

## **PJCIS Review of the Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022**

**1 March 2022**

The Australian Technology Network of Universities (ATN) welcomes the opportunity to provide a submission to the Parliamentary Joint Committee on Intelligence and Security's review of the Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022.

ATN is the peak body representing Australia's six most innovative and enterprising universities: Curtin University, Deakin University, RMIT University, The University of Newcastle, University of South Australia, and University of Technology Sydney.

The security of critical infrastructure is vitally important in the face of current and emerging sophisticated threats to Australia. Universities have long understood and accepted it is the responsibility of the Government to set and enforce the standard in these matters, and we, as partners in these endeavours, have demonstrated that we are willing and able to take on proportionate responsibility and protective measures.

Through the progress of these reforms we have welcomed the opportunity to work with the Department of Home Affairs on the design and implementation of critical infrastructure protections for universities.

The Bill and Explanatory Memorandum as they currently stand represent a risk-based and proportionate system that builds on the risk management and protections universities already have in place.

Where it is possible to do so, existing regulatory systems should be used to our advantage and transparency should be maintained so that all parties (Government, universities, and others) responsible for protecting critical infrastructure can consult with each other, share best practice and build a network of protections.

### **Recommendations**

1. The amended definitions of the higher education and research sector and critical education asset are more fit-for-purpose and should be adopted.
2. The activation of any positive security obligations is not needed for the higher education and research sector because of the cooperative and practical relationship that the Government and universities have developed through the University Foreign Interference Taskforce (UFIT).
3. There should be further guarantees and consideration of existing regulatory schemes before activation of any positive security obligations for the higher education and research sector.

info@atn.edu.au  
www.atn.edu.au  
Follow us @ATNunis

## Key points

- ATN affirms that national security (including critical infrastructure) is the Government's solemn responsibility and universities are ready, willing and able to do their part.
- ATN appreciates the consultative approach of the Department of Home Affairs in implementing these reforms so far and looks forward to continuing this cooperative partnership with the Department.
- The regulation of the critical infrastructure requirements needs to be clear and implemented with an understanding of the higher education sector and the other regulations in place.
- Where possible, transparency should be maintained so that all parties responsible for protecting critical infrastructure can consult with each other, share best practice and build a network of protections.

## **Recommendation 1: The amended definitions of the higher education and research sector and critical education asset are more fit-for-purpose and should be adopted.**

ATN has consistently advocated for a risk-based, targeted and proportionate approach to make efficient use of limited resources and protect the most critical infrastructure.

The higher education and research sector is highly aware of the national security risks and has taken positive steps to mitigate and address these risks, while continuing to provide world class teaching and research that benefits Australia.

Applying the highest level of protection to all parts of universities because of the criticality of one part would not be proportionate. The new definitions recognise this and support a constructive, measured and achievable approach from universities.

**ATN supports the change in definition of the higher education and research sector** to only those parts of the economy undertaking research that is supported financially by the Commonwealth and involve critical research.

In particular, ATN acknowledges that the Government has responded to feedback on the Exposure Draft of the Bill and changed the definition to only include parts of the economy that fulfill both criteria (rather than either criterion).

Existing Act	Exposure Draft	Current Bill
<p><b>higher education and research sector</b> means the sector of the Australian economy that involves:</p> <ul style="list-style-type: none"> <li>(a) being a higher education provider; or</li> <li>(b) undertaking a program of research that: <ul style="list-style-type: none"> <li>(i) is supported financially (in whole or in part) by the Commonwealth; or</li> <li>(ii) is relevant to a critical infrastructure sector (other than the higher education and research sector).</li> </ul> </li> </ul>	<p><b>higher education and research sector</b> means the sector of the Australian economy that involves undertaking a program of research that is:</p> <ul style="list-style-type: none"> <li>(a) supported financially (in whole or in part) by the Commonwealth; or</li> <li>(b) critical to: <ul style="list-style-type: none"> <li>(i) a critical infrastructure sector (other than the higher education and research sector); or</li> <li>(ii) national security; or</li> <li>(iii) the defence of Australia.</li> </ul> </li> </ul>	<p><b>higher education and research sector</b> means the sector of the Australian economy that involves undertaking a program of research that is:</p> <ul style="list-style-type: none"> <li>(a) supported financially (in whole or in part) by the Commonwealth; and</li> <li>(b) critical to: <ul style="list-style-type: none"> <li>(i) a critical infrastructure sector (other than the higher education and research sector); or</li> <li>(ii) national security; or</li> <li>(iii) the defence of Australia.</li> </ul> </li> </ul>

ATN also supports the change in definition of **critical education asset** to an asset owned or operated by a university that is used in connection with undertaking critical research.

However, we do note the inconsistency between the definition of critical education asset which only relates to assets owned or operated by universities, and the broader definition of the higher education and research sector.

Again, we acknowledge that the Government has responded to feedback on the Exposure Draft of the Bill and changed this definition.

Existing Act	Current Bill
<p><b>critical education asset</b> means a university that is owned or operated by an entity that is registered in the Australian university category of the National Register of Higher Education Providers.</p>	<p><b>critical education asset</b> means an asset that:</p> <ul style="list-style-type: none"> <li>(a) is owned or operated by an entity that is registered in the Australian university category of the National Register of Higher Education Providers; and</li> <li>(b) is used in connection with undertaking a program of research that is critical to: <ul style="list-style-type: none"> <li>(i) a critical infrastructure sector (other than the higher education and research sector); or</li> <li>(ii) the defence of Australia; or</li> <li>(iii) national security.</li> </ul> </li> </ul>

**Recommendation 2: The activation of any positive security obligations is not needed for the higher education and research sector because of the cooperative and practical relationship that the Government and universities have developed through the University Foreign Interference Taskforce (UFIT).**

ATN has consistently recommended that the protection of critical infrastructure needs to be part of a cohesive and coordinated approach by the Government across all its agencies and that the University Foreign Interference Taskforce (UFIT) should play an important role in this approach.

UFIT is the best model of collaboration and cooperation between universities and the Government. The key pillar to its success is the social compact that has been established between the sector and the Government – working together as partners of equal standing. The process has been collaborative and has delivered guidelines that are applicable, scalable and implementable for all universities.

**ATN supports the acknowledgement in the Explanatory Memorandum of UFIT** and that it will deliver the same outcomes as the risk management program specified in the Bill and as such the Government does not intend to activate any positive security obligations for the sector.

Explanatory Memorandum, clause 134:

*... The UFIT will deliver the same outcomes as intended by the critical infrastructure risk management program obligation for critical education assets. Therefore Government does not intend to 'switch on' any of the positive security obligations (including Part 2A) for critical education assets.*

**Recommendation 3: There should be further guarantees and consideration of existing regulatory schemes before activation of any positive security obligations for the higher education and research sector.**

In addition to clause 134 in the Explanatory Memorandum, clause 135 also notes:

*This reflects the range of regulatory obligations that already exist in relation to some classes of critical infrastructure assets, as well the obligations that may exist in relation to future critical infrastructure assets that are identified, and the Government's commitment to avoid duplicating regulation. However, should these alternative regulatory regimes be found wanting, Government will reserve the ability to 'switch on' any or all of the positive security obligations, including the critical infrastructure risk management program (Part 2A), to address any gaps and ensure that entities are subject to suitable and reasonable regulation.*

**ATN would welcome any further guarantees (in addition to clause 134) that the Government could provide to the higher education and research sector.**

**ATN would also welcome further amendments** to ensure that the Minister must consider existing regulatory schemes before making certain decisions such as a declaration of a critical infrastructure asset under section 51 or requiring a critical infrastructure risk management program under Part 2A.

---

Further enquiries should be addressed to:

**Executive Director**

Australian Technology Network of Universities  
[info@atn.edu.au](mailto:info@atn.edu.au)