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12 February 2021

Senator James Paterson
Chair
Parliamentary Joint Committee on Intelligence and Security
Parliament House

Via email: pjcis@aph.gov.au

Dear Senator Paterson,

Review of the Security Legislation Amendment (Critical Infrastructure) Bill 2020 and Statutory Review of the *Security of Critical Infrastructure Act 2018*

Thank you for the opportunity to provide comments on the review of the Security Legislation Amendment (Critical Infrastructure) Bill 2020 and statutory review of the *Security of Critical Infrastructure Act 2018*.

We provide this feedback to complement Universities Australia's more detailed submission and any advice the Group of Eight provides on behalf of its member institutions.

The University of Sydney supports the national security policy objectives that underpin the proposed amendments to the *Security of Critical Infrastructure Act 2018 (Cth)*, including the proposed expansion of the Act's coverage to apply to assets in the higher education and research sector. It is vital that critical infrastructure (facilities essential for everyday life such as energy, food, water, transport, communications, education, research, health, banking and finance) is protected.

We would, however, stress that a proportionate and workable regulatory approach is required in the protection of these assets. We note in particular that sector specific rules are expected to be developed early in 2021 through a co-design process, with these rules to inform a more detailed regulation impact statement; which will provide clarity about the costs and benefits for each sector of the specific obligations contained in Part 2A of the Bill (Critical Infrastructure Risk Management Programs). In this respect, we fully support Universities Australia co-designing, with the Department of Home Affairs, the details of the program as they apply to the sector.

We noted in two submissions on the draft Bill that the regulatory obligations are likely to be extensive and costly for research-intensive universities in terms of the resourcing required to support compliance with the regime. While we understand and support the policy objectives underpinning the Bill, we are concerned about the likely additional compliance costs for public universities responsible for operating critical national research infrastructure – often effectively on behalf of the Commonwealth and in some cases in collaboration with Commonwealth research agencies, state or territory government entities and other universities.

We also provided feedback to the draft Bill that it is possible that a university may be considered, in certain circumstances, to be part of the health care and medical sector (for example, in circumstances where an employee of a university is delivering health care in a university clinic within a public hospital facility or is jointly employed with a health service or medical research institute to operate research infrastructure or facilities) and that we thought that that effect would be unintended. We would support clarification in the proposed sector specific rules that, for the operational purpose of the enhanced critical infrastructure regime, universities do not straddle other sectors in addition to the higher education and research sector.

Within that feedback on the exposure draft we also noted the Minister's considerable powers to make rules and determinations which implement the broad objectives of the legislation, and an absence of relevant factors to guide the Minister in his or her rule making. We registered our concern about this absence of factors as it impacts the basis on which any rule making can be reviewed. In this regard, we observed that sector-wide consultation with the Minister's representative would allow universities to understand the intended reach of the rule making powers of the Minister before the Rules are released. This is important given the absence of review mechanisms for some of the powers included in the Bill.

Finally, we endorse the submission from Universities Australia and have provided the comments above to complement the feedback that UA has provided on behalf of the university sector. We support, in particular, that a sector-wide working group be established to ensure a range of expertise is available to assist with the co-design of the details of the legislation as it applies to the university sector.

Thank you again for this opportunity and we trust that this feedback is helpful. Should the Committee require anything further from the University, please do not hesitate to contact Mr Tim Payne, Director, Higher Education Policy and Projects, Office of the Vice-Chancellor and Principal (tim.payne@sydney.edu.au, 02 9351 4750).

Yours sincerely,

(signature removed)

Stephen Garton