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

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ABN: 71 626 822 845



To the Parliamentary Joint Committee on Intelligence and Security,

Thank you for the opportunity to provide feedback on the Security Legislation Amendment (Critical Infrastructure) Bill 2020.

Science & Technology Australia (STA) is the peak body representing more than 88,000 scientists and technologists in Australia. We do so through our member organisations including specialist scientific societies, research institutes, and research strategy bodies such as councils of deans.

## Introduction

Science & Technology Australia appreciates the opportunity to provide further comment on the protecting critical infrastructure legislation. Protection of Australia's critical infrastructure is important, and the research and education sectors take their responsibilities in this area seriously.

STA has previously outlined the importance of international engagement for research and higher education - and the importance of collaboration between industry and research. For ease of reference for the committee, our previous submission is attached as Appendix A.

In this submission, STA highlights the importance of collaboration by the Department of Home Affairs with research sector institutions to co-develop sector specific rules. We also highlight concerns about the ongoing rise of red tape and compliance costs for the sector, noting this legislation adds to a raft of other recently introduced regulatory measures.

## Sector specific co-development

STA supports the co-development of guidelines between the operators of critical infrastructure and the Department of Home Affairs. Between state regulations, which govern most universities, and increasingly complex federal regulations, co-development of the framework is essential.

A co-development approach is wise given the complexity of the challenges for the research and higher education sector. Australia's scientific and research institutions hold tens of thousands of complex agreements with international partners, domestic industries, State Governments, and interstate education institutions. Ensuring these factors are taken into account in the development of rules will minimise lost productivity and compliance burdens on institutions that are already subject to rigorous reporting and regulatory requirements.

Finally, a co-development approach will also result in stronger and more effective protective measures. By working with the sector to design any new rules, the focus can be more effectively targeted to any evolving potential risks not already covered by the comprehensive suite of other regulations. Universities, researchers and scientists are already covered by a series of other legislative and regulatory obligations and guidelines such as the [Guidelines to Counter Foreign Interference in the Australian university sector](#) (designed in partnership between universities and national security agencies) like [University Foreign Interference Taskforce \(UFIT\)](#), the [Defence Trade Controls Act](#),

and now the additional [Australia's Foreign Relations](#) legislation on agreements with international partners.

## The increasing cost of regulatory compliance

Every dollar spent on compliance with regulatory obligations is a dollar not spent on world-class research. While STA supports proactive management of risks, we have a growing concern that regulatory costs are mounting at a time when Australia's universities face significant financial challenges due to COVID-19's impact on international student numbers.

Since 2004, the amount of regulatory legislation for the higher education sector has doubled.<sup>1</sup> This includes legislation such as the Foreign Relations Act - but also the growth in metrics reporting under the Job-Ready Graduates higher education legislation.

The proposed Critical Infrastructure legislation highlights the cost to industry of regulations - especially for organisations required to have a positive security obligation. As the Regulatory Impact Statement outlines, positive security obligations will have a cost to industry to ensure compliance. While co-development of sector specific rules might limit these costs, it will not eliminate them.

Universities and research institutions continue to face significant financial stresses as a result of the economic fallout from COVID-19. Any increase in the compliance costs of research institutions will exacerbate this stress.

Universities will not be the only entities to feel the toll of the increased cost of compliance. Industry partners who use the nation's research infrastructure will also feel the pinch. It is a long-standing goal of the Australian Government to encourage industry-research collaborations - and STA is a longstanding supporter of that goal. Collaborations between Australian industry and our universities and research institutes should be made as easy and barriers as possible. If industry faces a growing regulatory burden in its research collaboration with publicly funded universities, this will be another barrier to stronger collaboration.

Providing dedicated compliance funding support to publicly-funded universities would ensure more research dollars are spent on research rather than on red tape. Such support might also mean that universities can handle compliance costs for their industry partners - rather than shouldering business with the costs of further red tape.

STA notes that section 4.2.1 of the regulatory impact statement indicates the costs will be more accurately identified in future impact statements after the sector specific co-design of the rules has been completed. STA urges the Australian Government to not only consider the regulatory cost in future statements, but also make a firm commitment to review the costs and provide financial support to publicly-funded bodies when these rules are implemented.

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<sup>1</sup> ["Higher education red tape has doubled since 2004"](#) Innovative Research Universities, 2020

## Summary

Science & Technology Australia understands the need for this legislation and its role in protecting our critical education and research infrastructure. Given the complexity of the challenges for our nation's education and research sector - as well as its global and businesses interconnectedness - STA is encouraged by the commitment of the Department of Home Affairs to co-develop the sector specific rules.

STA is however concerned about the growing regulatory burden being placed on Australian research institutions and researchers with no additional support to cover the financial cost of this burden. We therefore urge the Australian Government to review the cost of this regulatory burden once the sector specific rules have been co-designed - and provide financial support to cover this cost.

Every dollar spent on regulation is a dollar not spent on discovery.



Associate Professor Jeremy Brownlie  
President  
Science & Technology Australia



Misha Schubert  
CEO  
Science & Technology Australia

## Appendix A

To the Critical Infrastructure Centre,

Thank you for the opportunity to provide feedback on the Security Legislation Amendment (Critical Infrastructure) Bill 2020.

Science & Technology Australia (STA) is the peak body representing more than 88,000 scientists and technologists in Australia. We do so through our member organisations including specialist scientific societies, research institutes, and research strategy bodies such as councils of deans.

### Introduction

We thank the centre for taking Science & Technology Australia's earlier feedback into account to consider the extra regulatory burden this legislation would place on universities, research organisations, and researchers.

STA notes the intention for the Department of Home Affairs to consult closely with each sector to develop sector-specific rules. STA would be pleased to assist the Department by convening a consultative gathering of science, technology, engineering and maths sector leaders to provide input to this process.

We highlight three key insights which should be reflected in sector-specific rules:

- Research and higher education are globally-engaged activities - and this strong global engagement is crucial to Australia's success;
- The collaborative nature of research across multiple institutions strengthens the case for a collaborative approach with the sector; and
- Australia's rate of collaboration between industry and researchers may struggle further under the burden of additional red-tape.

We therefore make the following recommendations:

**STA recommends the Department of Home Affairs consults with us on the detail and complexity of rules for the research sector.**

**STA recommends a review 18 months after any new rules come into effect under this legislation to address any unintended consequences and monitor the red tape burden.**

### Research and higher education are globally engaged activities

In contrast to water and telecommunications infrastructure, the higher education and research sectors are strongly globally-engaged sectors. This strong global engagement is crucial to Australia's success and competitiveness.

Many Australian universities have overseas campuses and many of them teach students online who may be based overseas. Australia's research infrastructure facilities can also often be part of a larger international network to predict weather (such as the Global Observing System supported by Australia's Bureau of Meteorology) or map space (like the Square Kilometer Array).

These international linkages and crucial global engagement add a level of complexity to the protection of infrastructure. As complexity increases, so would regulatory compliance costs. These challenges are unlikely to be experienced by other infrastructure which does not have these burdens. We would be pleased to assist the Department to navigate this complexity in consultations on sector-specific rules.

## **The collaborative nature of research needs a collaborative approach**

STA agrees each institution should have a risk management plan for critical infrastructure. However, as outlined in Subsection 30AH(1)(c), the four proposed domains provide unique challenges for the research and higher education sector. This is because research does not occur in a vacuum.

Under the legislation, each university and research institution would be required to develop a risk management plan that takes into account physical, cyber, personal, and supply chain security risks.

Researchers in Australia often undertake work in multiple institutions as adjunct professors or visiting scholars - or undertake projects across institutions. In many areas of STEM that are infrastructure intensive, the National Collaborative Research Infrastructure Scheme (NCRIS) supports centralised resources or distributed node-based infrastructure to drive collaboration, maximise return on government investment, and improve skills and training.

Managing across institutions is an example of how extra compliance costs could apply to universities that would not apply to other areas of critical infrastructure. For example, it is unlikely an engineer working for one electricity company is also working for others.

This challenge is not insurmountable - but it is important to keep in mind that increasing the red-tape for researchers who move between or collaborate with other institutions could add to compliance costs. It should be noted it is standard practice for institutions to enter into collaboration agreements (for research dealing with intellectual property) or materials transfer agreements (for transferring samples with commercial sensitivity) when risks have to be managed. Extending and encouraging such precedents rather than establishing new mechanisms should be considered.

## **Industry-research collaborations will struggle under red tape**

STA notes that industry-based research is not included under this legislation unless industry is accessing publicly-funded research infrastructure. We support this exemption. However, in the legislation, there is some policy uncertainty that STA anticipates could still impose a further barrier to industry-research collaborations.

In the definitions for the higher education and research sector, because private research industries can receive funding from organisations like the Australian Research Council, they can be prescribed as critical infrastructure "should the legislative test be met in the future". This section introduces uncertainty to businesses that partner with publicly-funded research institutions through schemes like the ARC Linkage Program.

Not all research undertaken by private research institutions could be considered “nationally significant” according to the legislation. STA would, however, encourage the Department to strongly consider that any impediment to industry-research collaborations should be avoided.

We thank you for your attentive consideration to our feedback on behalf of the nation’s science and technology sectors.

Yours sincerely,



Associate Professor Jeremy Brownlie  
President  
Science & Technology Australia



Misha Schubert  
CEO  
Science & Technology Australia