

Universities Australia Submission to Parliamentary Joint Committee on Intelligence and Security

19 January 2015

Universities Australia welcomes this opportunity to provide a submission to the Parliamentary Joint Committee on Intelligence and Security's (PJCIS) inquiry into the *Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014* (the Bill).

Universities Australia is the peak body representing 39 Australian universities in the public interest. As the voice of Australia's universities, we support a sustainable national university system characterised by inherent quality, accessibility, innovation and high performance that affirms Australia as a world-leading nation and valued international partner.

Universities Australia is pleased to see that the Government intends to exclude universities, in their entirety, from the data retention obligations set out in Schedule 1 of the Bill. There would be significant administrative burden and cost consequences for universities if they were required to collect and retain data that is currently not required for their internal purposes.

As to whether the Government's clearly stated policy intention is fully reflected in the proposed drafting of the Bill, we consider that the current wording of new s 187B is tolerably clear. Having said that, universities operate in a rapidly changing technological environment, and it will therefore be of crucial importance to ensure that the intention behind new s 187B - that is, to exclude universities in their entirety from the proposed regime - is also clearly set out in supporting material such as the Explanatory Memorandum, as it currently is. It will also be important to ensure that any amendments to the Bill that are recommended by the Committee do not inadvertently impose unintended data retention obligations on universities.

We note that the exemption in new s 187B can be overridden by the Communications Access Coordinator (CAC): ss 187B(1)(b) and 187B(2). We are concerned that the power of the CAC to determine that a university will be subject to the proposed data retention regime is effectively open-ended. While s 187(3) requires the CAC to have regard to the interests of law enforcement and security, as well as the objects of the *Telecommunications Act 1997*, it also enables the CAC to have regard to "any other matter" that he or she considers relevant. The exercise of this power is not subject to judicial review. Universities Australia is concerned that there is the potential for an administrative officer to override the clearly stated intention of Parliament by making a determination that would subject a university to costly and burdensome

data retention obligations in circumstances where Parliament had determined that this was not warranted or appropriate. A university that was subject to such a determination might find itself in the invidious position of having to comply with the data retention obligations in s 187A immediately, without any reasonable opportunity to make necessary changes to its systems in order to fully comply. Universities Australia considers that the Committee should give further thought to the circumstances (if any) in which an administrative officer can override the policy intention behind new s 187B.

We look forward to contributing to any further consultations regarding the Bill, especially regarding any proposed changes that have the potential to impact on universities' obligations.