



EXPLANATORY STATEMENT

Issued by authority of the Minister of Home Affairs

Security of Critical Infrastructure Act 2018

Security of Critical Infrastructure Amendment (LIN 24/002) Rules 2024

- 1 The instrument, the *Security of Critical Infrastructure Amendment (LIN 24/002) Rules 2024*, is made under section 61 of the *Security of Critical Infrastructure Act 2018* (the Act). This provision allows the Minister to make rules (by legislative instrument) prescribing matters required or permitted by the Act, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.
- 2 The instrument amends the following instruments:
 - *Security of Critical Infrastructure (Application) Rules (LIN 22/026) 2022*;
 - *Security of Critical Infrastructure (Critical infrastructure risk management program) Rules (LIN 23/006) 2023*;
 - *Security of Critical Infrastructure (Definitions) Rules (LIN 21/039) 2021*.
- 3 Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that a power to make a legislative instrument includes a power to repeal, rescind, revoke, amend, or vary that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.
- 4 The instrument commences on the day after registration on the Federal Register of Legislation. It is a legislative instrument for the purposes of the *Legislation Act 2003*.

Purpose

Aviation definitions

- 5 The instrument updates and clarifies certain aviation-related definitions, in accordance with the *Aviation Transport Security Act 2004* and *Aviation Transport Security Regulations 2005*, which are relied on in LIN 22/026. The instrument amends the definition of designated airport to clarify that a '**designated airport**' is a category of security controlled airport. The instrument inserts the definition of **security controlled airport** to have the meaning given by subsection 28(2) of the *Aviation Transport Security Act 2004*. The instrument amends the definition of **regulated air cargo agent** to clarify that the meaning of the term is given by section 9 of the *Aviation Transport Security Act 2004*.

Positive security obligations—Parts 2, 2A and 2B of the Act

- 6 Part 2 of the Act provides that the Secretary of the Department must keep a private Register of Critical Infrastructure Assets containing information in relation to those assets. Under Part 2, the responsible entity for a critical infrastructure asset must give operational information, and a direct interest holder in relation to the asset must give interest and control information, to the Secretary to be

EXPOSURE DRAFT

included in the Register. For paragraph 18A(1)(a) of the Act, LIN 22/026 specifies the assets to which Part 2 of the Act applies.

- 7 Part 2A of the Act provides that the responsible entity for one or more critical infrastructure assets, to which Part 2A applies, must have and comply with a critical infrastructure risk management program (CIRMP) unless an exemption applies. For paragraph 30AB(1)(a) of the Act, LIN 23/006 specifies the assets to which Part 2A applies and requirements that responsible entities must comply with.
- 8 A CIRMP is a written program, the purpose of which, under paragraph 30AH(1)(b) of the Act, is to require a responsible entity for a critical infrastructure asset:
 - to identify each hazard where there is a material risk that the occurrence of the hazard could have a relevant impact on the asset; and
 - so far as it is reasonably practicable to do so—to minimise or eliminate any material risk of such a hazard occurring; and
 - so far as it is reasonably practicable to do so—to mitigate the relevant impact of such a hazard on the asset.
- 9 Part 2B of the Act provides that if a cyber security incident has a relevant impact on a critical infrastructure asset, the responsible entity for the asset may be required to give a relevant Commonwealth body a report about the incident. For paragraph 30BB(1)(a) of the Act, LIN 22/026 specifies the assets to which Part 2B applies.

Critical port and critical water assets

- 10 The instrument amends LIN 22/026 to specify critical port and critical water assets, which were not critical infrastructure assets immediately before the commencement of section 18A of the Act on 3 December 2021, as critical infrastructure assets to which Part 2 (Register of Critical Infrastructure Assets) obligations under the Act apply. This is to ensure that critical port or critical water assets that became critical infrastructure assets after 3 December 2021 are required to comply with Part 2 of the Act from the commencement of this instrument on the day after registration.

Schedule 1 Specified critical hospitals

- 11 The amendment instrument updates Schedule 1 of LIN 23/006 with a current list of ‘specified critical hospitals’ by removing selected hospitals from the table. This amendment ensures that the removed hospitals do not attract the obligations under Part 2A (Critical infrastructure risk management programs) of the Act and that such obligations only apply to the ‘specified critical hospitals’ in the Schedule.
- 12 The amendment instrument also introduces an identical Schedule of ‘specified critical hospitals’ to LIN 22/026. The effect of this amendment applies the positive security obligations under Part 2 (Register of Critical Infrastructure Assets) and Part 2B (Notification of cyber security incidents) of the Act only to those ‘specified critical hospitals’ within the Schedule.
- 13 These amendments removes ‘Cabrini Malvern’ and substitutes ‘Mater Adult Hospital’ with ‘Mater Private Hospital Brisbane’ from the table of specified critical hospitals following consultation with Cabrini Health Ltd (ABN 33 370 684 005) and Mater Misericordiae Ltd (ABN 83 096 708 922) as the

EXPOSURE DRAFT

EXPOSURE DRAFT

responsible entities for the relevant hospitals. Cabrini Malvern has been removed from the table of specified critical hospitals as it is not critical to the sector and to ensure that the hospital does not have to comply with the positive security obligations under the Act. ‘Mater Adult Hospital’ has been substituted to correct the operating name of the hospital.

Sugar mills

- 14 The instrument amends LIN 22/026 to remove references to the four sugar mills mentioned in subsections 4(2) and 5(3). Section 19 of LIN 21/039 provides that the four sugar mills mentioned in this amendment are not critical infrastructure assets.
- 15 The amendments of LIN 22/026, to repeal subsections 4(2) and 5(3), are to make clear that these sugar mills do not attract the obligations under the Act in relation to critical infrastructure assets. This includes the obligations under Part 2 (Register of Critical Infrastructure Assets) and Part 2B (Notification of cyber security incidents) of the Act.

Critical financial market infrastructure assets

- 16 The instrument amends LIN 22/026 to clarify which category of “critical financial infrastructure asset” is required to comply with Part 2 (Register of Critical Infrastructure Assets) obligations under the Act by aligning with the language used in paragraph 12D(1)(i) of the Act.
- 17 The instrument makes minor and technical amendments to LIN 21/039 to clarify the references and definitions for paragraphs 12D(6)(a) and 12L(8)(i) of the Act.

Consultation

- 18 At the time the Exposure Draft was prepared, the Office of Impact Analysis (OIA) was consulted and considered that the instrument is unlikely to have more than a minor regulatory impact. As such, no impact analysis was required. The OIA reference number is OIA23-04592.

Part 2, 2A and 2B

- 19 Sections 18AA, 30ABA and 30BBA of the Act requires that, before making or amending rules under sections 18A, 30AB and 30BB respectively, the Minister must:
 - cause a notice to be published on the Department’s website setting out the draft rules or amendments and invite persons to make submissions to the Minister;
 - give a copy of the notice to each State and Territory First Minister; and
 - consider any submissions received within the period specified in the notice. Subsections 18AA(3), 30ABA(3) and 30BBA(3) of the Act specifies that the period of the notice must be no shorter than 28 days.
- 20 For rules or amendments under section 30BB, the Minister must also:
 - give a copy of the draft rules or amendments to the responsible entity for an asset that is, or is proposed to be, specified in the rules; and

EXPOSURE DRAFT

EXPOSURE DRAFT

- if a submission is received from these entities within the specified notice period—give the entity a written statement that sets out the Minister’s response to the submission.
- 21 This exposure draft is made publically available to satisfy the consultation requirements of sections 18AA, 30ABA and 30BBA of the Act.
- 22 In developing this exposure draft, the Department of Home Affairs consulted with Cabrini Health Ltd (ABN 33 370 684 005) and Mater Misericordiae Ltd (ABN 83 096 708 922) as the responsible entities for the relevant hospitals to determine whether those hospitals were critical to the sector, and should therefore attract the positive security obligations under Parts 2, 2A and 2B of the Act and be included in the Schedules in LIN 22/026 and 23/006.

Details of the instrument

- 23 Details of this instrument are set out in Attachment A.

Parliamentary scrutiny etc.

- 24 The instrument is subject to disallowance under section 42 of the *Legislation Act 2003*.
- 25 A Statement of Compatibility with Human Rights has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the instrument is compatible with human rights. The Statement is included at Attachment B.

EXPOSURE DRAFT

Details of the *Security of Critical Infrastructure Amendment (LIN 24/002) Rules 2024*

Section 1 Name

The title of this legislative instrument is the *Security of Critical Infrastructure Amendment (LIN 24/002) Rules 2024*.

Section 2 Commencement

The instrument commences on the day after registration.

Section 3 Authority

Section 3 of the instrument provides that the instrument is made under the *Security of Critical Infrastructure Act 2018* (the Act).

Subsection 33(3) of the *Acts Interpretation Act 1901* relevantly provides that a power to make a legislative instrument includes a power to repeal, rescind, revoke, amend, or vary that instrument in the same manner, and subject to the same conditions, as the power to make the instrument.

Section 4 Schedules

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 of the instrument amends the following instruments:

- *Security of Critical Infrastructure (Application) Rules (LIN 22/026) 2022*;
- *Security of Critical Infrastructure (Critical infrastructure risk management program) Rules (LIN 23/006) 2023*;
- *Security of Critical Infrastructure (Definitions) Rules (LIN 21/039) 2021*.

Schedule 1—Amendments

Security of Critical Infrastructure (Application) Rules (LIN 22/026) 2022

Item [1] Section 3 (definition of *designated airport*)

This item amends LIN 22/026 to insert an updated definition of ***designated airport***, clarifying that ‘designated airport’ is a category of security controlled airport. Under subsection 28(6) of the *Aviation Transport Security Act 2004*, the Secretary may, by notice published in the Gazette, assign a particular security controlled airport a category prescribed under section 28A. Section 3.01B of *Aviation Transport Security Regulations 2005* prescribes four categories of security controlled airport for the purposes of section 28A of the *Aviation Transport Security Act 2004*, including ‘designated airport’ (paragraph 3.01B(a)). The revised definition makes clear that a reference in LIN 22/026 to a designated airport is a reference to a security controlled airport that has been assigned the category of ‘***designated airport***’ by the Secretary of the Department of Home

EXPOSURE DRAFT

Affairs. Pursuant to subsection 28(2) of the *Aviation Transport Security Act 2004*, a security controlled airport is a particular airport, or part of a particular airport, declared by the Secretary in a Gazette notice to be a ‘security controlled airport’.

Item [2] Section 3 (definition of *regulated air cargo agent*)

This item amends LIN 22/026 to revise the definition of *regulated air cargo agent*, to ensure it makes clear that the meaning of this term is given by section 9 of the *Aviation Transport Security Act 2004*. Section 9 provides that *regulated air cargo agent* means a person designated as a regulated air cargo agent in accordance with regulations made under section 44C of the *Aviation Transport Security Act 2004*.

Item [3] Section 3

This item amends LIN 22/026 to insert the definition of *security controlled airport*, in order to support the revised definition of ‘designated airport’ following the amendment of that definition by item 1. Under subsection 28(2) of the *Aviation Transport Security Act 2004*, a security controlled airport is a particular airport, or part of a particular airport, declared by the Secretary in a Gazette notice to be a ‘security controlled airport’.

Item [4] Subsection 4(1)

This item removes the reference to subsection 4(2) of LIN 22/026 as a result of the provision being repealed by item 6.

Item [5] Paragraph 4(1)(d)

This item amends LIN 22/026 to update the reference in paragraph 4(1)(d) from ‘a critical financial market infrastructure asset that is a payment system’ to ‘a critical financial market infrastructure asset that is covered by paragraph 12D(1)(i) of the Act’.

Section 12 of the SOCI Act provides the meaning of ‘critical financial market infrastructure asset’. Paragraph 12D(1)(i) provides that a ‘critical financial market infrastructure asset’ is an asset that is used in connection with the operation of a payment system that, in accordance with subsection (6), is critical to the security and reliability of the financial services and markets sector.

This amendment ensures that the obligations on a responsible entity under Part 2 of the Act applies to the critical financial market infrastructure assets that is an asset covered by paragraph 12D(1)(i) of the Act. This amendment is complemented by the amendment in item 17 of the amendment instrument, which prescribes, under subsection 12D(6) of the Act, certain payment systems for the purposes of paragraph 12D(1)(i). Subsection 10(5) of LIN 21/039 prescribes certain payment systems for this purpose. The amendment in item 17 of the amendment instrument inserts subsection 10(6) of the Definition Rules which outlines which responsible entity for each critical financial asset covered by paragraph 12D(1)(i).

Item [6] Paragraph 4(1)(f)

This item substitutes the reference to “critical hospital” as a specified critical infrastructure asset, with “a critical hospital that is mentioned in the table under Schedule 1”. This is to ensure that the obligations under Part 2 (register of critical infrastructure assets) of the Act only apply to the list of specified critical hospitals in the table in Schedule 1.

EXPOSURE DRAFT

EXPOSURE DRAFT

Item [7] At the end of Subsection 4(1)

This item inserts paragraphs 4(1)(n) and (o) to specify that the obligations on a responsible entity under Part 2 (Register of Critical Infrastructure Assets) of the Act applies to critical port assets and critical water assets that were not critical infrastructure assets prior to the commencement of section 18A of the Act (i.e. 3 December 2021). This is to ensure that critical port or critical water assets that became critical infrastructure assets after 3 December 2021 are required to comply with Part 2 of the Act from the commencement of this instrument on the day after registration.

For existing critical port or critical water assets, paragraph 18A(1)(c) of the Act provides that Part 2 of the Act continues to apply to critical infrastructure assets that were critical infrastructure assets immediately before the commencement of section 18A (i.e. 3 December 2021). For this reason, Part 2 of the Act continues to apply to critical electricity assets, critical gas assets, critical port assets and critical water assets that were already critical infrastructure assets immediately prior to the commencement of section 18A, as well as assets that were privately declared under section 51 before the commencement of section 18A of the Act.

Part 2—Grace period

Subsection 4(3) of LIN 22/026 provides a ‘grace period’ for compliance with Part 2 of the Act. Under this provision, Part 2 of the Act does not apply to the critical infrastructure assets mentioned in subsection (1) in the period beginning at the time that the asset becomes a critical infrastructure asset and ending on the later of:

- 6 months after the commencement of LIN 22/026 (paragraph 4(3)(a)); and
- 6 months after the asset becomes a critical infrastructure asset (paragraph 4(3)(b)).

For paragraph 4(3)(a), the date is calculated as being 8 October 2022 on that basis that LIN 22/2026 commenced on 8 April 2022 and 6 months after commencement is 8 October 2022.

For paragraph 4(3)(b), calculation of the date is dependent on when the asset became a critical port or critical water asset. For example, if an asset became a critical port or critical water asset after 1 July 2023 (i.e. the date calculated as being 6 months prior to the instrument commencing on 1 January 2024), paragraph 4(3)(b) would apply to provide this group of critical port or critical water assets a grace period to comply with Part 2 of the Act.

In practice, this means that assets that became critical port or critical water assets during the period commencing on 3 December 2021 until 30 June 2023 will not have a ‘grace period’ on commencement of this instrument on 1 January 2024. This is because paragraph 4(3)(a) would be an earlier date (i.e. 8 October 2022) and a 6 month ‘grace period’ for an asset that became a critical port or critical water asset before 1 July 2023 (i.e. the ‘later date’) would have expired when this instrument commences on 1 January 2024. Accordingly, Part 2 of the Act will apply on the commencement of LIN 24/002 to this group of critical port or critical water assets on commencement of this instrument.

Item [8] Subsection 4(2)

This item amends LIN 22/026 to remove subsection 4(2) from the instrument. Section 19 of LIN 21/039 provides that the four sugar mills which are mentioned in subsection 4(2) of LIN 22/026 are not critical infrastructure assets. This is because these assets were not intended to be captured by the definition of *critical*

EXPOSURE DRAFT

electricity asset under section 10 of the Act. This means that the obligations under the Act, such as Part 2, cannot apply to these assets and consequently the reference to them in LIN 22/026 is redundant.

Item [9] Subsection 5(1)

This item removes the reference to subsection 5(3) of the instrument, which is redundant as a result of the repeal of that subsection by item 12.

Item [10] Paragraph 5(1)(i)

This item substitutes the reference to “critical hospital” as a specified critical infrastructure asset, with “a critical hospital that is mentioned in the table under Schedule 1”. This is to ensure that Part 2B (Notification of cyber security incidents) of the Act only apply to the list of designated specified critical hospitals.

Item [11] Subsection 5(2)

This item makes a minor technical amendment to make clear that this subsection is for the purposes of paragraph 5(1)(p) of LIN 22/026. Paragraph 5(1)(p) provides that for paragraph 30BB(1)(a) of the Act, a critical aviation asset mentioned in subsection 5(2) is specified. This amendment provides greater clarity on the face of the instrument, creating a clear link between subsection 5(2) and paragraph 5(1)(p) on the face of the instrument. It also ensures consistency with drafting conventions, and addresses Scrutiny of Delegated Legislation Committee Principle (e) which relates to the clarity of drafting.

The Part 2B (Notification of cyber security incidents) positive security obligation applies to a designated airport, an asset used to perform an Australian prescribed air service operating screened air services that depart from a designated airport, a cargo terminal that is owned or operated by a regulated air cargo agent that is also a cargo terminal operator; and is located at a designated airport.

Item [12] Section 5(3)

This item amends LIN 22/026 to remove subsection 5(3) from the instrument. Section 19 of the LIN 21/039 provides that the four sugar mills, which are mentioned at subsection 5(3) of LIN 22/026, are not critical infrastructure assets. This is because these assets were not intended to be captured by the definition of *critical electricity asset* under section 10 of the Act. This means that the positive security obligations under the Act,

EXPOSURE DRAFT

such as Part 2B (notification of cyber security incidents), cannot apply to these assets and consequently the reference to them in LIN 22/026 is redundant.

Item [13] At the end of the instrument

This item inserts a table setting out critical hospitals for the purposes of paragraphs 4(1)(f) and 5(1)(i), which provide that critical hospitals mentioned in the table in Schedule 1 are specified for the purposes of paragraph 18A(1)(a) and paragraph 30BB(1)(a) of the Act.

The table of ‘Specified critical hospitals’ has incorporated the following amendments in accordance with item 16:

- removes Cabrini Malvern as a ‘specified critical hospital’ to ensure they do not attract the obligations under the Act (this follows consultation with Cabrini Malvern); and
- replaces ‘Mater Adult Hospital’ with ‘Mater Private Hospital Brisbane’ to correct the operating name of the hospital.

The amendment will ensure that the positive security obligations under Parts 2 (Register of Critical Infrastructure Assets) and 2B (Notification of cyber security incidents) of the Act only apply to the critical hospitals that are mentioned in the table of specified critical hospitals.

Security of Critical Infrastructure (Critical infrastructure risk management program) Rules (LIN 23/006) 2023

Item [14] Section 3

This item amends LIN 23/006 to repeal the definition of *designated hospital* as a result of the amendments in items 15 and 16 of the instrument.

Item 15 Paragraph 4(1)(g)

This item substitutes the paragraph “critical hospital” with “a critical hospital that is mentioned in the table under Schedule 1”. This is to ensure that Part 2A (Critical infrastructure risk management programs) of the Act only apply to a critical hospital that is mentioned in the table in Schedule 1 to LIN 23/006.

Item [16] Schedule 1

This item repeals the table of ‘Designated Hospitals’ at Schedule 1 and substitutes that with a table of ‘Specified critical hospitals’ which has incorporated the following amendments:

- removes Cabrini Malvern as a ‘specified critical hospital’ to ensure they do not attract the obligations under the Act (this follows consultation with Cabrini Malvern); and
- replaces ‘Mater Adult Hospital’ with ‘Mater Private Hospital Brisbane’ to correct the operating name of the hospital.

EXPOSURE DRAFT

Security of Critical Infrastructure (Definitions) Rules (LIN 21/039) 2021

Item [17] Subsection 10(5)

Subsection 10(5) of the instrument prescribes, for the purposes of paragraph 12D(1)(i) of the Act, specified payment systems in column 1 of an item in the table under subsection (7) as a *payment system* that is critical to the security and reliability of the financial services and markets sector. Section 5 of the Act provides that *payment system* has the same meaning as in the *Payment Systems (Regulation) Act 1998* as in force from time to time.

Paragraph 12D(1)(i) of the Act provides that an asset is a critical financial market infrastructure asset if is used in connection with the operation of a payment system that, in accordance with subsection 12D(6) of the Act, is critical to the security and reliability of the financial services and markets sector. Paragraph 12D(6)(a) of the Act provides for the prescription of specified payment systems that are critical to the security and reliability of the financial services and markets sector. The four payment systems in the table under new subsection 10(7) are prescribed for this purpose.

Item 17 amends LIN 21/039 to insert subsection 10(6) which prescribes the body corporate that is the *responsible entity* under the Act for each of the critical financial market infrastructure assets. The instrument does so by specifying in column 2 of the table in subsection 10(7), the responsible entity for a payment system specified in column 1 of an item in the table. Paragraph 12L(8)(i) of the Act provides that the rules may prescribe the *responsible entity* for a payment system.

Item 17 amends LIN 21/039 to insert subsection 10(7) which contains a table that prescribes critical financial market infrastructure assets for paragraph 12D(1)(i) of the Act in column 1. The specified payment systems are retail payment systems which, if they suffered a major disruption or a serious data breach, could have a material negative impact on end-users and economic activity and significantly reduce public confidence in payment services and key providers. Column 2 of subsection 10(7) specifies the responsible entity of the critical financial market infrastructure assets.

Additionally, the amendment in Item 17 addresses Scrutiny of Delegated Legislation Committee Principle (e) which relates to the clarity of drafting.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Security of Critical Infrastructure Amendment (LIN 24/002) Rules 2024

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The *Security of Critical Infrastructure Act 2018* (the Act) contains positive security obligations intended to enhance both Government and industry's understanding of the threat environment faced by Australia's critical infrastructure, and build cyber situational awareness.

Part 2 of the Act provides that the Secretary of the Department must keep a private Register of Critical Infrastructure Assets containing information in relation to those assets. Under Part 2, the responsible entity for a critical infrastructure asset must give operational information, and a direct interest holder in relation to the asset must give interest and control information, to the Secretary to be included in the Register. For paragraph 18A(1)(a) of the Act, the *Security of Critical Infrastructure (Application) Rules (LIN 22/026) 2022* specifies the assets to which Part 2 of the Act applies.

Part 2A of the Act provides that the responsible entity for one or more critical infrastructure assets, to which Part 2A applies, must have, and comply with, a critical infrastructure risk management program (CIRMP) unless an exemption applies. For paragraph 30AB(1)(a) of the Act, the *Security of Critical Infrastructure (Critical infrastructure risk management program) Rules (LIN 23/006) 2023* specifies the assets to which Part 2A applies and requirements that responsible entities must comply with.

A CIRMP is a written program, the purpose of which under paragraph 30AH(1)(b) of the Act is to require a responsible entity for a critical infrastructure asset:

- to identify each hazard where there is a material risk that the occurrence of the hazard could have a relevant impact on the asset; and
- so far as it is reasonably practicable to do so—to minimise or eliminate any material risk of such a hazard occurring; and
- so far as it is reasonably practicable to do so—to mitigate the relevant impact of such a hazard on the asset.

Part 2B of the Act provides that if a cyber-security incident has a relevant impact on a critical infrastructure asset, the responsible entity for the asset may be required to give a relevant Commonwealth body a report about the incident. For paragraph 30BB(1)(a) of the Act, the *Security of Critical Infrastructure (Application) Rules (LIN 22/026) 2022* specifies the assets to which Part 2B applies.

EXPOSURE DRAFT

The *Security of Critical Infrastructure Amendment (LIN 24/002) Rules 2024* (the amendment instrument) amends the following instruments:

- *Security of Critical Infrastructure (Application) Rules (LIN 22/026) 2022;*
- *Security of Critical Infrastructure (Critical infrastructure risk management program) Rules (LIN 23/006) 2023;*
- *Security of Critical Infrastructure (Definitions) Rules (LIN 21/039) 2021.*

The purpose of the amendment instrument is to:

- update and clarify aviation-related definitions, in accordance with the *Aviation Transport Security Act 2004* and *Aviation Transport Security Regulations 2005*, which are being utilised within LIN 22/026;
- specify critical port and critical water assets, which were not critical infrastructure assets immediately before the commencement of section 18A of the Act, as critical infrastructure assets to which Part 2 (Register of Critical Infrastructure Assets) obligations under the Act apply. This is to ensure that Part 2 of the Act applies to assets that become a critical port asset or a critical water asset after 3 December 2021;
- make consequential amendments to remove references to four sugar mills, which are not critical infrastructure assets under LIN 21/039. This ensures and makes clear that the sugar mills do not attract the obligations under the Act in relation to critical infrastructure assets. This includes the obligation under Part 2 (Register of Critical Infrastructure Assets) and Part 2B of the Act (Notification of cyber security incidents);
- make an amendment to paragraph 4(1)(d) of LIN 22/026 to correct the reference in 4(1)(d) from ‘a critical financial market infrastructure asset that is a payment system’ to ‘a critical financial market infrastructure asset used in connection with the operation of a payment system’. This amendment would align the language with that of section 12D(1) of the *Security of Critical Infrastructure Act 2018* and ensure that the Part 2 obligations under the Act are applied as intended. This amendment would be repeated in paragraph 10(5) of LIN 21/039 for the same purposes;
- update the definition of critical financial market infrastructure assets to ensure that it remains consistent across the *Security of Critical Infrastructure Act 2018* and delegated legislation. The amendments do not introduce any additional obligations for critical financial market infrastructure assets and only clarifies existing obligations; and
- repeal the table of ‘Designated Hospitals’ at Schedule 1 of LIN 23/006 and substitute that with an updated table of ‘specified critical hospitals’. Additionally, recreate this list of ‘specified critical hospitals’ into LIN 22/026. This is to apply the positive security obligations under Parts 2 (Register of Critical Infrastructure Assets) and 2B (Notification of cyber security incidents) of the Act only to the critical hospitals that is mentioned in the table of specified critical hospitals. In effect, the amendments will:

EXPOSURE DRAFT

EXPOSURE DRAFT

- update the list of specified critical hospitals by removing and amending selected hospitals to ensure that they do not attract the positive security obligations under Parts 2, 2A and 2B of the Act; and
- ensure that these positive security obligations under the Act only apply to the specified critical hospitals listed under the Schedules. This is to address health care and medical sector feedback that the current definition of critical hospital within the Act is too broad and extends the positive security obligations to hospitals that are not critical to the sector.

Human rights implications

This Disallowable Legislative Instrument engages the right to privacy in Article 17(1) of the *International Covenant on Civil and Political Rights* (ICCPR).

Right to privacy

Article 17(1) of the ICCPR provides that:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Interferences with privacy may be permissible where it is authorised by law and is not arbitrary. For an interference with the right to privacy not to be arbitrary, the interference must be for a reason consistent with the provisions, aims and objectives of the ICCPR and be reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted ‘reasonableness’ in this context to mean that ‘any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case’.

The term unlawful means that no interference can take place except as authorised under domestic law.

Part 2 of the Act provides that the Secretary of the Department must keep a private Register of Critical Infrastructure Assets containing information in relation to those assets. Under Part 2, the responsible entity for a critical infrastructure asset must give operational information, and a direct interest holder in relation to the asset must give interest and control information, to the Secretary to be included in the Register. This assists the Government to identify who owns and controls the asset, understand the risks relating to the critical infrastructure asset, and apply mitigations where necessary (e.g. through other positive security obligations or the exercise of powers under the Act, such as the Minister’s power to give a direction under section 32 of the Act in response to risk of an act or omission that would be prejudicial to security).

The amendments will ensure that Part 2 applies to responsible entities for assets that became a critical water asset or critical port asset after 3 December 2021. The requirement to provide information to the Register may engage the right to privacy of the owners or operators of the asset’s responsible entity, where those owners or operators are individuals. Such information is held securely by the Government and will not be made available on a public register.

The removal of four critical electricity assets from the Application Rules, being four sugar mills, will ensure that they are not subject to the obligations under the Act. The removal and amendment of select hospitals from the list of specified critical hospitals will ensure that these facilities are not subject to positive security obligations under the Act.

Register of Critical Infrastructure Assets – obligations to give information and notify of events

The Register is used by the Government to prioritise and inform risk assessments to identify and manage national security risks in critical infrastructure assets. The interest and control information and operational

EXPOSURE DRAFT

EXPOSURE DRAFT

information on the Register provides the Government with a more comprehensive understanding of how the asset and sector operates, and where there may be vulnerabilities. The information on the Register also influences the Government's ability to develop strategies to mitigate or reduce national security risk for assets which, if disrupted, would significantly impact the operations of large population hubs, economic interests and government operations.

The Government has taken sufficient steps to ensure that the limitations on the right to privacy are no more restrictive than necessary as the use and disclosure of information on the Register is restricted to purposes authorised under the Act. All information obtained under the Act, including information provided for the Register, is protected information as defined in section 5 of the Act. It is a criminal offence to use or disclose protected information other than as authorised by Part 4, Division 3 of the Act. This Division enables disclosure for specified purposes, including the provision of assistance to regulatory bodies with oversight of relevant critical infrastructure sectors. Part 4, Division 3, Subdivision B of the Act provides criminal penalties to deter the unlawful disclosure of protected information.

The information on the Register may be shared with the relevant states and territories in which critical ports or water assets are located. This information may have broader policy implications for states and territories, particularly in relation to maintaining the security and resilience of critical infrastructure assets vital for their jurisdiction. This acknowledges that the states and territories, as owners and regulators of critical infrastructure assets share the responsibility with the Government to manage national security risks.

Further, safeguards for the protection of personal information specified in the Australian Privacy Principles (APP) under the *Privacy Act 1988* will apply to interest and control information as defined in section 6 of the Act, and operational information gathered under Part 2 and Part 2B of the Act. This includes requirements regarding the security of personal information specified under APP 11 and requirements regarding use or disclosure under APP 6.

To the extent that bringing critical water assets and critical port assets within the scope of the requirement to provide information to the Register may result in the incidental collection of personal information and limit the right to privacy in Article 17 of the ICCPR, this limitation is permissible as the collection of personal information would be lawful, would not be arbitrary and would be reasonable, necessary and proportionate to achieving a legitimate national security objective.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to the objective of reducing national security risks.

The Honourable Clare O'Neil MP
Minister for Home Affairs
Minister for Cyber Security