

# EXPOSURE DRAFT

## EXPLANATORY STATEMENT

Issued by authority of the Minister of Home Affairs and Minister for Cyber Security

*Security of Critical Infrastructure Act 2018*

### ***Security of Critical Infrastructure (Naval shipbuilding precinct) Amendment (LIN 23/073) Rules 2023***

- 1 The instrument, the *Security of Critical Infrastructure (Naval shipbuilding precinct) Amendment (LIN 23/073) Rules 2023* (LIN 23/073), is made under section 61 of the *Security of Critical Infrastructure Act 2018* (the Act).
- 2 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.
- 3 The instrument commences on the day after registration on the Federal Register of Legislation, and is a legislative instrument for the *Legislation Act 2003* (the Legislation Act).

### ***Purpose***

- 4 The instrument amends LIN 23/007 to prescribe that for paragraph 9(1)(f) of the Act, an asset is a critical infrastructure asset if the asset is used for the primary purposes of naval shipbuilding and sustainment within the Osborne Naval Shipyard (ONS), which is located on the Lefevre Peninsula, South Australia; and the asset is operated by an entity which has exclusive control and use of the asset or the area where the asset is located through a licence or other contractual arrangement for the purposes of naval shipbuilding and sustainment.
- 5 The instrument amends LIN 23/007 to prescribe that for subsection 12L(23) of the Act an entity is a responsible entity of a critical infrastructure asset identified in subsection 4(1) if it is an entity that has been granted exclusive control and use (through licence or other contractual arrangement) to the asset or the area where the asset resides, and therefore holds responsibility to fulfil the obligations under Part 2A of the Act for that asset or area. The instrument also provides that in all other circumstances, Australian Naval Infrastructure Pty Ltd (ABN 45 051 762 639) (ANI) will be the responsible entity.
- 6 The instrument amends LIN 23/007 to repeal Schedule 1, which is a map of ONS.

### ***Consultation***

- 7 The Department of Home Affairs (the Department) engaged industry stakeholders from across the naval shipbuilding section in a consultation process to design the rules underpinning the risk management program.
- 8 Subsection 9(4) of the Act outlines that the Minister must not prescribe the asset as a critical infrastructure asset unless the Minister has consulted with the First Minister and each Minister who has responsibility for the regulation or oversight of the relevant critical infrastructure sector in the State, the Australian Capital Territory or the Northern Territory in which the critical infrastructure asset is wholly or partly located and given each consulted Minister written notice of the proposal to prescribe the asset. Additionally, the Minister is required to have regard to any representations given by a consulted Minister. Written representations must be made to the Minister in relation to the

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proposal to prescribe the asset within 28 days after being given the notice, pursuant to subsection 9(5) of the Act.

- 9 Under subsection 30AL(2) of the Act, the Minister must cause a notice to be published on the Department's website setting out the draft of the proposed rules, and invite submissions to the Minister. The Minister must also give a copy of the notice to each State and Territory First Minister. The Minister must consider any submissions received within the period specified in the notice. Subsection 30AL(3) of the Act specifies that the period of the notice must be no shorter than 28 days.
- 10 This exposure draft is made publicly available to satisfy the consultation requirements of section 30AL of the Act.
- 11 The Office of Impact Analysis (OIA) is to be consulted.

## *Details of the instrument*

- 12 Details of the instrument are set out in **Attachment A**.

## *Parliamentary scrutiny etc.*

- 13 The instrument is subject to disallowance under section 42 of the Legislation Act. The final explanatory statement for the instrument will contain a Statement of Compatibility with Human Rights in accordance with the *Parliamentary Scrutiny (Human Rights) Act 2011*.
- 14 The instrument will be made by the Minister for Home Affairs in accordance with the requirements of section 30AL of the Act.

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## Attachment A

### **Details of the *Security of Critical Infrastructure (Naval shipbuilding precinct) Amendment (LIN 23/073) Rules 2023***

#### **Section 1      Name**

This section provides that the name of the instrument is the *Security of Critical Infrastructure (Naval shipbuilding precinct) Amendment (LIN 23/073) Rules 2023* (LIN 23/073).

#### **Section 2      Commencement**

The instrument commences on the day after it is registered on the Federal Register of Legislation.

#### **Section 3**

Section 3 of the instrument provides that Schedule 1 amends the *Security of Critical Infrastructure (Naval shipbuilding precinct) Rules (LIN 23/007) 2023* (LIN 23/007) under section 61 of 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.

#### **Schedule 1—Amendments**

##### **Item [1]      Section 4**

This item amends LIN 23/007 by repealing current section 4 of the instrument, and substituting new section 4.

New subsection 4(1) of the instrument prescribes, for paragraph 9(1)(f) of the Act, that an asset is a critical infrastructure asset if it is:

- located within the Osborne Naval Shipyard (ONS), which is located on the Lefevre Peninsula, South Australia; and
- used for the primary purposes of naval shipbuilding and sustainment within ONS; and
- operated by an entity which has been granted exclusive control and usage through licence or other contractual arrangement, of the asset or the area where the asset is located for the primary purposes outlined (i.e. naval shipbuilding and sustainment). In practice, the licence or contractual arrangement which grants exclusive control and usage as outlined will be between Australian Naval Infrastructure Pty Ltd (ABN 45 051 762 639) (ANI) as the owner, developer and manager of the infrastructure and related facilities at ONS, and an industry stakeholder who will operate its business within ONS precinct.

New subsection 4(2) prescribes, for subsection 12L(23) of the Act, that the responsible entity for a critical infrastructure asset mentioned in subsection 4(1) is the entity which has exclusive control and use of the asset or the area where the asset resides, which has been granted through a licence or other contractual arrangement. In effect, this means that the entity which is granted exclusive control and usage as outlined will hold responsibility to fulfil the obligations under Part 2A of the Act for that asset or area where the asset resides. In the instance that exclusive control and use of an area or asset within ONS has not been granted to another entity, then ANI will be the responsible entity for that area of the critical infrastructure asset as the owner,

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developer and manager of the infrastructure and related facilities at ONS. In practice, the industry stakeholder who becomes the responsible entity of an asset or the area where the asset resides, should not assign their regulatory obligations under Part 2A of the Act to any third parties without prior consultation with, and consent of, the Commonwealth Regulator.

ONS is a multi-user hub, with multiple entities operating there for the purposes of naval shipbuilding and sustainment. There are numerous responsible entities at ONS which may differ from time to time. This reflects the operating nature of ONS, ensures that the most appropriate entity is the responsible entity for each critical infrastructure asset, and that the critical infrastructure risk management plan is adopted and complied with, as necessary and appropriate.

## **Item [2]            Schedule 1**

This item repeals Schedule 1 to LIN 23/007, including the map of the Osborne Naval Shipyard under Schedule 1. This amendment is consequential to the amendment by item [1], whereby new section 4 of LIN 23/007 prescribes a critical infrastructure asset for the purposes of LIN 23/007 by way of objective criteria set out under section 4.