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Critical Infrastructure Centre Cyber,
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Submitted electronically: <https://www.homeaffairs.gov.au/reports-and-publications/submissions-and-discussion-papers/protecting-critical-infrastructure-systems/submission-form>

Dear Sir/Madam,

RE: Security Legislation Amendment (Critical Infrastructure) Bill 2020

AGL Energy (AGL) welcomes the opportunity to provide feedback to the Department of Home Affairs (Home Affairs) on the consultation into Exposure Draft of the Security Legislation Amendment (Critical Infrastructure) Bill 2020 (Exposure Draft Bill), and accompanying documents including the Draft Bill's Explanatory Document.

AGL is one of Australia's largest integrated energy companies and the largest ASX listed owner, operator, and developer of renewable generation in Australia. AGL is committed to meeting the needs of its energy customers through our diverse power generation portfolio including base, peaking and intermediate generation plants, spread across traditional thermal generation as well as an array of renewable sources. AGL is also a significant retailer of energy and provides energy solutions to over 4.2 million customers in New South Wales, Victoria, Queensland, Western Australia, and South Australia.

A portion of AGL's assets are already captured by the current version of the Security of Critical Infrastructure Act 2018 and AGL takes its responsibilities under this act very seriously. AGL has a history of working collaboratively with both state and federal governments to ensure that its appropriate risk management practices and plans are in place to ensure business continuity and the provision of its essential services to the community continues. As a result, the feedback AGL provides on the Exposure Draft Bill and accompanying documents is based on our vast experience with managing risks for critical infrastructure assets.

While AGL appreciates the opportunity to provide comments and feedback on the Exposure Draft Bill we note that it is a detailed and complex new piece of legislation that raises many questions and uncertainty. As a result, AGL considers that additional time is needed for deeper consultation on the Exposure Draft Bill, consideration of the comments and concerns raised during the consultation period and the town halls sessions.

Regulatory Impact Statement and Cost Benefit Analysis:

The Draft Explanatory document noted that a qualitative RIS has been undertaken and it proposes that a more detailed RIS with quantitative cost-benefit assessment with respect to the Positive Security Obligation (PSO) component will be undertaken. However, this is only due to occur once the legislation has passed and when sector-specific rules are being developed. AGL is concerned that the proposed reforms and legislation have not been subject to a proper cost-benefit assessment, especially given reforms have some wide-ranging impacts on many sectors. The absence of a sufficient cost benefit analysis is not in line with regulatory practice and should be part of the reform process to ensure that the draft legislation and sector specific rules are not analysed retrospectively and that any unintended consequences are identified early and the least cost mitigation measures are put in place to



alleviate these consequences. This will ensure the most effective, timely and least cost approach is implemented in improving cybersecurity arrangements across critical Australia industries, including the energy sector.

Positive Security Obligation:

The energy sector is already subject to existing risk obligations and industry standards and these have been effectively co-ordinated and managed through the AEMO Energy Sector Cyber Security framework which is currently being transitioned to the Department of Industry, Science, Energy and Resources. In AGL's view the objective of the government to provide an uplift in security and resilience should in the first instance rely on current best practice sector processes and arrangements to achieve an uplift rather than duplicating obligations in legislation and creating the PSO.

The risk management program and the associated obligations featured in sections 30AA to 30AN require further consideration and amendment by government. Specifically, AGL notes the current arrangements treat sectors separately and businesses that operate across a range of sectors will be required to operate separate risk management programs. It is important to recognise that the requirement to create a risk management program for each asset will be onerous for a multi-asset company like AGL (in the sectors of energy and telecommunication) if the obligation does not consider and adopt the risk practices already undertaken by AGL, which is based on a single risk management framework to deal with events across both sectors, including cyber-attacks, under this single framework.

AGL notes the comment that any rules that apply Part 2A to an asset will have a six month delayed commencement for transition but considering the asset base of AGL throughout Australia this is likely to be insufficient time to implement new risk management programs.

The requirement of section 30AG to have sign off by each Board member is not practical. The approval of such a report generally occurs through approval of the whole of the Board or approval by a Board approved sub-committee. The Director's duties employed under the Corporations Act are no more enlivened when each Board member signs so AGL does not see the advantage to the government of each Board member signing. AGL suggests that the wording of Section 30 AG be amended to require approval by a Board or a Board approved sub-committee and not each member of the Board.

Enhanced security obligations:

AGL queries the difference in liabilities and immunities in the event of a cyber event or attack. Specifically, the absence of any liability for the authorised agency (Australian Signals Directorate or its officers), for unintended negative consequences arising from a Government Assistance, and the lack of redress or cost recovery for the impacted entity. If an affected entity is directed by the government to undertake certain actions, there should be a cost recovery mechanism in the legislation to allow the affected entity to recover costs for responding to those directions, especially as the directions are aimed at protecting the broader Australian community while the costs of the directions will be borne directly by the impacted entity and its customers.

Furthermore, the explanatory memorandum notes that an entity may be granted immunity from liability under Section 35BF if it acted in good faith, despite potential negative unintended consequences that could have a material impact on the affected entity, its customers or the and broader community. AGL recommends the Section should clearly state that this immunity also extends to actions taken by a regulator and/or other government departments and agencies in response to the actions taken by the entity under direction.

In the event that authorised personnel are required to attend an AGL site to perform actions under Section 35BB then it would be prudent to ensure that the Authorised Agency comply with the occupational health and safety requirements of that site. The owner or operator of that site has a responsibility for all those who enter the site, and the personnel of the Authorised Agency under the Act would come under that responsibility and it would be prudent for the personnel to follow the guidelines of the owner/operator to ensure no harm is caused while on site.



AGL appreciates the work of Home Affairs and the Critical Infrastructure Centre to date and looks forward to engaging in the sector co-design workshops next year and really understanding the responsibility and obligations required under the Act whilst avoiding duplication of current obligations.

If you would like to discuss any aspects of our response further please contact Marika Suszko, Wholesale Markets Regulation Manager at [REDACTED].

Yours sincerely,

Elizabeth Molyneux

General Manager, Energy Market Regulation