



bai communications

27 November 2020

Department of Home Affairs

By e-mail: [ci.reforms@homeaffairs.gov.au](mailto:ci.reforms@homeaffairs.gov.au)

Dear Madam / Sir,

Protecting Critical Infrastructure and Systems of National Significance Exposure Draft Bill

BAI Communications Australia (BAI) welcomes the opportunity to provide a response to the Protecting Critical Infrastructure and Systems of National Significance Exposure Draft Bill.

BAI Communications is an Australian headquartered 'neutral host' communications service provider in Australia, USA and Canada, and provider of communications services in Hong Kong. In this sense, neutral host means that BAI is a specialist communications infrastructure owner and operator, but is not itself a broadcaster or telecommunications carrier.

In Australia, BAI provides managed services and portal services to broadcasters (i.e. effectively fully or partially outsourced broadcast transmission services from a network of over 700 sites around the country), operations and maintenance services to emergency services communications networks operators (principally the NSW Government's Government Radio Network), as well as site access arrangements to telecommunications and radiocommunications operators.

In the USA and Canada, BAI Communications companies provide neutral host communications services including telecommunications, Wi-Fi, and emergency services communications within the New York City and Toronto subway systems.

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BAI Communications has been majority owned by the Canadian Pension Plan Investment Board (CPPIB) since 2009. CPPIB is one of the world's largest institutional investors and is responsible for investing the assets of the Canada Pension Plan, providing retirement security for millions of Canadians. CPPIB is a significant investor in infrastructure, real estate and other sectors around the world, including in Australia.

BAI believes strongly in the need for security and resilience of critical infrastructure, in all of its aspects. To this end, in April this year we made a submission to the Royal Commission into National Natural Disaster Arrangements highlighting areas of potential security and resilience improvement in broadcast, emergency services communications and telecommunications systems. This document is available on the Royal Commission website at

<https://naturaldisaster.royalcommission.gov.au/system/files/submission/NND.001.00573.pdf>.

Over recent years, BAI has participated in the Trusted Information Sharing Network (TISN) for Critical Infrastructure Resilience Communications Sector Group (CSG) and the Space Cross Sectoral Interest Group (CSIG).

### Critical Infrastructure Assets

BAI has engaged fully with the Department of Home Affairs throughout this bill consultation process and earlier on the August consultation paper.

It has been clear through this engagement that Department of Home Affairs sees the provision of broadcasting services to Australians as critical, particularly in times of emergency. This is a position strongly supported by BAI.

As per our previous submission, BAI believes that media playout facilities (which aggregate and schedule the broadcast programs) should be included as critical broadcasting assets as they are a central point of distribution of broadcasting content providing services to most Australians.

BAI believes that the process for determining which broadcasting transmission assets serving which geographic areas are "critical infrastructure assets" and therefore should be captured in this regulatory framework, is still not fully understood or agreed by industry and the Department of Home Affairs.

BAI notes the desire of the Department of Home Affairs to provide a threshold for the broadcast industry by which organisations can readily determine whether they are owners

and operators of a “critical broadcasting asset” through the definition in Clause 12E and earlier definitions.

However, BAI does not believe that the use of a “number of sites test” as proposed in 12E.1.b.ii will provide the Government with an appropriate way to capture entities which own and operate “critical broadcasting assets” and therefore meet the public policy intent of the new framework.

Rather, BAI submits the Government should take a more nuanced approach and look to how broadcasting services are delivered to Australians (through broadcast transmission, satellite direct to home, mobile networks and fixed broadband) and then determine how best to work with those entities who own and control those delivery mechanisms to ensure that those “critical broadcasting assets” are appropriately risk managed.

As BAI has discussed in meetings with the Department of Home Affairs, the definition of “critical broadcasting asset” should include considerations as to the population affected and the number of alternate ways Australians can access vital information – particularly in times of emergency.

For example, we believe that a single broadcast transmission asset which serves millions of people should definitely be classified as critical and this could be specified under the proposed Clause 12E.1.a.ii

Further discussion between industry and Government is required to determine at what population level - with consideration of alternative delivery mechanisms - the Government’s policy intent is served by classifying other broadcast transmission assets as critical.

### Critical infrastructure risk management program

BAI notes the requirement for entities which are responsible for critical infrastructure assets to have and maintain a “critical infrastructure risk management program” as specified in Clause 30AH.

BAI is concerned that the obligations for this plan are subject to future rules – as yet unknown - and therefore we are unable to determine the impact of these rules on our business. BAI requests clarity on these rules prior to any legislation or regulation being enacted.

## Costs of any “uplift”

BAI believes it is reasonable that Government expects industry to comply with “best practice”, industry appropriate, international standards such as ISO 27001 Information Security Management at industry’s cost. However, should the Government require a higher standard, require compliance urgently or impose additional reporting requirements, BAI believes that Government should reimburse industry for any uplift over and above an internationally recognised, standards-based approach.

Should the Government agree with this approach, BAI believes that this public funding can provide a positive economic impact through job creation and skill enhancement.

If the Government imposes additional costs on industry without providing aligned funding, industry will make decisions across their whole portfolio of investments to ensure legal compliance but this is likely to negatively impact investments in other economically positive areas. If service providers are unable to bear the incremental cost, the diversion of investment could affect the viability of service provision to some communities.

BAI notes that the actual costs of compliance will not be known until both the legislation is finalised to provide clarity as to which entities are to be regulated AND the scope of the obligations are determined through the industry co-designed sector specific standards.

Finally, based on our review of the information provided thus far and discussions with the Department of Home Affairs, BAI does not believe that the assets we own and control will fall within the definition of Systems of National Significance.

## Dependence on other industries

It should be noted that the broadcast sector has significant dependency on other key industries, including:

- Telecommunications systems
  - A broad range of telecommunications systems are used to provide content to broadcast transmission sites and provide monitoring and control including satellite, fibre, microwave and mobile networks.
- Electrical supply
  - Whilst all high-power broadcast transmission sites (i.e. those serving larger populations across a geographic area) are supported by on-site standby power generators, this is not the case at many smaller sites. Recommendations on addressing this were part of our submission to the Royal Commission.

- From an audience / community perspective, battery operated radios – particularly in vehicles – are common, however television receivers almost exclusively rely on domestic electricity supply.
- Diesel supply
  - As noted above, BAI's high power sites are supported by standby power generators. These typically have seven to ten days of on-site diesel capacity. After this period, diesel re-supply is required and this should be prioritised.

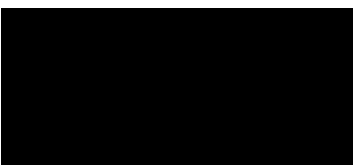
In summary, BAI believes there is benefit in Government having a clear picture of the security and resilience of the communications sector. We note that the definitions of regulated entities /assets require further industry input to provide the appropriate level of regulation.

BAI is concerned that the proposed "Critical infrastructure risk management program" includes provision for rules to be made which are currently unformed and unknown. Without clarity as to these rules, it is impossible for BAI to determine the impact of these on our business.

Good corporate practice includes compliance with a range of internationally recognised standards for security and resilience. Should the Government require expedited compliance or an uplift beyond these existing standards, then this should be funded by Government and could provide a positive economic impact.

Should you require any clarification or elaboration on the above, please don't hesitate to contact me.

Kind regards



Stephen Farrugia  
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BAI Communications Australia