

**PROTECTING CRITICAL INFRASTRUCTURE AND SYSTEMS OF NATIONAL
SIGNIFICANCE**

SECURITY LEGISLATION AMENDMENT (CRITICAL INFRASTRUCTURE) BILL 2020

SUBMISSION BY COMMERCIAL RADIO AUSTRALIA

November 2020

Commercial Radio Australia (**CRA**) is the peak industry body representing the interests of commercial radio broadcasters throughout Australia. CRA has 261 member stations, 220 of which are based in regional and rural areas.

CRA welcomes this opportunity to provide comments in relation to the draft *Security Legislation Amendment (Critical Infrastructure) Bill 2020 (Draft Bill)* and accompanying explanatory document. The Draft Bill amends the *Security of Critical Infrastructure Act 2018 (SOCI Act)*.

1. Summary

CRA urges the Government to consider two key points in relation to the application of the Draft Bill to the commercial radio industry, before taking any further steps in relation to passage of the Draft Bill:

- I. First, the commercial radio industry is one of the nation's major information sources during crises and plays a vital role in communicating messages to local communities in emergencies. Its infrastructure should be protected as a priority in the event of an emergency.

Broadcast media is the most effective means by which Government and emergency service organisations communicate with the public when critical events occur. Commercial radio plays a particularly important role, as both metropolitan and regional surveys show that around 80% of Australians listen to commercial radio. Regional commercial radio stations frequently operate as the only source of local news in an area.

Accordingly, any definition of critical broadcasting assets should be capable of including transmission facilities used by commercial radio stations. However, this is subject to confirmation that additional regulatory burdens will not be imposed upon the commercial radio industry as a result of its inclusion.

- II. Second, commercial radio is already one of the most highly regulated media industries in Australia. Further administrative burden may threaten the viability of the industry, particularly in regional areas where the compliance burden is highest.

The regulatory burden is particularly substantial for regional licensees, who must comply with onerous local content and trigger event obligations, as well as the Australian music requirements that apply to all Australian commercial radio stations. A significant level of reporting is attached to these obligations, which falls especially heavily upon regional stations who already operate with a relatively small number of staff.

The commercial radio industry has a well understood and trusted regulatory framework that covers its broadcast communication function during emergencies. Its obligations are set out in individual MoUs with State emergency service agencies and in the Commercial Radio Code of Practice. Further, the owners of commercial radio licences may easily be found on the ACMA's existing public registers.

The commercial radio industry will resist strongly any attempt to impose additional burdens on it through the Positive Security Obligations proposed in Part 2A of the Draft Bill.

Before the Government proceeds further with the Draft Bill, CRA requests confirmation that section 30AB will not be used to trigger positive security obligations for the commercial radio industry and the SOCI Act obligations will therefore remain dormant, with the existing obligations continuing to apply without supplement.

2. Important role of commercial radio stations in emergencies

Of CRA's 261 member stations, 220 are based in regional and rural areas. Many are owned by small, independent operators, who strive to achieve community engagement through a focus on local issues.

Accordingly, the industry is very well placed to understand the needs of local communities and to communicate effectively with them during emergencies.

Commercial radio is at times the only local source of information.

For example, on the evening of 31 December 2019, the ABC lost its transmitters in the Batemans Bay area due to the intensity of the heat at the tower. Commercial radio broadcasters 2EC and PowerFM became the only source of radio coverage for the community for the days following the event. 2EC and Power FM assisted the ABC in transmitting through the commercial broadcaster's tower.

As the below examples show, many local stations go to extraordinary lengths to provide information and to continue broadcasting through emergencies.

Examples:

- From mid November 2019 through until February 2020, 2EC and Power FM covered the disastrous bushfires engulfing the South Coast of NSW. In total there were 74 days of broadcasts dedicated to covering the bushfire crisis. Unlike other natural disasters, these fires continued for months and required a much more consistent (and exhausting) effort to effectively cover the emergency. Below is detail regarding the efforts made by these stations:
 - 2EC and Power FM is a small station and during this period had a total of 12 staff to cover – One journalist, 4 announcers, 1 engineer and the rest in support staff. They were able to achieve an extraordinary amount despite such limited staff. There were many days when the coverage was 24/7 and the announcers were working very long hours in rotation – noting there were only 4 of them.
 - 2EC and Power FM experienced multiple power outages and transmission failures, along with studios in Bateman's Bay being evacuated. The station engineer was able to come up with creative solutions to continue a level of transmission. Throughout this period, listeners were also able to stream the stations' coverage.
 - Communications were not limited to emergency warnings. 2EC and Power FM provided a significant level of information regarding road closures, availability of basic essentials like fuel, milk, bread and also at times connecting family members. Fact checking all of this information takes significant resources and all 12 employees devoted countless hours of their own time to ensure that the community was updated.
- Nine Radio had comprehensive, up to the minute and immediate coverage during the bushfire crisis from September 2019 (when the bushfires started in QLD, throughout NSW and all the way through until Victoria and South Australia when the bushfire crisis ended in early February 2020).
- During the 2019 bushfires both 92.7 MIX FM and 91.9 SEA FM (Sunshine Coast Broadcasters) remained on-air live from the start of the catastrophic Peregrian fires at 4.30pm in the afternoon. The local drive show stayed on-air and took calls from people on the ground until midnight, at which point additional staff came in to cover live coverage overnight. This continued until the fires were under control. The emergency team became active whenever fires flared up.
- During the 2019 Townsville floods, both Power 100 and Star 1063 were live and local running the stations 24 hours a day. The announcers were doing 6-hour shifts and assisting the teams when not on air, answering the phones and assisting the local business and community in letting people what was open or closed, what roads have been closed. The radio announcers stayed at a nearby hotel, to make sure they able to assist as their neighbourhood was flooded. During this time, the station had a direct line to the Townsville Council for up to date announcements.
- During Cyclone Yasi in 2011, 4TO in Townsville continued to broadcast despite being located in an area where storm surge was predicted. When the evacuation order was given a skeleton staff moved to a makeshift home studio. They continued to broadcast throughout the night. The Member for Thuringowa, Craig Wallace, reported the following in Parliament:

I commend all the staff, reporters, editors at the Townsville Bulletin and our local radio station 4TO. They warned us constantly of the dangers and then broadcast right through the cyclone so

that we knew what was going on. They were our only link to the outside world. In the lead up to the cyclone, the Bully and 4TO made a courageous decision to keep broadcasting.

That's no mean feat. You see, 4TO is in Woolcock Street and it was going to go under if we'd had the big storm surge the bureau was predicting.

When the evacuation order was given, they still didn't give up and moved into a makeshift home studio in Kirwan drawing on the resources of panel operators from Southern Cross media's hub on the Gold Coast.

Once that connection was established via a tie line to Daniel the manager's home – they were in business. There, they bunkered down and prepared for the worst - Daniel, Steve Price, Wayde, Blair, Minty from home with his kids, 2 cats, a cattle dog, family and friends.

They broadcast all through that dark night and shared phone calls and SMS messages from locals who were also bunkered down in their homes, in bathrooms, hallways and cupboards right across the north from Hinchinbrook to Bowen.

- 4KZ in Cairns broadcast non-stop emergency information throughout the night during Cyclone Yasi, as well as regular updates during the lead-up to the event. A letter published on 12 February 2011 in the Cairns Weekend Post read as follows:

Thanks must go to the 4KZ radio announcers, Al Kirton and Greg Vuleta for their comprehensive and informative coverage in the days leading up to Cyclone Yasi approaching the coast, and our town. I thought that during the night these men had to go home and bunker down like the rest of us, but no, all through that dreadful night they remained with us, calmly giving updates and playing great music. It was comforting to know they were out there, putting their own lives at risk for our community.

3. Threshold for inclusion as a 'critical broadcasting asset'

The examples provided above are a small subset of those provided to CRA by commercial radio broadcasters, whose role in Australian communities during emergencies is unparalleled.

Subject to confirmation that the Positive Security Obligations outlined in Part 2A of the Draft Bill will not apply to the commercial radio industry, CRA submits that the threshold in the Draft Bill for '*critical broadcasting assets*' should be capable of including these commercial radio stations.

Currently, section 12E of the Draft Bill defines *critical broadcasting assets* as assets that are (relevantly):

- (i) owned or operated by the same entity; and*
- (ii) located on at least 50 sites.*

The threshold of 50 or more sites will exclude CRA members who own their own transmission assets. It is important to include broadcasters who own only a few transmission assets, as they are often the smaller broadcasters who operate in regional areas, which are most at risk during emergencies.

However, we appreciate that the Department does not wish to set a formal threshold too low, as it may inadvertently catch non-critical infrastructure.

Section 12E(2) provides that the rules may prescribe specified sites that are critical transmission sites.

As a solution, we suggest that the rules that accompany the Draft Bill expressly include ‘commercial radio broadcasters who are licensed under sections 36 and 39 of the *Broadcasting Services Act 1992*’.

However, before the Government proceeds further with the Draft Bill, CRA requests confirmation that section 30AB will not be used to trigger positive security obligations for the commercial radio industry and the SOCI Act obligations will therefore remain dormant, with the existing obligations continuing to apply without supplement. This issue must be resolved before a final decision on the asset threshold is made.

4. Existing regulatory framework is comprehensive and well understood

The existing regulatory framework governing the commercial radio industry in times of emergency is comprehensive, trusted and well understood.

Commercial Radio Code of Practice

Commercial radio stations must adhere to the *Commercial Radio Code of Practice*.

Code of Practice 7 sets out commercial radio broadcasters’ obligations in relation to the broadcast of emergency information. Specifically:

A licensee will, in consultation with appropriate emergency and essential service organizations, implement a set of internal procedures to enable the timely and accurate broadcast of warnings and information supplied by such organizations relating to an existing or threatened emergency.

All commercial radio stations are bound by this Code.

Memoranda of Understanding

As a result of the recommendations of the Victorian Royal Commission into the ‘Black Saturday’ fires in Victoria, CRA entered into Memoranda of Understanding (**MoU**) with emergency service authorities in NSW, VIC, QLD and SA. These set out protocols, communication channels and protocols for the communication of emergency information over commercial radio stations in disaster affected areas.

The commercial radio industry has now entered into MoUs in New South Wales, South Australia and Queensland. Western Australia and Tasmania are the only States that do not have an MoU in place. The commercial radio industry has offered to enter discussions regarding an MoU with these governments.

The bushfires in 2019/20 highlight the importance of having an emergency communication process that is as effective as possible. The MoUs assist in achieving this, by setting out

communication processes and protocols for a collaborative approach to the broadcast of emergency information.

Contact lists are regularly updated under the MoUs and ownership and operator information is provided under the ACMA *Register of Radiocommunications Licences*.¹

5. Additional Positive Security Obligations (Part 2A) are unnecessary and duplicative and should not apply to the commercial radio industry

CRA welcomes the Government's recognition that any positive security obligations should not duplicate existing regulatory approaches, should be proportionate to the risk profile of the particular sector and impose the least regulatory burden to achieve the security outcomes.²

CRA further supports the 'on switch' mechanism under which the obligations under Part 2A of the Draft Bill are not triggered unless a Determination under section 51 determines that the Part shall apply to that particular critical infrastructure asset.³

CRA urges the Government to confirm that Part 2A will not be triggered in relation to the commercial radio industry. To do so would be duplicative, disproportionate and unduly burdensome, for the reasons detailed below.

The Positive Security Obligations in the Draft Bill cover three areas:

- (i) Adopting and maintaining an all-hazards critical risk infrastructure program;
- (ii) Mandatorily report cyber security incidents;
- (iii) Provision of ownership and operational information to the Register of Critical Infrastructure Assets.

(i) All-hazards critical risk infrastructure program

All commercial radio stations implement risk management programs as part of their core business operation.

It is vital that broadcasters remain on-air in order to fulfil their emergency service obligations under the Commercial Radio Code of Practice and also under the State Emergency Service MoUs. There are also commercial imperatives that support a robust risk management plan, to avoid losing valuable airtime due to unforeseen events.

CRA member stations' internal risk management policies vary from network to network, but include the following key aspects:

- identification of risks;
- risk mitigation strategies;

¹ https://web.acma.gov.au/rrl/register_search.main_page

² Para 21, Explanatory Document.

³ Section 30AB, Draft Bill.

- recovery procedures, such as redundancy and back up systems; and
- testing, planning and review.

The stations' internal policies and processes are reviewed and updated regularly, including following emergency events, where informed adjustments are made to reflect the recent experiences.

These mechanisms work effectively to safeguard commercial radio infrastructure assets during emergencies.

Commercial radio stations differ significantly in size and structure, from large networks over 80 stations, to individual local operators. All have a critical role in emergencies but will have very different – and dynamic – operational structures. This means that the most effective risk management program is one developed by that particular station or network.

The imposition of a single risk management program across such a diverse range of radio broadcasters is likely to be far less effective than the continuation of the current regime.

CRA submits that the stations' existing risk management programs should be deemed adequate and no further program should be required under the Draft Bill or SOCI Act.

(ii) Cyber security incidents

CRA does not consider the cyber security threat to commercial radio stations to be significant. Accordingly, there should be no mandatory cyber security reporting required and the Government powers to intervene in the event of a cyber security incident should not apply to the commercial radio industry.

At present, a mandatory cyber security reporting obligation for commercial radio stations would be excessively disproportionate to the risk.

No cyber security obligations should be required of commercial radio broadcasters. The corresponding Government powers of intervention to respond to cyber security incidents should therefore not apply.

(iii) Ownership and operational information

Commercial radio stations hold licences under sections 36 or 39 of the Broadcasting Services Act 1992 (**BSA**).

The Australian Communication and Media Authority (**ACMA**) publishes registers of all radiocommunications licences on its website⁴.

This detail includes:

- Licence number
- Service

⁴ https://web.acma.gov.au/rrl/register_search.main_page

- Callsign
- Licence area
- Licensee name and address
- Technical details

In addition to the ACMA register, stations must maintain an up to date list of contacts under the MoUs with emergency service agencies. CRA undertakes an annual audit and update of these contact details in August each year. During the intervening period, CRA contacts emergency service agencies directly with updates, as individuals leave or join stations.

The commercial radio industry would resist strongly any requirement that it report ownership and operator information under Part 2 of the SOCI Act. Such information is already contained in the ACMA's public register and would be duplicative.

The commercial radio industry would also resist any annual reporting requirement under section 30AG. Commercial radio stations already have an extremely high level of reporting – particularly local content and trigger event reporting for regional radio – and any further imposition would be disproportionate and unreasonably burdensome.

Please contact Joan Warner, on [REDACTED], for clarification on any aspect of this submission.

Commercial Radio Australia