



AUSTRALIAN INSTITUTE of
SUPERANNUATION TRUSTEES

27 November 2020

Attn: The Manager
Critical Infrastructure Centre
Department of Home Affairs

Submitted online to: <https://www.homeaffairs.gov.au/reports-and-publications/submissions-and-discussion-papers/protecting-critical-infrastructure-systems/submission-form>

Dear Sir/Madam,

Re: Exposure Draft Security Legislation Amendment (Critical Infrastructure) Bill 2020

In brief: AIST supports the intent of the Bill and its objectives. We submit that further consultation with industry will enhance the regulatory framework and avoid unnecessary duplication.

About AIST

Australian Institute of Superannuation Trustees (“AIST”) is a national not-for-profit organization whose membership consists of the trustee directors and staff of industry, corporate and public sector superannuation funds.

As the principal advocate and peak representative body for the \$1.4 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST advocates for financial wellbeing in retirement for all Australians regardless of gender, culture, education or socio-economic background. Through leadership and excellence, AIST supports profit-to-member funds to achieve member-first outcomes and fairness across the retirement system.

General Comments

AIST welcomes the opportunity to make a submission on the Exposure Draft Security Legislation Amendment (Critical Infrastructure) Bill 2020 (“the Bill”).

AIST strongly supports measures that seek to enhance the security capabilities of superannuation funds. As the custodians of Australian’s retirement savings, trustees are acutely aware of the need to have robust systems in place to safeguard these finances from all threats.

The security capabilities and governance of superannuation funds have been enhanced through several industry specific regulatory instruments. These regulatory standards, overseen by APRA, ensure that funds can protect members' monies and data from physical or cyber related threats. These instruments comprehensively cover all aspects of fund operations, including services undertaken through outsourced providers.

AIST welcomes the stated intent to work with industry on the critical infrastructure regulatory framework to avoid duplication and/or impracticable regulation.

Specific comments

Cyber security framework

AIST submits that the rules and operative provisions within the exposure draft should closely resemble APRA's Prudential Standard CPS 234: Information Security.

CPS 234 outlines the requirements necessary for superannuation funds to minimise the likelihood and impact of a cyber security incident while also providing a framework for how funds are expected to respond if such an attack is to occur.

Superannuation funds have undertaken significant work to respond to the requirements provided for under CPS 234. To this end, aligning the requirements of CPS 234 with the critical infrastructure framework will enable a consistent and streamlined approach to cyber security.

Critical superannuation asset

AIST welcomes the effort to include a definition of a 'critical superannuation asset'. We note the explanatory memorandum which suggests that the definition is likely to capture funds with Funds Under Management ("FUM") of \$20 billion or more. The recognition of funds based on FUM may be difficult to administer in practice.

A fund's FUM can increase or decrease over time. A fund may have FUM of \$19 billion in one year and experience an increase the following year, which may put the fund over the \$20 billion threshold. This would result in the fund being covered by the legislation. If, however, the same fund was to experience a decline in FUM this may put them below the threshold, with the relevant compliance measures still in place. The industry would be well-served by having a definition that is consistent to ensure that compliance is achievable.

AIST proposes that Home Affairs engage with industry to develop a workable definition of a critical superannuation asset.

Definition of an 'asset'

AIST submits that the inclusion of 'any other thing' in the definition of an 'asset' is too broad. AIST is concerned that the expanded definition could cover investment assets owned (either wholly or in part) by superannuation funds.

Many superannuation funds are the owners of major critical infrastructure assets; however, they do not have operational responsibility of these assets. AIST accepts the intention of a catch-all definition, however the definition should be limited to the assets of which superannuation funds either can directly control or have the capacity to exercise control.

Annual reporting and sign-off

AIST is concerned that the arrangements provided for under Section 30AG of the Bill will be impracticable for superannuation funds. Specifically, the requirement to produce an annual report 30 days after the end of the financial year will put significant pressure on fund staff during an already demanding period (e.g. preparation of annual and financial reports, implementation of system changes and preparation of members' annual statements).

AIST proposes that the section be amended to require a report to be completed annually. We submit that by adopting a more flexible approach, the interest of all parties will be well served.

We further submit that the requirement for all board members to sign the annual report may be impracticable, particularly if funds are required to do so 30 days after the end of the financial year. AIST suggests that section 30AG(2)(f) be amended with a requirement for the annual report to be approved by all board members but only require a signature from a responsible member of the board. This approach would be similar to other regulatory reporting requirements.

Consultation

AIST seeks to work with the Department of Home Affairs on an industry specific rules framework. We strongly support an industry led regulatory approach to minimise duplication and ensure maximum efficiencies.

For further information regarding our submission, please contact Samuel Lynch at

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Yours sincerely,

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Eva Scheerlinck
Chief Executive Officer