

27 November 2020

Hon Peter Dutton
Minister for Home Affairs
PO Box 6022
Parliament House
Canberra ACT 2600

By online submission

Dear Mr Dutton

Exposure Draft—*Security Legislation Amendment (Critical Infrastructure) Bill 2020*

AEMO welcomes the opportunity to make this submission on the Exposure Draft of the *Security Legislation Amendment (Critical Infrastructure) Bill 2020* (the Draft Bill).

AEMO recognises the considerable effort by the Department of Home Affairs (DoHA) to consult on the Draft Bill, following an extensive and open consultation process on the development of an enhanced critical infrastructure security framework.

The Draft Bill is a significant step toward meeting the Government's policy intent, of establishing an effective framework to protect essential services, by uplifting the security and resilience of critical infrastructure and systems of national significance (SoNS). However, AEMO wishes to provide comment on a number of key provisions in the Draft Bill that could improve the effectiveness of the framework.

New definition of critical energy market operator asset for AEMO [Item 7 Section 5 Draft Bill]

The Draft Bill introduces a new category of critical infrastructure asset for the energy sector. This definition determines who is the responsible entity for those assets (new section 12L) which in turn imposes important responsibilities. For example, a responsible entity must:

- have and comply with a critical infrastructure risk management program for its assets (new Part 2A);
- notify cyber security incidents where AEMO becomes aware of a such an incident (which has a liability protection provision) (new Part 2B)
- carry out enhanced cyber security obligations for systems of national significance (declared by the Federal Minister). This involves statutory incident response plans; cyber security exercises; vulnerability assessments; periodic reporting of system information.

The new definition in the Draft Bill states:

critical energy market operator asset means an asset that:

(a) is used by:

- (i) Australian Energy Market Operator Limited 21 (ACN 072 010 327); or
- (ii) Power and Water Corporation; or
- (iii) Regional Power Corporation; or
- (iv) Electricity Networks Corporation; and

(b) is critical to ensuring the security and reliability of an energy market.

AEMO comments on *critical energy market operator asset*

AEMO proposes changes to the new definition of critical energy market operator asset (and consequentially, the definition of responsible entity in cl 12L(12) of the Bill):

1. The changes are proposed only for AEMO as the Market and System Operator for the energy markets which it operates.

The position of the other entities listed (Power and Water Corporation; Regional Power Corporation; Electricity Networks Corporation) may require different analysis and arrangements.

2. The definition of 'critical energy market operator asset' should expressly exclude critical electricity assets and critical gas assets for AEMO. These are existing definitions in s10 and s12 of Security of Critical Infrastructure Act 2018 (SOCI Act).

This means that there will be no duplication of critical infrastructure responsibilities.

3. The definition of 'critical energy market operator asset' should not just refer to AEMO "using" an asset, as this may unintentionally include non-AEMO systems with which it interfaces ("uses") in operating the market and the systems. These assets may not fall within the exclusion of critical electricity assets and critical gas assets.
4. AEMO considers that words to the following effect would achieve the intended outcome, noting that the drafting suggestions are put forward only in relation to AEMO's particular circumstances.

critical energy market operator asset means an asset that:

a. is owned or operated by:

- i. Australian Energy Market Operator Limited (ACN 072 010 327); or
- ii. Power and Water Corporation; or,
- iii. Regional Power Corporation; or
- iv. Electricity Networks Corporation; and

b. is used to operate an energy system or market; and

c. is critical to ensuring the security and reliability of an energy system or market, but does not include a critical electricity asset, a critical gas asset or a critical liquid

fuel asset.

New definition of 'energy sector' [Item 7 section 5 Draft Bill]

The (new) definition of 'energy sector' in the Draft Bill, should also include transmission as well as distribution and supply, given the very particular meaning those terms have in energy and the fact that they are used in the existing definitions of critical electricity assets (s10) and critical gas assets (s12).

Future flexibility under the enhanced critical infrastructure security framework

Given the rapidly changing nature of the criticality of assets in the energy sector, AEMO supports the mechanisms provided for in the Draft Bill to allow flexibility using rules or other subordinate instruments. This approach allows the framework to address change without creating excessive uncertainty. For example, the role of non-synchronous generation and batteries, previously considered non-critical will become increasingly critical over time and can be dealt with in the SOCI Rules.

Concurrent operation of the SOCI Act 2018 with existing State-based energy sector legal and regulatory frameworks

AEMO's previous submission highlighted that any changes to the SOCI Act to enhance the Commonwealth critical infrastructure regime will be most effective if they operate alongside the existing State-based legal frameworks for the energy sector. This includes both national co-operative legislative regimes and also State/Territory-based laws and rules of each of the participating jurisdictions.

AEMO notes that existing section 16 of the SOCI Act (recognising the operation of State and Territory laws) will continue to apply and along with other 'switch on switch off' mechanisms, this will go a long way toward providing certainty for responsible entities fulfilling their obligations under the Commonwealth legislation.

Of particular importance for the energy sector is the need for existing liability (risk management and insurance) arrangements under the National Energy Legislation to work in tandem with the liability protections in the SOCI Act. For example, it appears that there should be nothing in the SOCI Act that is prima facie inconsistent with the existing liability arrangements for AEMO (and for Transmission Network Service Providers) under the National Electricity Law (NEL). The new protection from liability provisions (for example, in new s30BE & s35AW Draft Bill) would not appear to raise issues of inconsistency with existing immunity arrangements. If it is necessary to clarify the position, AEMO would be seeking amendments to the National Energy Legislation to facilitate concurrent operation and recognition of existing liability arrangement if this is considered necessary.

Individual Board member sign off on annual report [Item 39 proposed section 30AG Draft Bill]

Proposed section 30AG of the Draft Bill sets out annual reporting requirements for responsible entities that must have and comply with a critical infrastructure risk management program. AEMO considers that the requirement (in s30AG(2)(f)) for the annual report to be signed by

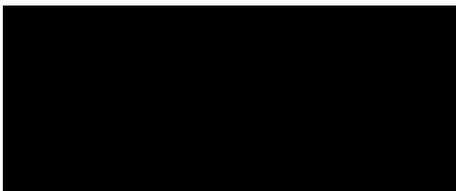
each member of the board is not in keeping with the broader rules and protocols around Director responsibilities.

AEMO also notes that the reporting timeframe of 30 days for submission of an annual report (section 30AG(2)) would be very challenging for most energy businesses.

Protecting critical infrastructure and SoNS is a priority for Government, the market bodies and industry, and AEMO values the open and collaborative nature of the consultation process to date. Effective partnership between Government and critical infrastructure industries is paramount to achieving security objectives, and AEMO looks forward to continuing to work closely with the DoHA as reforms progress and the sector specific requirements are developed.

For further information on the AEMO submission, please do not hesitate to contact myself or Tim Daly, Chief Security Officer on [REDACTED].

Yours sincerely

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Tony Chappel
Chief External Affairs