

Mr Sam Grunhard
First Assistant Secretary
Critical Infrastructure Security Division
Department of Home Affairs
By email: ci.reforms@homeaffairs.gov.au

27 November 2020

Dear Mr Grunhard

Comment on the Security Legislation Amendment (Critical Infrastructure) Bill 2020

Thank you for the opportunity to comment on the *Security Legislation Amendment (Critical Infrastructure) Bill 2020* (the **Bill**). Australia's broadcasting and communications infrastructure is vital to the Special Broadcasting Service Corporation's (**SBS**) audiences for access to valued and trusted news, information and analysis. This year has shown the critical role that SBS plays in ensuring that audiences have the most up-to-date information, in English, as well as in over 60 other languages.

We appreciate that the Department of Home Affairs is taking steps to manage the security and resilience of certain assets. As noted in our submission in response to the Department's September 2020 Consultation Paper, SBS:¹

- supports the Government's focus on critical infrastructure and essential services, and the mitigation of risks associated with them;
- provides its services in partnership with a range of private entities who own the infrastructure used to distribute SBS content; and
- notes it is therefore appropriate to focus new regulation on those owners and operators, including entities who own and operate infrastructure used to provide broadcast transmission and telecommunications services.

As set out below, SBS notes that the Positive Security Obligation (**PSO**) appropriately falls on the owners and operators of key assets used to provide transmission services to SBS. However, obligations under Part 3A, which deals with responding to serious cyber security incidents, may apply to a broader group of entities, including SBS. Careful review should be undertaken to ensure the each of the powers in this part—including the ability to require information or direct an entity to do or refrain from doing a certain thing—are subject to appropriate safeguards, including broadly applicable requirements to consult affected entities.

Definitions and identification of critical infrastructure assets for the communications sector

SBS notes that under the Bill, in relation to communications, the PSO—which includes obligations to adopt and maintain a risk management program, reporting and information obligations—will fall on broadcasting transmission and telecommunications critical infrastructure asset owners. Relevantly, SBS's service providers, not SBS, will be

¹ Available at <https://www.homeaffairs.gov.au/reports-and-pubs/files/critical-infrastructure-consultation-submissions/Submission-053-Special-Broadcasting-Service.PDF>

the responsible entity for each of the assets and subject to these obligations. This is appropriate as it means that those entities that operate the infrastructure on which SBS relies, will be captured under the PSO.

The definition provided in the Explanatory Document of the 'communications sector'² captures the relevant organisations and businesses within this sector.

The identification of 'critical infrastructure assets' was the subject of earlier consultation between the Department of Home Affairs and SBS. The identification of our primary transmission provider, BAI Communications—captured on the basis of the number of sites at which it operates transmission assets—is appropriate, along with other transmission providers, the services on which SBS relies.

There are approximately 400 additional transmission sites, not captured by the current identification of critical infrastructure assets, which provide SBS digital television terrestrial broadcasting to regional and remote communities. As a national broadcaster, SBS must be able to reach audiences in these areas of Australia. Each of these facilities is vital to the community that it serves, and this was apparent at the sites that suffered damage or service loss during the 2019-20 bushfire season (eg. Batemans Bay and Talbingo).

SBS would be pleased to take part in further consultation with the Department of Home Affairs, the Department of Infrastructure, Transport, Regional Development and Communication, the Australian Communications and Media Authority and the ABC, on the further identification of responsible entities.

Definitions and identification of critical infrastructure assets for the data storage or processing sector

The definition of the 'data storage or processing sector' covers only those entities that are storing or processing business critical data of a critical infrastructure asset. Consideration should be given to broadening this definition to capture entities which hold business critical data of all businesses or organisations within the sector—with an appropriate threshold.

Government assistance measures

The powers outlined in the in Part 3A of the Bill in relation to Government assistance measures are broad and have the potential to impact the operation of organisations and businesses which may be given an information gathering direction, an action direction or intervention request by the Secretary of Home Affairs.

It is noted that the latter could result in significant interventions by the Australian Signals Directorate such as accessing and removing computers, analysing, copying and modifying data and altering the function of a computer to respond to an incident.

SBS may be caught by these provisions because a 'relevant entity' is defined in section 5 to include an entity that is a 'direct interest holder in relation to an entity' (where entity refers to the owner of relevant assets). The Explanatory Memorandum provides that this is appropriate because the responsible entity for the asset may not always have the necessary information or ability to acquire it, and that there should be an ability to direct the entity that is best placed to respond.

'Direct interest holder' is not defined, but it is likely SBS could be characterised as an entity that has a direct interest in the security of transmission or other critical communication assets captured by the scheme. For example, SBS's direct interest could be an interest in the ongoing provision of our news and information services via regulated transmission or content distribution assets.

² Exposure Draft, *Security Legislation Amendment (Critical Infrastructure) Bill 2020*, Schedule 1, Part 1 (page 10)

Powers to require information, direct and intervene should be carefully calibrated.

It is appropriate that section 35AB of the Bill, which outlines the requirements for Ministerial authorisation of the above actions, contains qualifications that must be met—such as that there is a material risk that the incident has seriously prejudiced, is seriously prejudicing, or is likely to seriously prejudice, social or economic stability of Australia or its people, defence or national security. Such qualifications are essential to ensure that government intervention only occurs where necessary.

We note that under Part 3A the Minister for Home Affairs must consult in relation to proposed directions unless the delay would frustrate their effectiveness. These consultation requirements should also apply to a 'direct interest holder' such as SBS; not just the regulated asset owners (section 35A refers to consulting a 'specified entity', but that term is not defined). This should be confirmed in the Bill and Explanatory Memorandum.

Ongoing consultation

We would appreciate the opportunity to participate in ongoing consultation regarding sector specific measures. While SBS will not be captured by the PSO, SBS's ongoing operations rely on those entities who will be captured. Should the introduction of the PSO on entities with which SBS partners result in additional costs, government support to meet the enhanced requirements may be required.

Thank you again for the opportunity to respond to this consultation. If you have any questions, or would like any further information, please do not hesitate to contact us.

Yours sincerely,



Clare O'Neil
Director, Corporate Affairs