

15 September 2020

Critical Infrastructure Reform
Department of Home Affairs

[submission via form]

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Protecting Critical Infrastructure and Systems of National Significance

The Australian Communications and Media Authority (ACMA) is the Commonwealth statutory authority responsible for the regulation of broadcasting, radiocommunications, telecommunications and online content.

The ACMA welcomes the opportunity to comment on proposed changes to the protection of critical infrastructure and systems of national significance.

The ACMA notes the intention that the proposed Enhanced Cyber Security Obligations be administered by the Department of Home Affairs.

In relation to its regulatory responsibilities for telecommunications, radiocommunications and broadcasting, the ACMA is particularly focussed on the role it might play in relation to the proposed Positive Security Obligation on communications industry participants. We have limited our response to reflect our observations on the potential interaction between the proposals and the existing legislative structures which we administer and to reflect our potential role in administering the proposals as a communications sector specific regulator.

The ACMA notes that the owners and operators in the communications sector extend well beyond the traditional telephony sector and beyond the legislative constructs of carrier and carriage service provider in the *Telecommunications Act 1997*. Importantly, there are approximately 160,000 radiocommunications licensees to be considered in the consideration of Positive Security Obligations related to critical infrastructure. The ACMA also notes its role in licensing television and radio broadcasters under the *Broadcasting Services Act 1992*. Further development of measures to protect critical infrastructure will need to focus on which actors in the supply of services over critical infrastructure are of interest and how sectoral boundaries are to be best determined.

In relation to identifying entities which own or operate systems of national significance, telecommunications industry participants of sufficient scale could be expected to be owners and operators of systems of national significance. Under section 42 of the *Telecommunications Act*, entities using network units (infrastructure) to provide services to the public require a carrier licence. There are currently 313 licensed carriers. The ACMA annually assesses licensed carriers' revenue from telecommunications activities. Revenue may provide a good proxy for scale and hence for national significance. However, revenue alone will not provide a definitive test of national significance and there are

potentially systems of national significance in the radiocommunications and broadcasting spheres. The ACMA encourages the Department to give further consideration to its measures for defining systems of national significance.

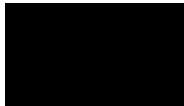
The ACMA notes that there appears to be overlap between the Positive Security Obligation as described in the paper and the requirement introduced into Part 14 of the *Telecommunications Act* by the Telecommunications Sector Security Reform (TSSR) reforms to protect networks and facilities from unauthorised access and interference. The ACMA encourages further consideration in the design of the Positive Security Obligation to avoid regulatory duplication and provide a clear set of obligations for industry operators.

The ACMA is keen to ensure that any additional regulation in this sphere is consistent with the regulatory policy of the *Telecommunications Act* to the extent that it does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry.

The ACMA has well established relationships with the communications sector to support the design and implementation of sector specific standards for a Positive Security Obligation. The ACMA currently has a number of security related statutory interactions which interface between the Department of Home Affairs and the communications sector. The ACMA is well placed to monitor and enforce compliance with sector specific standards related to a Positive Security Obligation and to act as a conduit between communications industry participants and security agencies.

Should you wish to discuss this matter further, the contact officer is Dominic Byrne, Manager Technical Regulation and Carrier Infrastructure Section ([REDACTED], Ph [REDACTED]).

Yours sincerely



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