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Our Ref: #11,523,968
Your Ref: Protecting Critical Infrastructure and Systems of National Significance
Consultation Paper
Contact Officer: Mark Feather
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Mr Michael Pezzullo
Secretary
Department of Home Affairs
6 Chan Street
BELCONNEN ACT 2617

16 September 2020

Dear Mr Pezzullo

Re: Protecting Critical Infrastructure and Systems of National Significance Consultation Paper

The Australian Energy Regulator (AER) welcomes the Department of Home Affairs' (DHA) extensive consultation efforts across the energy sector and the broader economy on these proposed reforms.

We recognise the importance of uplifting the security and resilience of critical infrastructure and the ongoing work underway in this space. We are particularly interested in understanding the impacts to consumers, regulated businesses and the broader energy sector.

The AER will welcome future consultation opportunities and look forward to participating in the sector design phase to work through more energy specific issues.

From the proposed reforms and the Consultation Paper, the AER has three major observations:

- 1) Proportionality and cost implications for consumers
- 2) Benefits of a central regulator and the role of the AER
- 3) Implementation considerations – varying levels of preparedness and timing

1) Proportionality and cost implications for consumers

We support the DHA's intent to 'develop proportionate requirements that strike a balance between uplifting security, and ensuring businesses remain viable and services remain sustainable, accessible and affordable.'¹

It is important to not lose sight of the cost implications for consumers. We would urge that further consideration be given to costs and how the cyber regulator might give regard to costs in implementing the new standards and obligations.

From the energy sector specific workshops, the DHA shared early thoughts on lowering the existing electricity generation threshold for regulated critical infrastructure assets. As noted by various participants, reducing the threshold will likely capture a number of assets not currently within scope of the *Security of Critical Infrastructure Act 2018 (Cth)*. This is likely to have additional cost implications for these generators to meet the new obligations, which in turn is likely to have a flow on effect to consumers.

It will be useful to also hear consumer views as part of the sector design phase to get a clearer idea of potential consumer issues. Consumer voices will contribute towards a proportionate approach to sector specific standards and help with finding a balance between security preparedness and keeping energy affordable.

2) Benefits of a central regulator and the role of the AER

The Consultation Paper sought views on these two questions:

17. Who would you consider is best placed to undertake the regulatory role for sectors you are familiar with? Does the regulator already have a security-related regulatory role? What might be the limitations to that organisation taking on the role?

18 What kind of support would be beneficial for sector regulators to understand their additional responsibilities as regulators?

A central regulator across multiple sectors will improve regulatory consistency and outcomes. By pulling together expertise and resources in one central regulator, there are some obvious benefits:

- Minimise duplication – having multiple regulators across different sectors will duplicate efforts and require significantly more resourcing.
- Facilitate and build expertise and experience – by having one central regulator, they can build deeper security expertise and share lessons learnt across sectors.
- Regulatory consistency – dispersed responsibility of regulation over the same subject could give rise to different regulatory methodologies, inconsistencies and inefficiency.
- Deeper understanding of threats – a central regulator will have better oversight of the threat landscape across supply chains and cross sector inter-dependencies and relationships.
- Efficiencies in reporting and engagement – one central regulator will help minimise confusion and reporting burden, especially for entities that operate across multiple sectors and jurisdictions with existing reporting obligations under various schemes.

¹Protecting Critical Infrastructure and Systems of National Significance Consultation Paper, p5.

- Broader engagement with consumers – a centralised source of communication will deliver clearer messaging for ongoing consumer engagement so they understand the drivers for increased costs.

The AER is an energy sector regulator that undertakes economic regulation of network assets and is responsible for monitoring and ensuring compliance with national energy laws² and rules. The AER is not a technical or safety regulator. For example, our focus in regulating network businesses is to lower network costs to consumers by driving increased efficiencies. We assess the capital, operating and finance costs of network businesses and provide them with incentives to reduce these costs in the interests of consumers. Our staff have expertise in assessing these costs and in establishing benchmarking and economic incentive arrangements.

The AER notes that cyber security and critical infrastructure resilience regulation differ significantly from our existing consumer and economic related functions. The proposed role for the regulator to work with their sector to co-design and appoint sector specific standards is vastly different from the AER's current work and expertise. The setting and administration of standards may also conflict with our existing network regulation function which is intended to drive efficiencies in network business operation and investment in the interests of consumers. We do not believe the AER is best placed to undertake this standards setting role.

The AER does have an enforcement and compliance role under the national energy laws. There could be potential alignment on this role for the AER, but it would require additional resources and expertise. There will also need to be further consideration on who would be responsible for Western Australia which is outside of our existing scope. If the AER is given additional monitoring, compliance and enforcement functions then additional funding and expertise would also be required to build technical expertise, capability and capacity.

3) Implementation considerations – varying levels of preparedness and timing

We are keen to be part of the next phase of sector design as it will help us understand the implications of any new requirements for the businesses we regulate.

Varying levels of preparedness

We note that through our network regulation processes, we have observed that network businesses have varying levels of security spending and different businesses are at different stages of security preparedness. While there has been a growing awareness of security issues, not all businesses are at the same level. While the energy sector is relatively mature compared to some other sectors, each business will have a different starting point to reaching the new standards.

This variation in preparedness is an important consideration noting that the DHA's initial thinking on lowering the proposed threshold of a regulated critical infrastructure asset for electricity generation is likely to capture a range of entities not previously captured. Some of these entities may be relatively inexperienced in this area and require time and resources to uplift to meet the new standards.

² These include the National Electricity Law, the National Gas Law and the National Energy Retail Law.

Timing

In terms of timing for network businesses to meet the new standards, we would be keen to participate in the next phase of sector specific design. In particular there should be further consideration on:

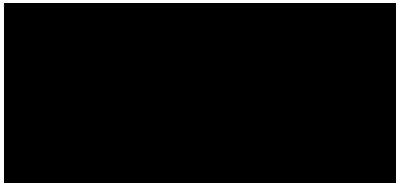
- what the energy sector obligations should involve,
- which entities are subject to which obligations,
- how the cyber regulator might give regard to costs in implementing new obligations, and
- whether all obligations take effect from mid-2021 or will they be phased through a transition period.

These will likely have impacts on existing network regulatory determinations and further work will be needed during the sector design phase to understand the specific impacts.³ There will be a need to consult extensively with industry on sector design and also ongoing consumer engagement so they understand the drivers for increased costs.

We welcome these reforms as an important step forward in uplifting the security preparedness of the energy sector. We look forward to participating in the next phase of consultation and sector design for these reforms.

For further information on our submission, please do not hesitate to contact myself or Mark Feather, General Manager – Policy and Performance on [REDACTED].

Yours sincerely



Clare Savage
Chair
Australian Energy Regulator

Sent by web form on: 16.09.2020

³ Calendar of AER regulatory determinations including regulatory control period and key milestones online:
<https://www.aer.gov.au/system/files/AER%2010%20year%20regulatory%20determination%20calendar%202018-2027%20%28updated%20December%202019%29.pdf>