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Critical Infrastructure Centre

Department of Home Affairs

Submitted electronically: ci.reforms@homeaffairs.gov.au

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Dear Sir/Madam,

AGL Energy (AGL) welcomes the opportunity to provide feedback to the Department of Home Affairs (“the Department”), and the Cyber and Infrastructure Security Centre (CISC), on the Exposure Draft of the Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022 (the SLACIP Bill) and associated Explanatory Document outlining the measures contained within the Exposure Draft.

AGL appreciates the time and effort required of the Department to facilitate the consultative process to develop and refine these reforms over the past 12 months. The changes made with regards to the legislative framework and associated rules after the Parliamentary Joint Committee on Intelligence and Security (PJCIS) report and supporting recommendations on the Security Legislation Amendment (Critical Infrastructure) Bill 2021, demonstrate the Department’s willingness to respond to industry feedback and balance the commercial impacts with the need for a security uplift in the energy sector.

Please find below feedback from AGL on both the Exposure Draft of the SLACIP Bill and the measures contained in the supporting Explanatory Document. We believe this feedback identifies key areas within the SLACIP Bill that require more detail such that entities can be clear on what is expected of them and why, and Boards or governing bodies can be confident in attesting to compliance with the requirements of the Bill:

PART 2A – CRITICAL INFRASTRUCTURE RISK MANAGEMENT PROGRAM

Clear definition of ‘effective governance’ requirements

AGL agrees that governance and oversight are critical aspects of an effective risk management program, but request that the Department and CISC specify what is meant by ‘robust assurance and review process’ as referenced in the Explanatory Document. AGL recommends that this be clarified as uncertainty over the required method and extent of assurance may result in significant cost and difficulties in assessing compliance.

Consultation and grace period required for changes to any applicable Standards or laws

Timelines should be specified for industry to adequately comply with any imposed requirements or standards. This is particularly important with regard to Cyber Security requirements but also more broadly across other areas of material risk as funding for security uplifts is often required years in advance. Therefore, AGL request that should any mandatory standards/maturity levels be imposed under Section 30AN, that a minimum implementation time frame of 12 months be provided, with further opportunity for this to be extended based on the outcomes of consultations with industry under sections 30AL and 30AM.



Annual reporting and subsidiary companies

With regards to Section 30AH, for those assets owned by entities who have multiple subsidiaries (or where the licence to operate is similarly held) or whose assets are registered with subsidiaries, AGL suggests that for reporting purposes this be rolled up to the holding or parent company rather than requiring each entity or subsidiary to prepare an annual report. This will significantly reduce the administrative burden that arises if each subsidiary is required to prepare its own report. To facilitate this request, the report submitted by the holding / parent company can outline in the report the subsidiaries and the assets they own or are licenced to operate.

Expectations regarding annual reporting for Year 1

AGL recommends that the reporting requirements for the first year of the risk management program be modified to a 'readiness attestation' regarding readiness to comply with the requirements of the Act. This will assist responsible entities in preparing for annual reporting to the Department, particularly given the timeline for passing the SLACIP Bill and the first reporting cycle under the Act is not yet know, and the resources required to facilitate compliance with these obligations may vary from a few months to a year.

PART 2C – ENHANCED CYBER SECURITY OBLIGATIONS

Confidentiality of records relating to cyber exercises

AGL suggests that any requirements made under the Act that relate to record(s) for the monitoring of a cyber exercise such as Section 30CM(4) be confidential. Similarly, any reports provided to the Secretary for Home Affairs such as those under sections 30CQ, CH, CR and CZ must be confidential.

Further guidance on the conditions that may lead to activation of provisions

As the Enhanced Cyber Security Obligations are based on the discretion of the Secretary, is the Department or the CISC planning to provide any guidance or any indications on the conditions (or timing) that may lead to the activation of these specific provisions? And how those conditions relate specifically to the critical infrastructure assets. Many of the elements of the enhanced cyber security obligations would have funding and implementation lead times so may not be available immediately after the provision of notice by the Secretary. Further guidance on these obligations would be helpful.

PART 6A – DECLARATION OF SYSTEMS OF NATIONAL SIGNIFICANCE (SONS) BY THE MINISTER

Time period for consideration of submissions

AGL suggests that the time period listed in Section 52(1)(b) for an entity to provide a submission to the Minister about the proposed declaration should mirror the time period listed in Section 52E(3) of 60 days. 28 days is short timeframe for a responsible entity to provide a substantial response to the Declaration.

Limiting duplication of information requests

AGL would kindly request that any information requests issued to entities should only be issued if the information has not already been provided to either the regulator or another Government Department. The energy industry is subject to significant and multi government agency information requests and this often results in duplication of effort to respond to regulatory notices or requests for information from different departments or regulators when that information has already been provided in a prior notice or RFI. Communication and co-ordination amongst departments and regulators for information requests would assist both the entities and the Government to produce and receive information in a timely manner.



Further clarity on criteria for designation of SONS

The definition regarding designation of SONS by the Minister requires further clarification. AGL suggests that the criteria being assessed when considering impacts to social and economic stability should an incident materialise on an asset be provided, so that it is clear to responsible entities the basis for which the Minister is designating an asset as SONS.

CRITICAL INFRASTRUCTURE ASSET DEFINITION

Rationale for significant change to the current critical electricity asset threshold

Although AGL notes that the new critical infrastructure asset thresholds are already in force under the *Security of Critical Infrastructure (Definitions) Rules 2021*, we respectfully maintain that an asset with a nameplate generation capacity of 30 megawatts does not materially contribute to the stability of the system.

This position is supported by the outcomes from the implementation of the Mandatory Primary Frequency Response reforms, which materially improved the resilience of the National Electricity Market (NEM) in eastern Australia. These reforms allow the NEM to return to its normal operating range when faced with a contingency event, and thereby bolster the NEM's overall resilience and reliability. Based on our preliminary analysis and as an experienced generator in the NEM, AGL suggests at a minimum that a threshold equal to or greater than 500 megawatts is more appropriate when considering the criticality of an asset on the system security and resilience of the NEM. This would also assist with the direction of resources and funding to those most critical assets rather than smaller insignificant assets such as those of 30MW.

Given the above, AGL suggests that the definition threshold for a critical electricity asset be reviewed on the anniversary of the rules coming into force to ensure that the threshold is adequate for the Department's stated objectives of system security and resilience.

If you would like to discuss any aspects of our response further, please contact Marika Suszko, Wholesale Markets Regulation Manager at [REDACTED]

Yours sincerely,

Con Hristodoulidis
Senior Manager, Regulatory Strategy