



# Electrical Trades Union of Australia

*Proud to be Union*

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Department of Home Affairs

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## **ETU Submission to the Exposure Draft Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022**

The Electrical Trades Union of Australia ('the ETU') is a division of the Communications, Electrical and Plumbing Union ('the CEPU').<sup>1</sup> The ETU is the principal union for electrical and electrotechnology tradespeople and apprentices in Australia, representing well over sixty-one thousand workers around the country. The CEPU represents close to one hundred thousand workers nationally, making us amongst the largest trade unions in Australia.

In the spirit of reconciliation, the ETU acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples today.

The ETU welcomes the opportunity to make a submission to the Department of Home Affairs on to the Exposure Draft Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022 (the 2022 Bill). We do, however continue to have concerns with the manner in which the Department of Home Affairs is consulting on such significant reforms. The ETU shares the concerns of many other stakeholders, including:

- both timing of the release and length of consultation period coincided with the end of year, Christmas / New Year period and a time when many employees are on leave,
- that proactive engagement appears to only occur with select stakeholders and then treats those stakeholders as if they are equally resourced and therefore somehow equally capable of the same levels of engagement, and
- consultation is not contextualised or targeted in a way that maximises the quality of stakeholder engagement.

The ETU opposed the initial Security Legislation Amendment (Critical Infrastructure) Bill 2021 (the 2021 Bill) due to its unreasonable requirement to subject workers in a large number of industries to invasive and unnecessary security assessments.<sup>2</sup>

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<sup>1</sup> CEPU is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth).

<sup>2</sup> <https://www.aph.gov.au/DocumentStore.ashx?id=b410ce43-12d1-45a0-9c6a-a59963cf7215&subId=701514>

The 2021 Bill passed on 2 December 2021 with significant amendments based on the recommendation of the Parliamentary Joint Committee on Intelligence and Security (PJCIS). Among many other provisions, the requirement for employers to conduct security assessments of their employees was removed and the PJCIS recommended the Government consult further on those contentious provisions of the original 2021 Bill with a view to reintroducing these provisions separately later.

Whilst the exposure draft of the 2022 Bill appears to have some minor modifications directed towards the criticisms and deficiencies identified through the PJCIS process, these modifications could only really be characterised as negligible, and have been constructed in such a way as to increase uncertainty at worst, or at best, serve no purpose.

The ETU retains the strong concerns previously articulated in our various submissions and our 2021 inquiry appearance and recommends that the proposed Bill be rejected in its current form due to:

- a. The proposed schemes for critical infrastructure risk management programs and enhanced cyber security obligations (and indeed the cyber security provisions more generally) wholly fail to ensure the rights, particularly the right to privacy and civil liberties, of employees is taken into account,
- b. The continued failure to understand and recognise the industries it is proposed to cover and the existing systems and processes already in place to manage these risks,
- c. No argument or evidence being put forward which demonstrates the recently updated legislation is deficient absent these further amendments,
- d. No argument or evidence that existing arrangements, including in other legislation regulating security in these industries are inadequate, and
- e. The introduction of unnecessary and uncertain regulatory burden that is not reasonably offset by any stated benefit.

The co-design process for the rules contemplated in the 2022 Bill has not occurred to the ETU's knowledge. There is no framework for this co-design process and no requirement to either consult with employees or their Unions, nor to consider, incorporate or respond to concerns raised by such. At the town hall meetings arranged by the Department on 25 January 2022 it was stated that consultation was occurring on proposed rules and other unspecified elements of the 2022 Bill, with this consultation being separate to that publicly advertised. It is unclear where these consultations are occurring, what is being consulted, who is being consulted and how the views and concerns of workers are being considered.

Despite the Department of Home Affairs assertions that the exposure draft has incorporated and responded to the concerns raised during the inquiry into last year's version of the Bill, the reality is nothing in this draft:

1. Improves transparency and certainty of the law by removing the substantial levels of delegated decision-making and restoring parliamentary oversight.
2. Ensures that all decisions made under the Bill are reviewable by the Administrative Appeals Tribunal.
3. Delineates the class of "critical employees" or other personnel subject to possible background checks to ensure that civil liberties are not unnecessarily impinged upon.
4. Legislates for mandatory consultation with employees and their union representatives if the entity is considering implementing background checking.
5. Prevents an entity from taking a maximalist approach to background checking or limits an employer from using information obtained during background checks for unrelated purposes.

6. Amends the Bill to ensure that rights under industrial, work health and safety, privacy or anti-discrimination laws are not impinged upon.
7. Ensures that citizen's private data that may be accessed under the Bill is quarantined from employers.
8. Puts in place an appeal mechanism to an independent mediator for workers and their representatives to appeal an entity's Risk Management Plan should background checking be 'unwarranted' or 'excessive' for all, or for a class of employees.
9. Establishes a proportional cost benefit analysis of the regulatory burden these additional measures will place on businesses and therefore consumers such as electricity consumers, nor does it provide certainty on the parameters in which the provisions need to be applied.

Absent proper consultation and engagement followed by sensible amendments to address these key concerns the proposed Bill should not be progressed any further.

In addition, the ETU would welcome more meaningful engagement in order to properly participate and be afforded the opportunity to meaningfully contribute to any final development of a proposed Bill going forward.