

29 April 2021

UPDATE

Consultation on coverage of the Security of Critical Infrastructure Act

Missing from the government consultation on the *Security Legislation (Critical Infrastructure) Bill 2020 (Bill)*, (see item 4 of our last [Update](#)) was any indication of how new security obligations are likely to be applied across the Australian economy.

The intended extent of coverage is of particular interest because regulated entities will be required to file and keep up to date owner and operator reports, maintain a comprehensive risk management program, report cyber security incidents, file an annual risk management report and may become the subject of government investigation and direction.

Last week Home Affairs commenced consultation on proposed rules to be made under the Bill giving an indication of how the new law is likely to apply.

The definitions of Critical Infrastructure Asset in the Bill will apply

The consultation paper proposes to apply the definitions of critical infrastructure assets appearing in the Bill for 10 Asset classes. The potential coverage is:

1. **Telecommunications:** All networks used to supply a carriage services and “any other asset” used in connection with a carriage service. This would appear to encompass all carriers and most carriage service providers.
2. **Data processing:** Any data storage or processing provider that: “wholly or primarily” provides a data storage or processing service to:
 - a. government or an entity established by federal or state government (e.g., a University); or
 - b. an end user that is the responsible entity for a critical infrastructure asset and the service related to business-critical data.
3. **Defence:** An asset supplied to the defence department or Australian Defence Force under contract and consists of or enable a critical defence capability. A critical defence capability includes materiel, platform, network, technology, system, or service required in connection with Australia’s defence or national security.
4. **Energy:** An asset “critical to ensuring the security and reliability of an energy market” used in connection with the operation of the energy market system by the Australian Energy market Operator, Power and Water Corporation, Regional Power Corporation, or the Electricity Networks Corporation.
5. **Education:** The Bill will be amended so that a university that is owned or operated by an entity that is registered in the Australian University National Register of Higher Education Providers.
6. **Health:** A hospital that has a general intensive care unit (to be inserted in the Bill)
7. **Aviation:** Assets of an aircraft operator or a regulated air cargo agent used in the provision of an air service, and assets used by an airport operator in connection with the operation of an airport.
8. **Ports:** The Act lists 20 major Australian ports.

9. **Public Transport:** The Bill will be amended so that any network or system owned by a single entity that is capable of handling at least 5 million passenger journeys per month (not including aviation).
10. **Water and Sewage:** A water or sewerage system managed by a single utility that services at least 100,000 water connections or 100,000 Sewerage connections per month.

Additional coverage as proposed in draft rules

The consultation proposes that the Minister make rules to prescribe:

1. Communications

- a. **Broadcasting:** The transmission assets of any entity that has transmission assets at 50 or more sites and the transmission assets owned and operated by TXAustralia
- b. **Domain names:** The .au country code top level Domain system.

2. Energy

- a. **Electricity generators:** Including batteries and other storage that have a nameplate generation capacity that is greater than or equal to 30 megawatts and connected to a wholesale electricity market
- b. **Gas:** Existing regulatory thresholds to be retained.
- c. **Liquid fuel assets:** The major refineries, Geelong, and Lytton,
- d. **Liquid fuel pipelines:**
 - i. Sydney Metropolitan Pipeline (including Silverwater to Newcastle via Plumpton to include the Banksmeadow to Silverwater Pipeline);
 - ii. Gore Bay Pipeline (Gore Bay to Clyde/Parramatta terminal to include the Viva Energy Mascot Pipeline);
 - iii. Westernport Altona Geelong (WAG) Pipeline and associated infrastructure (Long Island Point Tank Farm to Altona to Geelong Refinery);
 - iv. Longford (Dutson) to Hastings Pipeline and associated infrastructure (crude oil from Bass Strait to Long Island Point Tank Farm);
 - v. Melbourne Airport Jet Fuel (JUHI) Pipelines (Altona/Newport to Tullamarine via Somerton);
 - vi. Caltex Jet Fuel Pipeline (Kurnell to Sydney Airport);
 - vii. Brisbane Jet Fuel (JUHI) Pipelines; and
 - viii. Perth Airport Jet Fuel Pipeline.
- e. **Liquid fuel storage facilities:** Liquid fuel storage facilities that have storage capacity of more than 50 megalitres to be critical liquid fuel assets.

3. Financial services and markets

- a. **Banking:** Authorised deposit taking institutions and their related body corporates, with total assets above \$50 billion.
- b. **Financial markets:** financial markets that are operated by a domestic s795B(1) Tier 1 market licensee and that have, for at least two consecutive quarters, a turnover metric threshold test of at least one of:
 - i. 35 per cent market share of traded Cash Market Products (as defined in the Market Integrity Rules (Securities Markets));
 - ii. \$4 billion average daily value of traded Cash Market Products;
 - iii. \$15 billion average daily notional value of Futures Markets Contracts transactions as defined in the Market Integrity Rules (Futures Markets); or
 - iv. \$30 billion average daily notional value of transactions that are not Cash Market Products or Futures Markets Contracts.
- c. **Clearing and Settlement:** those clearing and settlement facilities that are operated by the holders of a clearing and settlement facility licence granted under s824B(1) of the Corporations Act where the holder is incorporated in Australia and subject to

financial stability standards determined by the Reserve Bank of Australia under s827D of the Corporations Act.

- d. **Financial benchmarks:** An asset owned or operated by the holder of a benchmark administrator licence used in connection with the administration of a significant financial benchmark declared under s908AC(2) of the Corporations Act.
 - e. **Derivative trade repositories:** The holder of Australian derivative trade repository licence and where – the derivative trade repository has at least \$20 trillion average daily notional value of outstanding transactions for all asset classes for a least two consecutive quarters
 - f. **Payments Systems:** The Mastercard debit and credit card systems, The Visa debit and credit card systems, The EFTPOS card system, and The New Payments Platform.
 - g. **Insurance:** Insurance entities with total assets over \$2 billion as critical insurance assets.
 - h. **Life Insurance:** Life insurance entities with assets over \$5 billion as critical insurance assets.
 - i. **Health Insurance:** Health insurance entities with assets over \$0.5 billion to be critical insurance assets.
 - j. **Superannuation:** Registrable superannuation entity licensees that hold total assets over \$20 billion to be critical superannuation assets
4. **Food and Grocery sector;** Woolworths Group, Coles Group, Aldi, Costco, and Metcash.
 5. **Higher education and research:** Australian National University is prescribed.
 6. **Transport sector:**
 - a. **Freight assets:** 49 intermodal terminals will be prescribed.
 - b. **Freight services:** National logistics providers with an annual revenue threshold of over \$150 million to be critical freight services assets. “This will include entities such as Toll Group, Aurizon, DHL Global Forwarding and Linfox.”

Consultation

The Department homepage on this consultation is [here](#). Submitters might wish to advocate the inclusion or exclusion of particular assets and/or the application or exemption of particular regulatory requirements having regard to recognised risks and/or existing rules. . The time required to comply with the new law and therefore, the appropriate sunrise period might also be a matter for comment. Submissions close at 4pm on **14 May 2021**.

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Please do not hesitate to contact me if you have any questions regarding these developments.

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