

20 August 2021

Critical Infrastructure Centre
Cyber, Digital and Technology Policy Division
Department of Home Affairs
4 National Circuit Barton ACT 2600

Submitted via email by graham.pearson@energycouncil.com.au to ci.reforms@homeaffairs.gov.au

Draft Regulation Impact Statement

The Australian Energy Council (the “**AEC**”) welcomes the opportunity to make a submission to the Department of Home Affairs (the “**Department**”) on the Draft Regulation Impact Statement (the “**RIS**”).

The AEC is the industry body representing 20 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The AEC makes the following comments:

Do you agree with the following assumption made in estimating the costs of the draft risk management program framework (page 37 of the draft Regulation Impact Statement)? *It is reasonable to estimate the total cost to implement the draft risk management program framework by using the average costs submitted by organisations of the same type (generator, transmitter or distributor) and of a similar size.*

The AEC agrees that this is a reasonable approach.

However, the AEC does note that the cost of implementing the Department’s preferred option 2 is significant:

“The average cost of compliance for each entity is estimated at \$13.1 million in one-off costs and \$4.6 million per year in ongoing costs, noting that there is a wide range provided in submissions from industry. Entity costs range between \$0.2 million and \$95.9 million in one-off costs and \$0.1 million and \$31.0 million in on-going costs per year.”¹

The costs, even at the lower end of the range, are substantial and will fall onto the energy industry. The Department has acknowledged that the costs of implementing the framework are likely to be passed on to consumers through “increased electricity prices”.² This places generators, as well as transmission and distribution companies, in an unenviable position of increasing electricity costs for consumers at a time when various stakeholders, including the Federal Government, are publicly advocating for lower costs.³

The AEC strongly encourages the Department to consider the risk trade off associated with the framework and seek to minimise upfront and ongoing costs to the extent possible. The AusCheck requirement is one area where, in the AEC’s view, the costs are not proportionate to the benefit.

Do you agree with the following approach to quantifying the benefits of the draft risk management program framework (page 37 of the draft Regulation Impact Statement): *It is reasonable to calculate the*

¹ See p41, Draft regulation impact statement: a risk management program framework for critical electricity assets

² See p48, Draft regulation impact statement: a risk management program framework for critical electricity assets

³ See, for example, [Coal the loser as power prices smashed](#)

benefits of the draft risk management program framework on the basis of the expected avoided costs of potential future incidents.

The AEC agrees that this is a reasonable approach.

Do you agree with the selection of the South Australian blackout in 2016 as the baseline benefit scenario for modelling the cost of avoided future incidents in Australia (pages 46-47 of the draft Regulation Impact Statement)?

The AEC has some concerns about using the South Australian blackout as the baseline benefit scenario, and does not agree that an even more severe scenario, at 150 percent of the South Australian blackout costs, is a reasonable comparison to draw.

With respect to the 2016 system black, this was a highly improbable and technical event. It was caused by six lightning strike faults in short succession that triggered a previously unknown design flaw that existed in many wind turbines. This is not the sort of matter that the critical infrastructure reforms are intended to, nor could, address.

Whilst that particular technical issue was immediately rectified, the NEM has learned considerably from the event and is being reinforced and operated such that the probability of recurrence upon other unanticipated fragilities is further reduced. Networks are being operated more conservatively. Project EnergyConnect will provide a second interconnector for South Australia and more generally, the network is increasingly reinforced with distributed energy resources such as stand-alone power systems, microgrids, network connected batteries and stand-alone batteries.

Furthermore, the critical infrastructure reforms are primarily focussed on limiting the risk of malicious action rather than technical events. Using the South Australian blackout as a baseline then may lack relevance to the reforms being considered (e.g. no amount of personnel security checks could prevent the SA system black).

In setting a baseline, the Department should also give weight to the fact that critical electricity assets are not all equal in risk. An aggressive and successful malicious action on the transmission grid could conceivably trigger a system black. But it is not conceivable that an attack could be co-ordinated across sufficient disparate generators to trigger one. Therefore, having different baseline scenarios for generation and transmission and distribution is something the Department should consider.

If the Department retains its view expressed in the RIS, it should at least recognise that the probability of a system black event and the probability of this legislation averting it is very small. Therefore, the benefit value that is ascribed to avoiding another SA system black event should be multiplied by a small probability value.

Cyber Security Profile 3

The RIS notes:

"In response to feedback received following the workshop series (through the receipt of completed industry costing templates), the Department:

- *Removed the requirement for electricity generators >1,000 MW, transmission and distribution networks, to meet cyber Security Profile 3 (SP-3) within 60 months of commencement of the rules.⁴*

The AEC supports the permanent removal of the requirement for generators >1,000 MW, and transmission and distribution network to meet SP-3. Our view is that the SP-3 was too high and the benefits were not commensurate to the costs. It is more appropriate for SP-2 to be the standard with a two-year compliance period.

⁴ See p60, Draft regulation impact statement: a risk management program framework for critical electricity assets

Personnel hazards

The AEC reiterates its concerns about the proposed direction of the personnel hazards rules, which are likely to prove onerous both in terms of time and costs, potentially inconsistent with jurisdictional anti-discrimination and fair work legislation, and not likely to materially enhance resilience. We do not believe a reasonable case has been made as to why these rules should, as suggested in the workshops, apply retrospectively to all staff or why a background check under the AusCheck scheme is necessary over an ordinary criminal history check.

Imposing such onerous requirements may prove counterproductive if it ultimately prevents or delays a responsible entity from responding to a security threat. For example, it is quite common for generators to employ overseas contractors when undertaking maintenance activities due to the specialist requirements (such as repairing the Callide Power Station). Sourcing overseas staff during Covid-19 has become a major challenge and the onboarding process will be further slowed, if not rendered wholly impractical, if these contractors must first pass through the AusCheck scheme before performing critical work.

The AEC is concerned that in some circumstances the delays caused by the AusCheck requirement may actually increase the vulnerability of Australia's energy system.

An appropriate regulator

The energy industry operates under a myriad of laws and regulations that are both general (e.g. the Competition and Consumer Act) and specific (e.g. the National Energy Retail Laws). Responsibility for the enforcement of these laws rests primarily with the Australia Energy Regulator ('AER') in the NEM and the Economic Regulation Authority ('ERA') in Western Australia.

While the AEC acknowledges the Department's desire to play a close role in monitoring these regulations, given that the AER and ERA already have significant experience with, and technical knowledge of, the energy industry, the AEC retains its view that they are the appropriate bodies to oversee the energy industry's obligations under the critical infrastructure framework, with support from the Australian Cyber Security Centre.

Conclusion

The AEC appreciates this opportunity to provide feedback on the RIS and encourages the Department to consider the issues raised above.

Please do not hesitate to contact Graham Pearson, Policy Manager by email on graham.pearson@energycouncil.com.au or by telephone on 0466 631 776 should you wish to discuss this further.

Yours sincerely,

Graham Pearson
Policy Manager
Australian Energy Council