

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

Submitted via email: [ci.reforms@homeaffairs.gov.au](mailto:ci.reforms@homeaffairs.gov.au).

23 June 2021

### **Critical Infrastructure Risk Management Program: Sector-Specific Rules**

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to the Department of Home Affairs' Critical Infrastructure Rules Co-Design Discussion Paper.

The Energy Council is the industry body representing 21 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, sell gas and electricity to over ten million homes and businesses, and are major investors in renewable energy generation.

The AEC supports the intent of the legislation to bolster the resilience of Australia's critical infrastructure to material risks and cyber threats. Our members recognise that the reliable provision of energy is essential to the social and economic wellbeing of Australia and already have existing and sophisticated security and IT systems in place to ensure this. Furthermore, AEMO, in partnership with the Department of Industry, Science, Energy, and Resources, has developed its own Australian Energy Sector Cyber Security Framework, which leverages international best practice to foster industry collaboration in managing cyber risks.<sup>1</sup> It is important the Department of Home Affairs acknowledges the maturity of these existing systems and the need to ensure alignment when developing its Risk Management Program for generators. This Program should be seen as complementary to, rather than the foundation of, how energy generators minimise their risk exposure to cyber-attacks.

The AEC has participated in the Department's industry co-design workshops for the electricity sector. We welcome the constructive intent of these workshops and acknowledge the Department's willingness to respond to feedback, evident in the recent amendments to the supply chain rules and removal of reference to the ENA Standard. At the same time, the workshops appear to have raised more questions than they have resolved with respect to other matters of industry compliance, especially personnel hazards.

The AEC and its members would welcome the opportunity for future, targeted consultation with the Department to further explore and hopefully clarify the concerns below.

#### **Scope of legislation**

The AEC understands that the Department of Home Affairs is currently in the process of reviewing the submissions it received to its consultation on the Critical Infrastructure Asset Definition Rules. These Definition Rules are a threshold question and ultimately determine which generators must develop a Risk Management Program, and in turn, which generators participate in the workshops.

As it stands, there are two uncertainties with respect to the Definition Rules: what the threshold level is (proposed to be at 30MW) and how the Department will measure the threshold (i.e. whether it will be determined by generation unit or by generation site). Clarifying how the threshold is to be

---

<sup>1</sup> Details of the AESCSF can be found on AEMO's website: <https://aemo.com.au/initiatives/major-programs/cyber-security/aescsf-framework-and-resources>.

measured is especially important as it will influence the estimated compliance costs energy generators will incur to implement their Risk Management Program, which the Department has asked participants to declare. For example, a generator with two 500MW units will have different compliance obligations depending on whether generation assets are measured by unit (in which case it would trigger compliance with SP-2) or measured cumulatively (in which case it would trigger compliance with SP-3).

### **Personnel hazards**

The AEC has significant 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,<sup>2</sup> and not likely to materially enhance resilience. We do not believe a reasonable case has been made as to why these rules should apply retrospectively to all staff or why a background check under the AusCheck scheme is necessary over an ordinary criminal history check. This latter requirement will significantly slow onboarding processes and may be practically impossible in the case of overseas contractors. Furthermore, the proposed close monitoring of domestic critical employees appears to suggest the Department believes threats to the energy industry may come from ‘within’, which does not seem to be empirically supported. In any event, the probability of one individual taking malicious action that causes harm is negligible due to the existing checks and balances that generation sites have in place, as well as their actions being immediately observable to other staff and the market operator in AEMO.<sup>3</sup>

Imposing such onerous requirements may prove counterproductive if it ultimately prevents or delays a responsible entity from responding to a security threat. For example, since electrical engineering is a highly specialised field, it is not uncommon for generators when undertaking maintenance to employ overseas contractors, particularly if the Original Equipment Manufacturer (OEM) is providing maintenance services under contract. The onboarding process is going to be significantly slowed, if not rendered wholly impractical, if these contractors must first pass through the AusCheck scheme before performing critical work. In some circumstances, these delays may actually increase the vulnerability of Australia’s energy system to an attack.

Adding to this, in the event of an attack, the ability of responsible entities to rapidly respond may be hampered if relevant external experts (e.g. an IT specialist capable of diluting or nullifying a cyber-attack) must first pass through an onerous background check.

### **Timelines and other regulatory changes**

The Department has indicated an intent to take a collaborative approach towards monitoring compliance. While the AEC supports this, it should not be used as justification for an accelerated rollout of the new laws. We remain concerned that the timelines for these reforms are becoming increasingly constricted and insufficient to allow the Department and industry to confidently resolve outstanding issues with the rules.

Furthermore, the Department should be mindful of other significant regulatory changes that the energy industry is currently preparing for, most notably 5 Minute Settlement (‘5MS’). Preparing for 5MS requires industry participants to implement fundamental changes to their IT systems that are highly time and resource intensive, and complicated by the changes to working conditions that the COVID-19 pandemic has caused. Both AEMO and the AEMC have recognised these pressures and sought to develop regulatory roadmaps to avoid imposing unmanageable compliance obligations on

---

<sup>2</sup> For example, if an employee was dismissed because they were unable to meet “suitability” requirements to perform critical work, the employer may be exposed to an unfair dismissal lawsuit.

<sup>3</sup> For example, AEMO would be promptly aware of any malicious action that attempts to cause disruption to energy supplies.

industry participants.<sup>4</sup> The AEC encourages the Department to collaborate with these market bodies so a coordinated approach to regulatory rollout is achieved.

Any questions about this submission should be addressed to Rhys Thomas, by email to [Rhys.Thomas@energycouncil.com.au](mailto:Rhys.Thomas@energycouncil.com.au) or by telephone on (03) 9205 3111.

Yours sincerely,



**Ben Skinner**  
GM Policy  
Australian Energy Council

---

<sup>4</sup> See, for example, AEMO's Regulatory Implementation Roadmap: <https://aemo.com.au/en/initiatives/major-programs/regulatory-implementation-roadmap>.