



The Australian Industry Group
Level 2, 441 St Kilda Road
Melbourne VIC 3004
PO Box 7622
Melbourne VIC 3004
Australia
ABN 76 369 958 788

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Department of Home Affairs
Email: ci.reforms@homeaffairs.gov.au

Dear Sir/Madam

DRAFT CRITICAL INFRASTRUCTURE ASSET DEFINITION RULES PAPER

The Australian Industry Group (Ai Group) welcomes the opportunity to make a submission to the Department of Home Affairs (Home Affairs) on its Draft Critical Infrastructure Asset Definition Rules paper (Paper).

We note that the Security Legislation Amendment (Critical Infrastructure) Bill 2020 (Bill) is currently under review by the Parliamentary Joint Committee on Intelligence and Security (PJCIS). As part of that consultation process, we have raised issues relating to aspects of the Bill that remain outstanding. Given these parallel consultations, there is the potential for confusion for all parties (including policy makers and stakeholders) regarding the order of reforms. For instance, should changes arise from the PJCIS's review, this could impact on Home Affairs' consultation and stakeholders may need to be consulted again. Our suggestion would therefore be that the PJCIS review be completed before other related consultations arising from the Bill commence.

Setting aside the consultation process and other outstanding issues for the time being, for the purposes of this submission, we are providing our comments insofar as it relates to critical infrastructure assets and rules under the Bill, as proposed by Home Affairs in its Paper. In particular, the Paper notes that a total of 22 critical infrastructure asset classes will be subject to the enhanced regulatory framework upon passage of the Bill, with 12 of these classes requiring further rules to be made to finalise the assets subject to the enhanced regulatory framework. The Paper also notes that the other 10 classes do not require further rules as they have been fully defined in the Bill.

Overall, we strongly support the protection of "services that are vital to Australia's security, economic prosperity and way of life while minimising regulatory impost on industry", as stated in the Paper. Industry and Government indeed share these mutual objectives. We also welcome the Paper's intent to provide further clarification and Home Affairs consulting with stakeholders on definitions relating to critical infrastructure asset definitions and rules.

To ensure that our mutual objectives are properly achieved, we strongly encourage Home Affairs to provide sufficient weight to the views of entities directly impacted by the proposed rules and definitions. Home Affairs should also recognise the extent of an entity's control of assets based on what is within their control that might be captured in defining critical infrastructure assets and rules. For example, how far will the scope of responsibility of an entity flow down the supply chain? There should be flexibility for those along the supply chain to have their own processes in place to determine their critical assets. A best endeavours approach could be considered.

If not properly defined, the Paper's proposed definitions and rules for critical infrastructure assets can risk imposing obligations on an entity to manage risks beyond their control, which will likely fail and impose compliance costs that will not achieve the desired objectives. This is particularly an issue for companies that have wide operations, or diversified portfolios and operate, service or supply assets to a range of sectors identified under the Bill. There will also likely be a higher regulatory burden created for SMEs and those not currently subject to critical infrastructure security legislation.

To elaborate further, the following are two examples:

- Under the proposed rules in the Paper, some companies may have critical infrastructure assets that are defined under several sectors. Has Home Affairs contemplated how inconsistencies will be resolved if there are multiple layered definitions?
- The proposed rules may capture intermodal terminals as a critical freight infrastructure asset under the transport sector. It may be useful to clarify whether specific intermodal terminals are intended to be regulated or captured or whether it relates to an entire location including onsite warehousing. This will affect companies that have or are planning to set up a logistics facility within an intermodal facility. It would also be helpful to clarify the definition of “national logistics providers” which would assist businesses where logistics may contribute to a part of their broader operations.

The above examples are non-exhaustive – there may be other examples that require further clarification and attention. Nevertheless, these examples highlight a need to ensure that any new definitions and rules concerning critical infrastructure assets are properly defined to avoid inadvertently creating an unnecessary regulatory burden on industry that may not achieve the intended objectives.

We welcome ongoing engagement with Home Affairs as further consultation is undertaken.

If you would like clarification about this submission, please do not hesitate to contact me or our Lead Adviser – Industry Development and Defence Industry Policy, Charles Hoang (02 9466 5462, charles.hoang@aigroup.com.au).

Yours sincerely,



Louise McGrath
Head of Industry Development and Policy