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The Chair, Mr Andrew Hastie MP  
Parliamentary Joint Committee on Intelligence and Security  
PO Box 6021  
Parliament House  
Canberra ACT 2600

Dear Mr Hastie MP

**RE: SUBMISSION TO THE REVIEW OF THE SECURITY OF CRITICAL  
INFRASTRUCTURE BILL 2017**

I am writing to provide a submission to the PJCIS Review of the Security of Critical Infrastructure Bill 2017 on behalf of the Northern Territory Government.

The attached submission was endorsed for release by Cabinet of the Northern Territory Government on 11 December 2017 and forwarded to the Commonwealth Attorney General's Department that day.

Unfortunately the submission arrived four days after the Bill was tabled and while there was an understanding that the Attorney General advised in his letter to the NT Chief Minister (attached) that submissions would only be accepted until 3 November (later extended to 10 November); the NT maintains that a four-five week turn around to comment on new and complex legislation is unrealistic as it does not afford States and Territories reasonable time to effectively analyse a draft bill and submit an endorsed government position.

As the Bill that was tabled was unchanged from the one commented on in the Northern Territory submission, the Northern Territory Government position remains unchanged. As such it is requested that the attached endorsed submission be accepted by the PJCIS as part of its current review.

Yours sincerely

DAVID WILLING  
Executive Director Security & Government Services

5 January 2018

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# **Northern Territory Government Submission**

## **Draft Security of Critical Infrastructure Bill 2017 and Explanatory Document**

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## Northern Territory Context

The Northern Territory Government has long been the owner/operator of critical infrastructure of significance and of strategic importance nationally.

This includes Northern Territory power and water networks in cities and remote communities and until recently, the Port of Darwin.

Due to a low resource base (available capital, population, own source revenue and baseline infrastructure); the Northern Territory is in a disadvantaged position to undertake major infrastructure projects without external capital investment when compared to other states and territories. Large scale commercial ventures such as the Inpex gas plant currently under construction are vital to both the Northern Territory economy and the Commonwealth's developing northern Australia agenda.

The lease of the Port of Darwin to Landbridge was entered into following a decade of work to source external funding from a variety of government and non-government sources which would enable this strategically important piece of infrastructure to be effectively maintained and expanded to meet the future needs of maritime logistics for Australia's most northern, major port. Without this private investment, the strategic importance of the port would also diminish over time due to an inability to keep pace with technological and industry standards.

While private investment is of critical importance to the economic future of the Territory, the Northern Territory Government remains cognisant of the need to ensure national security is not compromised.

The objects of the Draft Security of Critical Infrastructure Bill 2017 (the Bill) identify the risks of sabotage, espionage and coercion for three sectors; ports, power and water. The Northern Territory Government will continue to take an all hazards approach to mitigating risks for critical infrastructure. It is acknowledged that the Critical Infrastructure Centre assesses criticality with a national focus, and this does not necessarily align with the criticality of an asset to a particular jurisdiction.

The Critical Infrastructure Centre has advised the Northern Territory Government that in its current state, the Bill will include two Northern Territory-based assets: Port of Darwin which is owned by the Northern Territory Government leased to Landbridge for 99 years; and the Northern Territory Government owned Power Water Corporation, through their power assets.

The Northern Territory Government notes the Critical Infrastructure Centre's proposal to include gas as a critical asset in the Bill, prior to its introduction to Parliament. Gas represents major industry in the Northern Territory and its significant importance in the national supply chain enhances its level of criticality as a resource and asset.

The Northern Territory Government looks forward to a continuing dialogue regarding the Bill.

## Northern Territory Government Response

### 1 Ministerial Directions Power

#### 1.1 Powers

The Northern Territory Government understands the need to enhance the resilience of critical assets to further protect Australia's national security. The Northern Territory Government understands there are appropriate safeguards in place to prevent misuse of the ministerial directions power. It must however, be used only as a last resort when good faith negotiations between the affected owner and operator, the state or territory and the Commonwealth have failed. It is important that owners and operators of critical infrastructure are fully aware of the risks to their assets to ensure they are able to make a fully informed



decision and response to the Commonwealth. This is of course noting the need to maintain confidentiality around sensitive operations and investigations into national security. It is critical that any use of the ministerial directions power is solely used to address issues of national security, particularly sabotage, espionage and coercion and not broadened over time to be used for other risks.

The 'last resort' Ministerial direction power in the Bill is broad in scope, with no limitations on the nature of any direction.

While the Northern Territory Government acknowledges that the Commonwealth has endeavoured to ensure a minimal regulatory burden in the design of the bill, costs associated with risk assessments and consequent mitigation actions, or compliance with Ministerial directions, could be significant and could have a wide-ranging impact on wider economic and regional development goals. They may also have the potential to result in legal liability under existing contracts and additional unquantifiable costs for the asset owner (Northern Territory Government). For example, it is possible that the Port Operator could seek to recover costs or damages associated with a Ministerial direction through a claim against the Northern Territory Government, should an exercise of the Ministerial direction necessitate a termination of the Port Lease, or otherwise impact on the Port Operator's rights under the existing contract.

In light of the above, the Northern Territory Government seeks further consideration by the Commonwealth as to the appropriateness of potential compensation provisions, and in what circumstances the application of such provisions might be triggered.

The Northern Territory Government also requests that section 30(4) of the Bill be amended so that the Minister must have regard to the costs likely to be incurred by State and Territory Governments in complying with a direction; as well as the likely implications of a particular Ministerial direction on economic and regional development, and future investment projects or supply chains. This broader scope of considerations will ensure that decisions made by the Minister in relation to 'last resort' Ministerial direction powers capture a broader range of risks and benefits associated with intervening in the market.

In addition, the Northern Territory Government considers it appropriate that the Bill operate in a manner that ensures that it, as ultimate owner of critical infrastructure assets, is adequately engaged throughout consultation and negotiation processes relating to risk assessments and mitigations, and in respect of Ministerial directions, even in situations where the Minister may have identified the Port Operator as the entity best placed to manage the particular risk.

Section 40 of the Bill allows the Secretary to share "protected information" with, amongst others, Ministers in a number of portfolios including taxation, promoting investment in Australia and industry regulation. These portfolios in and of themselves would not appear to be connected to the objects of the Bill.

You have stated in your explanatory document that the ability to disclose in section 40 may be used for the purposes of assessing whether the asset operator or reporting entity has complied with its tax obligations.

There may be an argument that, aggregated information regarding taxation, industry regulation and the promotion of investment are connected with decisions that have an impact on national security. However, the purpose described in the explanatory documents (to assess compliance with tax obligations) could extend beyond the purpose of protecting national security, and will likely be of concern to private entities.

It is recommended that the purposes of sharing the information with the Ministers for taxation, industry regulation and promotion of investment be limited to disclosure for the purposes of national security, to limit the scope of the use of the information.

## 1.2 Regulatory Costs

The Northern Territory notes there will be regulatory costs involved in compliance with the legislation in relation to the reporting requirements to maintain the critical asset register as outlined in the explanatory document and costs associated with any mitigating actions that the asset owner or operator is required to undertake. The exact scope and cost of these changes cannot yet be determined.

There may also be costs resulting from the Commonwealth exercising any step in powers however the responsibility for bearing those costs has not been determined and requires further consultation.

## 1.3 Mitigations

The cost of the mitigations issued under the Ministers direction must be proportionate to the level of risk posed by the threat. A sensible and measured approach must be taken by the Minister when issuing a direction. Consideration should also be given to the relevant fiscal cycles of private companies and government owned companies. A government owned company will often be subject to the same budget approval process as other government agencies. This has significant lead times for appropriate development, scrutiny and approval processes. The government-owned Power and Water Corporation will be subject to the Bill for its power assets, and must also comply with the annual budget cycle of the Northern Territory Government, where a forward budget has historically been released in the final quarter of the financial year.

# 2 Critical Infrastructure Asset Register

## 2.1 Collection of information

The information proposed to be collected by the Commonwealth for the Critical Infrastructure Asset Register appears to be reasonable in the national security context and useful to better inform the levels of risk for sabotage, espionage and coercion.

## 2.2 Security of information

Any information held on the register will be confidential and sensitive. Further clarity is required as to the systems, protections and classifications applied to the register.

## 2.3 Information sharing

The Northern Territory Government is encouraged to learn that the Critical Infrastructure Centre intends to share the information collected for the asset register, on a case-by-case basis, with the jurisdiction in which the asset is located. This will enhance the threat picture and identify key risks from a specific national security perspective. This information will be used to build on the broader all-hazards approach taken by the Northern Territory Government when assessing risks to critical infrastructure.

## 2.4 Timeframes

The six month period following the passage of the Bill through the Commonwealth Parliament appears to be reasonable for owners and operators of identified critical infrastructure to supply the required information to the Critical Infrastructure Centre. The Commonwealth should however request the information from the owners and operators individually, and not assume this process will be automatic. The 30 day period by which an entity is required to provide information to the Critical Infrastructure Centre if a notifiable event occurs is reasonable, however may require some flexibility in the first 12-24 months of the legislation being implemented to enable the implementation of suitable communication pathways between owners and operators, and the Critical Infrastructure Centre. The Northern Territory Government supports the additional 30 day period should an additional notifiable event occur.



## 2.5 Port of Darwin

The Port of Darwin has been named in the Bill as being a critical port, as also declared under Section 13 of the *Maritime Transport and Offshore Facilities Security Act 2003*.

Further consultation is required to determine which assets form part of the criticality. For instance is it just infrastructure or the entire water port?

## 2.6 Power and Water Corporation (power)

The Northern Territory Government as the owner of Power and Water Corporation recognises that it will be required to report information for the register to the Critical Infrastructure Centre once the Bill is passed.

Further consultation is required to determine which assets form part of the criticality as some may no longer be controlled by the Territory.

# 3 Scope

## 3.1 Inclusion of gas sector

Commonwealth officials have advised that gas pipelines will likely be added to the Bill as critical infrastructure. If that is to occur, the Northern Territory would recommend also considering the inclusion of gas processing facilities and other infrastructure.

## 3.2 Assets for possible future inclusion

The Northern Territory Government acknowledges that the Critical Infrastructure Centre has identified water, electricity and ports as the most critical assets to focus on in the Bill.

The Northern Territory Government believes that the fuel sector should also be considered for any legislative amendments in the near future. The largely foreign- owned fuel market and supply chain in Australia would be subject to the same national security risks of sabotage, espionage and coercion, as outlined in the Bill.

While the Northern Territory acknowledges there may be future categories of critical assets incorporated under the legislative regime, it is imperative that decisions in relation to the inclusion of future assets are transparent and evidence-based. On this basis, the Northern Territory requests that the Bill be amended to require the responsible Commonwealth Minister to consult with State and Territory Governments prior to including additional forms of critical infrastructure.

## 3.3 Defence assets

The Northern Territory Government notes the Commonwealth's intention to include some Defence infrastructure as critical assets. This approach is supported given Defence's large and strategic contribution to the Northern Territory economy and a number of locations in the Northern Territory being of importance to national security. Many of the Defence sites in the Northern Territory are located in or adjacent to major towns and cities. The protection of these assets and mitigation of identified risks also allows for additional safeguards for those neighbouring economies.

While the Critical Infrastructure Centre, through their consultations, has explained that Defence is working with the Critical Infrastructure Centre to identify which Defence assets need to be included, the Northern Territory Government requests that it is consulted in this process where a given asset is located in the Northern Territory.

## **4 Consultation**

### **4.1 Security of Critical Infrastructure Bill 2017**

The Northern Territory Government is concerned that the release of the Bill and the associated timeframe by which jurisdictions and industry must provide feedback is insufficient. The Bill is complex and has significant implications for states and territories and owners and operators of critical infrastructure. The Northern Territory Government believes that further consultation should occur prior to the Bill being introduced to the Commonwealth Parliament to ensure there is sufficient understanding of the Bill's purpose and effects, and to allow enough time to properly analyse the legal, economic and social implications of the proposal.

Given the Bill's focus is on the security of nationally significant infrastructure, the Northern Territory Government would like consideration to be given to further consultation taking place via the Legal Issues Working Group of the Australia New Zealand Counter Terrorism Committee. If this is not entirely appropriate then it is requested that a similar working group be established by the Critical Infrastructure Centre.

It is important that the Critical Infrastructure Centre use existing mechanisms and bodies in place to improve consultation, understanding and information flow. One of these is the Trusted Information Sharing Network (TISN). The TISN consists of many established members and meets on a regular basis. The sectors identified for inclusion in the Bill of the port, power and water, and the proposed gas sector, each have aligned TISN Sector Groups with representatives from industry and government. These existing networks should be used as a means to work with industry owners and operators and provide a greater level of understanding for all parties.

### **4.2 Foreign stakeholders**

Foreign investment is critical to the Australian and Northern Territory economies. With much of the Northern Territory's foreign investment coming from Asia, it is important that the Critical Infrastructure Centre properly communicates the effects of the Bill with these investing countries. It is critical that investors are aware of and understand the Bill when they are looking to invest in the critical assets as defined in the Bill.