Emergency Management Victoria

Emergency Management Commissioner

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Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
CANBERRA ACT 2600

BY EMAIL: pjcis@aph.gov.au

Dear Committee Secretary

Re: Review of the Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022

Thank you for the opportunity to provide written feedback to address any or all aspects of the Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022.

This correspondence responds to the five areas of focus offered by the Committee. I also attach a copy of the confidential submission provided by the Victorian Government to the Department of Home Affairs in February 2022 to support these responses.

Did you provide feedback on the exposure draft and do you feel like consultation was inclusive and wide-ranging?

The Victorian Government prepared a private submission to the Department of Home Affairs on its exposure draft of the Bill. As noted in the Victorian Government's submission, there are many complex and unique considerations specific to each critical infrastructure sector that should be taken into account.

Adequate consultation periods allow industry to consider impacts of risk management program rules and suggest alternatives to Commonwealth. The consultation period of 15 December 2021 to 1 February 2022 may have limited the opportunity for consultation as it coincided with the summer holiday period.

1. **What are your five key themes of feedback on the Bill?**

The Victorian Government submission to the Department of Home Affairs on the exposure draft of the Bill identified five key recommendations:

- Recommendation 1: Recognition of Victoria's existing frameworks to avoid duplication.
- Recommendation 2: Legislated two-way information sharing or formal agreements to recognise roles and responsibilities of States, Territories, and the Commonwealth in risk management and emergency response.

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- Recommendation 3: Mandated notification to First Ministers of relevant jurisdictions when Enhanced Cyber Security Obligations are switched on for Systems of National Significance.
- Recommendation 4: Mandated consultation with First Ministers of relevant jurisdictions on declarations of Systems of National Significance.
- Recommendation 5: Increased consultation periods for future changes to Risk Management Program rules.

2. Has your feedback been incorporated in the Bill or addressed in explanatory material?

As noted above, the Victorian Government made five recommendations to improve the Bill:

- Recommendation 1 – Not incorporated.
- Recommendation 2 – Not incorporated.
- Recommendation 3 – Primary recommendation (notification to First Ministers) not incorporated. Victoria's accompanying suggestion that any notices issued by the Secretary under section 30CU or 30DB are reasonable and proportionate to the threat has been incorporated (though not for section 30CM, also suggested).
- Recommendation 4 – Not incorporated.
- Recommendation 5 – Incorporated. Subsection 30AL(2) and 30AL(3) amended to require the Minister to consult on proposed risk management program rules for at least 28 days.

3. Do you think the potential regulatory impact has been captured accurately?

In its submission to the Department of Home Affairs, the Victorian Government raised the following concerns and opportunities:

- The Bill's explanatory document stated the "Government will work in partnership with responsible entities of critical infrastructure assets to ensure the new requirements build on and do not duplicate existing regulatory frameworks."
- Victoria works to the sound principle that duplication of regulatory frameworks at state and national level should be avoided through recognition of existing frameworks, as raised in previous submissions.
- Victoria notes that recognition of State-based frameworks would reduce the burden on individual entities and better allow them to focus on good practice.
- In line with this principle, and with the Commonwealth's intention to minimise regulatory burden on industry, Victoria made the following recommendations:
  - (1a) Recognise Victoria's critical infrastructure resilience framework
  - (1b) Recognise other State-based risk management frameworks.
- As part of Recommendation 1, which was not incorporated, Victoria requested that section 74P of the *Emergency Management Act 2013* (EM Act) is formally accepted as meeting, or meeting in part, the requirements of the Risk Management Program under Part 2A of the Bill, noting significant alignment between the two frameworks.
- Victoria also suggested that an exemption could be made for Victorian public sector entities subject to the Victorian Government Risk Management Framework (VGRMF) administered by the Victorian Managed Insurance Authority, or the Victorian Protective Data Security Framework (VGPDSF) and accompanying protective data security standards regulated by the Office of the Victorian Information Commissioner (OVIC).

4. On balance, do you support the Bill in its presented form, recognising the risks facing critical infrastructure assets in Australia?

The Victorian Government in principle supports the Commonwealth Government's commitment to enhancing the security and resilience of Australia's critical infrastructure across all hazards.

As noted in the Victorian Government submission, adopting Victoria's recommendations will acknowledge the important role played by States, Territories and industry in protecting critical infrastructure, and more effectively meet the reform intent.

If you require further information, please contact [redacted]

Yours sincerely

[redacted]

Andrew Crisp APM
Emergency Management Commissioner

01/03/2022

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