

16 November 2022

Department of Home Affairs
Cyber and Infrastructure Security Centre

Dear Sir/Madam

RE: Security of Critical Infrastructure (Critical infrastructure risk management program) Rules

Communications Alliance welcomes the opportunity to comment on the exposure draft legislation for the *Security of Critical Infrastructure (Critical infrastructure risk management program) Rules (LIN 22/018) 2022*.

The draft legislation is a disallowable instrument under the *Security of Critical Infrastructure Act 2018* (the SOCI Act) and requires responsible entities (the owner or operator of a critical infrastructure asset) to develop a Risk Management Plan and have this signed off by their board, council or other governing body. The Rules require responsible entities to consider the material risks to their critical assets, and cover a number of critical assets, including critical domain name systems and critical data storage or processing assets.

Home Affairs have confirmed that telecommunications assets are not covered under this consultation process, and are instead working with the Department of Communications to develop amendments through the Telecommunications Sector Security Reforms (TSSR) and the *Telecommunications Act 1997* to regulate critical telecommunications assets.

We understand that the anticipated amendments to the *Telecommunications Act 1997* are likely to include a strengthening of the TSSR provisions, to align them to those required by other critical infrastructure assets under the SOCI Risk Management Program obligations. We welcome this approach of using the existing legislative and regulatory framework to regulate, and will engage fully in that process. We also note the length of this current consultation is 45 days, and would welcome a similar amount of time to consider any amendments to the *Telecommunications Act 1997*.

The purpose of this submission is to offer some high-level comments for consideration in the development of the amendments to the *Telecommunications Act 1997*:

1. Relevant impacts on critical infrastructure assets

Section 8E of the SOCI Act defines an asset as a 'critical infrastructure asset' if it is a 'critical telecommunications asset'. Section 8G defines a 'relevant impact' on a critical infrastructure asset is any hazard, whether direct or indirect, that impacts the availability, integrity or reliability of the asset.

In practice, the very broad definition of an asset, and what constitutes a relevant impact, create challenges for industry. For example, declaring a telecommunications network as an asset could create an impossible expanse, where every outage or network issue is considered to be a relevant impact. While we appreciate that the intent is to provide flexibility to the entity, more granular detail on what qualifies as an asset, and what constitutes a relevant impact, would be welcome.

2. Material risk

The purpose of the critical infrastructure Risk Management Program is to ensure that the responsible entity for a critical asset identifies each hazard where there is a material risk that the occurrence of

that hazard could have a relevant impact on the asset, minimise or eliminate any material risk of such a hazard occurring, and mitigate the relevant impact of such a hazard on the asset.

Section 5 of the draft Rules articulates examples of material risks for assets, providing additional and substantive detail beyond what is included in the Act. This additional context is useful and is drafted in a way that makes sense in the context of risk management.

We are supportive of this additional detail, and we understand that the CISC is not being overly prescriptive as to what a likely material risk is for each entity, given responsible entities are best placed to make that assessment for their business. However, further consideration should be given as to whether the materiality test has been set in a reasonable and workable way – meaning, does industry understand what is required, without assumption, and whether what is being asked is reasonable?

3. Compliance

Part 2A of the SOCI Act sets out that a responsible entity must give an annual report relating to its critical infrastructure Risk Management Program, and that if the entity has a Board, council or other governing body, the annual report must be approved by the governing body.

We note and welcome the provision of a draft Annual Report Approval form¹, which will allow entities to submit an annual declaration of compliance with the RMP Rules. However, more guidance on how compliance will be assessed would be welcome, as this does not appear in either the draft Rules or the explanatory statement.

4. Regulation Impact Statement

The explanatory statement notes that a regulation impact statement (RIS) is conducted in relation to the instrument, to identify the regulatory impact of these reforms. We welcome the identification of the regulatory costs of the Risk Management Program, and believe that a RIS should also be conducted to assess the net benefit, or otherwise, of any proposed amendments to the *Telecommunications Act 1997*.

If you have any questions with respect to this letter, please contact Christiane Gillespie-Jones at Communications Alliance on 0402 473 743.

Yours sincerely,



John Stanton
Chief Executive Officer
About Communications Alliance

¹ Draft Annual Report Approval form, <https://www.homeaffairs.gov.au/reports-and-pubs/files/approval-responsible-entity-rmp-annual-report.pdf>

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to be the most influential association in Australian communications, co-operatively initiating programs that promote sustainable industry development, innovation and growth, while generating positive outcomes for customers and society. The prime mission of Communications Alliance is to create a co-operative stakeholder environment that allows the industry to take the lead on initiatives which grow the Australian communications industry, enhance the connectivity of all Australians and foster the highest standards of business behaviour.

For more details about Communications Alliance, see <http://www.commsalliance.com.au>.