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Submitted via Parliament of Australia website

Committee Secretary

Parliamentary Joint Committee on Intelligence and Security

PO Box 6021

Parliament House

Canberra ACT 260012 February 2021

12 February 2021

Dear Sir/Madam,

RE: Security Legislation Amendment (Critical Infrastructure) Bill 2020

AGL Energy (AGL) welcomes the opportunity to provide feedback to the Parliamentary Joint Committee on Intelligence and Security on the Exposure Draft of the Security Legislation Amendment (Critical Infrastructure) Bill 2020 (Exposure Draft Bill), and accompanying documents including the Draft Bill's Explanatory Document.

AGL is one of Australia's largest ASX listed owner, operator, and developer of renewable generation in Australia. AGL is committed to meeting the needs of its energy customers through our diverse power generation portfolio including base, peaking and intermediate generation plants, spread across traditional thermal generation as well as an array of renewable sources. AGL is also a significant retailer of energy and provides energy solutions to over 4.2 million customers in New South Wales, Victoria, Queensland, Western Australia, and South Australia.

AGL notes that this suite of reforms is broad and extends to areas beyond cybersecurity and into risk management processes to which private entities that already have experience, competency, and established systems for managing critical infrastructure. A portion of AGL's assets are already captured by the current version of the Security of Critical Infrastructure Act 2018 and AGL takes its responsibilities under this act very seriously. AGL has a history of working collaboratively with both state and federal governments to ensure that it has appropriate risk management practices and plans are in place to ensure business continuity and the provision of its essential services to the community.

Regulatory Impact Statement and Cost Benefit Analysis:

The Draft Explanatory document noted that a qualitative RIS has been undertaken and it proposes that a more detailed RIS with quantitative cost-benefit assessment with respect to the Positive Security Obligation (PSO) component will be undertaken. However, this is only due to occur once the legislation has passed and when sector-specific rules are being developed. AGL is concerned that the proposed reforms and legislation have not been subject to a proper cost-benefit assessment, especially given reforms have some wide-ranging impacts on many sectors. The absence of a necessary cost benefit analysis is not in line with regulatory practice and should be part of the reform process to ensure that the draft legislation and sector specific rules are not analysed retrospectively



and that any unintended consequences are identified early, and the least cost mitigation measures are put in place to alleviate these consequences.

Positive Security Obligation:

The energy sector is already subject to existing risk obligations and industry standards and these have been effectively co-ordinated and managed through the AEMO Energy Sector Cyber Security framework which is currently being transitioned to the Department of Industry, Science, Energy and Resources. In AGL's view, the objective of the government to provide an uplift in security and resilience should in the first instance rely on current best practice sector processes and arrangements to achieve an uplift rather than duplicating obligations in legislation and creating the PSO.

The risk management program and the associated obligations featured in sections 30AA to 30AN require further consideration and amendment by government. Specifically, AGL notes the current arrangements treat sectors separately and businesses that operate across a range of sectors will be required to operate separate risk management programs. It is important to recognise that the requirement to create a risk management program for each asset will be onerous for a multi-asset company like AGL (in the sectors of energy and telecommunication) if the obligation does not consider and adopt the risk practices already undertaken by AGL, which is based on a single risk management framework to deal with events across both sectors, including cyber-attacks, under this single framework.

AGL notes the comment that any rules that apply Part 2A to an asset will have a six-month delayed commencement for transition but considering the asset base of AGL throughout Australia this is likely to be insufficient time to update AGL's risk management programs.

Enhanced security obligations:

AGL queries the difference in liabilities and immunities in the event of a cyber event or attack. Specifically, the absence of any liability for the authorised agency (Australian Signals Directorate or its officers), for unintended negative consequences arising from a Government Assistance, and the lack of redress or cost recovery for the impacted entity. If an affected entity is directed by the government to undertake certain actions, there should be a cost recovery mechanism in the legislation to allow the affected entity to recover costs for responding to those directions, especially as the directions are aimed at protecting the broader Australian community while the costs of the directions will be borne directly by the impacted entity and its customers.

In the event that authorised personnel are required to attend an AGL site to perform actions under Section 35BB then it would be prudent to ensure that the Authorised Agency comply with the occupational health and safety requirements of that site. The owner or operator of that site has a responsibility for all those who enter the site, and the personnel of the Authorised Agency under the Act would come under that responsibility and it would be prudent for the personnel to follow the guidelines of the owner/operator to ensure no harm is caused while on site.

Broad delegation of administrative power:

AGL notes that sections 49A and 49B authorises the use of the monitoring and investigation powers under the Regulatory Powers (Standard Provisions) Act 2014. Subsections 49A(14) and 49B(12) provide that an authorised person may be assisted by 'other persons' in exercising powers or performing functions or duties in relation to monitoring and investigation. The nature of this "other person" and their adequacy to undertake such work is not defined in the bill or the explanatory



memorandum. The exercise of this power should be defined and restricted to those appropriately trained and qualified for such work.

Information requests from entities:

Finally, any information requests issued to entities should only be issued if the information has not already been recently provided to either the regulator or another Government Department. The energy industry is subject to significant and multi government agency information requests and this often results in duplication of effort to answer regulatory notices or requests for information from different departments or regulators when that information has already been provided in a prior notice or RFI. Communication and co-ordination amongst departments and regulators for information requests would assist both the entities and the Government to produce and receive information in a timely manner.

If you would like to discuss any aspects of our response further please contact [REDACTED]
Wholesale Markets Regulation Manager [REDACTED]

Yours sincerely,

Elizabeth Molyneux

General Manager, Energy Market Regulation