14 May 2021

Critical Infrastructure Centre
Department of Home Affairs
3-5 National Circuit
Barton ACT 2600

Dear Sir/Madam

Response to Critical Infrastructure Asset Definition Rules paper

The Clean Energy Council is pleased to provide a submission in response to the Department of Home Affairs' (**the Department**) Critical Infrastructure Asset Definition Rules paper. Our submission is focused on the proposed changes to the 'critical electricity asset' definition associated with the *Security Legislation Amendment (Critical Infrastructure) Bill 2020* (**the Bill**).

The Clean Energy Council (**CEC**) is the peak body for the clean energy industry in Australia. We represent and work with over 900 of the leading businesses operating in renewable energy, energy storage and renewable hydrogen. We are committed to accelerating Australia's clean energy transformation.

The clean energy sector recognises the importance of protecting critical infrastructure from security risks, particularly cyber-attacks. We support the Department's ambition to build the resilience of the electricity sector and understand this means including renewable energy assets under the Bill as the country's electricity mix transitions towards clean energy. However, the CEC submits that the proposed definition of 'critical electricity asset' is overly simplistic in achieving this goal and will have unintended and disproportionately adverse effects on renewable energy generators. We therefore recommend two key changes.

1. Amend the capacity threshold

The CEC opposes the current proposal that generators with a nameplate generation capacity greater than or equal to 30 MW should be considered critical electricity assets. There is no substantiation provided as to why the Department has selected this threshold and why these assets are considered 'critical', except that it is an easy and effective mechanism to capture all generators, regardless of criticality.

The explanatory memorandum to the Bill states current definition of 'critical electricity asset' will be expanded in recognition that:

> *the prolonged disruption to Australia's electricity networks would have **a significant impact on communities, businesses and national security capabilities**.*

Furthermore, the explanation in the Department's Consultation Paper from August 2020 defined critical infrastructure more broadly as:

> *those physical facilities… which if destroyed, degraded or rendered unavailable for an extended period, would **significantly impact on the social or economic wellbeing of the nation**, or affect Australia's ability to conduct national defence and ensure national security.*

Phone: +61 3 9929 4100
Fax: +61 3 9929 4101
info@cleanenergycouncil.org.au

Level 15, 222 Exhibition
Street, Melbourne, VIC
3000, Australia

cleanenergycouncil.org.au

ABN: 84 127 102 443

The CEC submits that generally a standalone, average large-scale renewable energy generator (typically between 80 – 250 MW) is not critical to the security of the electricity network. There would be very little material risk to the stability of the network or supply to consumers, nor would there be any impact to the social and economic wellbeing of the country, if there were a breach, outage or failure of such as system.

Implementing a definition that captures most generators (as acknowledged by the Department in the Asset Definitions Rules paper) necessarily captures these generators that are not critical, meaning that these assets will be subject to unnecessarily regulatory burdens. The new obligations under the Bill will require additional costs and resources associated with compliance for those companies involved. It is incongruous that a generator of 32 MW would be subject to the same obligations under the Bill as a 1000 MW thermal power station, and we consider that the additional compliance burden may be unfeasible for smaller generators and have the adverse effect of reducing new entrants and competition.

This 'catch-all' definition will also mean that assets that are not critical will also be subject to additional foreign investment implications which may stifle investment. This is because the definition of a 'critical infrastructure asset' is linked to the proposed Foreign Investment Review Board (**FIRB**) definition of 'national security business' which has new obligations for foreign buyers under the *Foreign Investment Reform (Protecting Australia's National Security) Act 2020* (Cth). The CEC is concerned that the relationship with these FIRB changes and the Bill will create time-consuming requirements and investment uncertainty which will dissuade investors. This poses a risk of having a chilling effect on investment for some renewable energy assets and will decrease the number of funding participants. In circumstances where investors are not dissuaded, the proposed changes will at the very least create delay in the investment process and add complexity to an already challenging regulatory environment.

As well as being burdensome on the generators involved, these unnecessary regulatory obligations and foreign investment implications that will be placed upon assets that are not critical are inconsistent with the Australian Government's Deregulation Agenda being led by the Hon Ben Morton MP, Assistant Minister to the Prime Minister.

In summary, we urge the Department to adopt a higher threshold for individual generators (eg. 300 MW) or for a portfolio of generators, in order to avoid an unnecessary regulatory burden on generators which are not critical to the operational security of the electricity market.

2. The definition should only apply to operational assets

The CEC understands from conversations with the Department that it intends for only operating assets to be considered 'critical electricity assets'. The CEC suggests that this should be clearly outlined in the definition to avoid any doubt.

As there are several stages of connection to the grid, we recommend that the definition states that an electricity asset (that satisfies a capacity threshold) is only considered a 'critical electricity asset' once it is **registered and authorised** at the specific nameplate of the project.

We support the Department's decision that the definition only apply to assets that are connected to the wholesale electricity market as this will avoid the inclusion of microgrids.

Thank you for again this opportunity to provide feedback on the proposed definition of 'critical electricity asset' and we look forward to working in co-operation with the Department to refine the definition. As we anticipate that some renewable energy assets will ultimately be considered 'critical electricity assets',

we recommend that the Department allows ample transition time to allow the industry to effectively comply with any new obligations under the Bill.

Please contact Lucinda Tonge at ltonge@cleanenergycouncil.org.au or on 0432 612 955 should you wish to discuss these matters further.

Yours sincerely,

Anna Freeman
Policy Director, Energy Generation