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Independent Pricing and Regulatory Tribunal
PO Box K35 Haymarket Post Shop,
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CONFIDENTIAL

Dear Mr van Uffelen

Review of electricity network operators' critical infrastructure licence conditions

Transgrid welcomes the opportunity to comment on the recently released findings from IPART's review of the critical infrastructure licence conditions. We commend IPART on the approach taken to identify areas where the licence conditions may be amended and acknowledge the cooperative way in which these proposed changes have been communicated with licence holders.

Transgrid has reviewed the Draft Report and the recommendations within and takes pleasure in responding to each question below.

1. *Do you consider the applicable critical infrastructure reporting manual and audit guidelines contain significant issues in complying with the requirements in these documents, and if so, what are these issues?*

TransGrid notes IPART's proposal to review the Electricity networks reporting manual – Critical infrastructure licence conditions, Electricity networks audit guideline – Audit fundamentals, process and findings and Electricity networks audit guideline – Critical Infrastructure licence conditions audits (**Audit Guideline – Critical Infrastructure**) at a later date to ensure the requirements under those documents are consistent with any associated licence conditions, prior to the licence conditions taking effect. TransGrid considers that this is a reasonable approach but requests that IPART consult on the draft documents prior to finalising the changes.

TransGrid submits that as part of its review of those documents, IPART should also consider clarifying in section 1.6 of the Audit Guideline – Critical Infrastructure that the applicable licence conditions for the audit under consideration are the licence conditions that applied during the relevant financial year. The current version of the Audit Guideline – Critical Infrastructure refers to "the licence conditions applicable at the time of the audit", which may lead to some confusion as to the licence conditions that should form the basis of the audit

2. *Do you agree with our proposal to retain the maintenance of the distribution/transmission system conditions?*

Transgrid agrees with IPART's proposal to retain the current requirements for maintenance of the distribution/transmission system. We are also comfortable with the proposed amendment to allow some third party maintenance to be carried out overseas where it is not reasonably practicable to do so within Australia.

Transgrid notes however that the risk management approach set out in the SOCI Act Critical Infrastructure Risk Management Plan (CIRMP) requirements, is a more sophisticated way of allowing entities responsible for critical infrastructure assets to holistically identify and mitigate the risks that arise out of remote access to their maintenance and operational systems. This requirement applies to a broad range of critical infrastructure assets across the nation and in TransGrid's view, there is no reason to impose obligations upon it that require it to comply with a different standard.

The opportunity therefore exists for consideration of a nationally consistent approach to protecting critical infrastructure in Australia. It is counterproductive and economically inefficient for there to be one set of rules that apply in NSW, while a different set of rules applies in the ACT and other parts of Australia. It is also inappropriate for one set of rules to apply to particular classes of critical infrastructure assets in NSW, while different rules apply to other classes of critical infrastructure assets in the State.

Consequently, it may be argued that the licence conditions requiring the maintenance of the transmission system to be undertaken solely within Australia (with exception) have now been superseded by the passing of the SOCI Act and the requirement under it for TransGrid to adopt, comply with and maintain a CIRMP that addresses the risks of remote access to TransGrid's transmission network.

3. *Do you agree with our proposal to retain the exception to the maintenance condition allowing for a protocol to be agreed with the CISC?*

Transgrid has in place a Secure Remote Access Protocol (SRAP) with the Department of Home Affairs and agreed with the Cyber and Infrastructure Security Centre (CISC), that allows controlled access to the SCADA system. The protocol can only be used in exceptional circumstances when Transgrid personnel or onshore technicians from Transgrid's network control system vendor are incapable of effectively responding to urgent requirements and offshore remote access to the network is required by Transgrid's vendor. Whilst Transgrid has never had to activate the protocol, we view its existence as a valuable and lower cost alternate control that enables efficient and effective compliance with the licence conditions.

Transgrid therefore concurs with IPART's proposal to retain the exception to the maintenance conditions allowing a protocol to be agreed with the CISC for alternative maintenance arrangements.

We note with regard to the establishment of a protocol, that the Licence conditions do set a compliance standard that is higher than the requirements of the SOCI Act. As noted in 2 above, effective application of the SOCI Act requirements, may negate the need for a protocol.

4. *Do you agree with our proposal to maintain the requirements for operation and control of the transmission/distribution system?*

At the present time and with consideration of our current electricity network control systems structure, Transgrid agrees with IPART's proposal to retain all the current requirements for operation and control of the transmission/distribution system.

We note however that in the future as network control systems mature, that it may become increasingly difficult to comply with the requirement that the transmission system is only accessed,

operated and controlled from within Australia (Condition 1). Compliance may become unduly restrictive of system choice and operation and economically inefficient.

TransGrid also submits that the second licence condition (Condition 2) that requires TransGrid to ensure that its transmission system is not connected to any infrastructure or network in a way that could enable a person outside Australia to access, control or operate it in whole or in part, is unnecessary and duplicative (as the risks it seeks to address are already covered by Condition 1).

The risk management approach set out in the SOCI Act CIRMP requirements may be a more sophisticated way of allowing entities responsible for critical infrastructure assets, to holistically identify and mitigate the risks that arise out of remote access to their operational systems. There may therefore be no reason to impose obligations upon the industry that require compliance with a different standard.

TransGrid accepts that there have been previous international cases in which a foreign entity has gained unauthorised access to an electricity system. However, the licence condition as written does not actually address the risk remains that a sophisticated nation state actor could be capable of accessing an electricity system from within Australia.

TransGrid encourages IPART to consider that the best way to address this risk is to ensure that its CIRMP identifies and take steps to address the risk of remote access to its operational systems.

5. *Do you agree with our proposal to amend the security clearance requirements by allowing a network operator to choose between NV1 security clearance or the background checks under the AusCheck scheme?*

Transgrid's experience with ensuring compliance with the requirement that Directors and senior officers are security cleared to Negative Vetting 1 level, mirrors the comments contained in IPART's Draft Report. Where this process has needed to be followed, we have experienced delays in processing times and have received comments from the person subject to the security clearance as to the onerous amount of documentation required in order to complete the submission. Negative Vetting clearance also places an ongoing burden on the holder in order to maintain compliance.

Transgrid therefore supports IPART's proposal to provide flexibility in the process, by allowing Transgrid to choose between NV1 clearance and AusCheck.

We do note however that obtaining NV1 clearance does enable the holder of the clearance to have discussions of a confidential nature with certain government agencies that may not be allowed if the holder was cleared only under AusCheck. In particular, the role of the senior officer responsible for Security Operations includes managing relationships with Commonwealth and State government agencies. At times, managing these relationships effectively may be difficult if clearance to an NV1 level is not held.

We acknowledge that the proposed changes provide the licence holder with the ability to determine the most appropriate level of security check performed and we consider this to be an appropriate outcome.

6. Do you agree with our proposal to retain the data security requirements?

Transgrid agrees that the security of critical information is of utmost importance to protecting the transmission system against malicious attacks by bad actors and Transgrid has in place a range of security related controls that protect access to sensitive information. These controls have been subject to independent audits since privatisation in 2015 with no issues having been identified during this time.

However, Transgrid submits that the requirement that such data only be accessible from within Australia is unnecessarily restrictive and is creating inefficiencies in our procurement and supply chain processes. This creates at times, unnecessary restrictions on the suppliers able to be chosen for a particular service which impacts on the costs involved.

Despite the options provided by the current list of exemptions, TransGrid considers that there would be benefit in allowing greater flexibility to have technology support and related services provided to it from outside Australia, particularly where:

- the requisite skills or expertise are not located in Australia, or
- it is economically more efficient to have the work undertaken or systems implemented from outside Australia.

If it were to do so, it would address the risks associated with remote access to this data through the risk management approach set out in its CIRMP.

7. Do you agree with our proposal to remove the Bulk Personal Data requirements?

Transgrid agrees with IPART's view that including the Bulk Personal Data requirements within the licence, duplicates the requirements of the *Privacy Act 1988* (Cth).

Accordingly, Transgrid concurs with IPART's proposal to remove the Bulk Personal Data requirements from the licence.

8. Do you agree with our proposal to replace the data agreement provisions with a new provision enabling the Commonwealth Representative to agree to a Protocol?

Transgrid agrees with IPART's proposal to allow protocol agreements to be entered into with the Commonwealth Representative.

We note this change will streamline the existing process of requiring both IPART and the Commonwealth Representative to agree to data protocols and will result in a more efficient process in dealing with such protocols.

9. Do you agree with our proposal to retain the compliance reporting and auditing requirements?

Transgrid notes that whilst the requirement to organise and conduct an annual external compliance audit does incur time and financial costs, we agree with IPART that the audit requirement is an effective and independent mechanism to provide the necessary assurance to IPART of Transgrid's compliance with its licence obligations.

We also note that the Transgrid board receives a level of comfort from the independent external audit of compliance with the licence conditions and that it also supports maintenance of the Board's risk appetite with regards to compliance.

As noted in IPART's Draft Report, the *Security of Critical Infrastructure Act 2018* (Cth) (**SOCI Act**) does not currently require an independent audit to be conducted to support the annual report required under section 30AG of the SOCI Act. If the Commonwealth was to require an independent audit to be conducted at some time in the future, we would suggest that the compliance reporting and auditing requirements of the licence would need to be reconsidered as attending to two audits on a similar subject matter and at the same time, would be costly and duplicative.

Subject to the above, Transgrid supports the retention of the compliance reporting and auditing requirements.

However, TransGrid does not support the recommendation to provide IPART with a copy of the report that it is required to provide to the CISC under section 30AG of the SOCI Act (SOCI Report). The SOCI Report is specifically created for the purposes of the SOCI Act and is protected information under the SOCI Act.

IPART is not an entity to whom protected information may be disclosed under section 43E of the SOCI Act. This also means that the use or disclosure of the protected information by IPART is not covered by section 44 of the SOCI Act. Accordingly, TransGrid does not consider it appropriate to provide it with a copy of the SOCI Report.

Given that IPART itself recognises that the SOCI Report is unlikely to provide IPART with the same level of assurance as an audited report, TransGrid also considers that the audited compliance report requirements in the licence conditions give IPART sufficient assurance that TransGrid has complied with its licence conditions.

10. Are there any additional comments you wish to make on the draft licence conditions or the draft report?

TransGrid submits that there should be an additional principle that IPART should apply in reviewing the critical infrastructure licence conditions, which is to not to impose regulatory burdens and costs on operators that are not reasonable and proportionate.

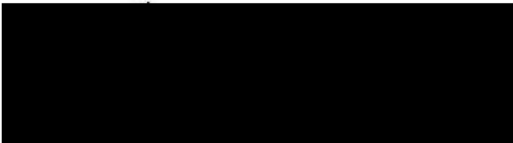
TransGrid also questions the decision by IPART not to undertake a cost benefit analysis (CBA) of the licence conditions and the proposed changes to the licence conditions. The justification for this was because of the low probability but potential for extremely high consequence of negative outcomes.

TransGrid submits that a CBA will help determine the reasonableness and proportionality of the conditions. The fact that there may be high consequences of negative outcomes does not mean that a CBA should not be undertaken. In particular, TransGrid notes:

- The NSW Treasury Guidelines require a CBA analysis be carried out for NSW Government Activities (<https://www.treasury.nsw.gov.au/information-public-entities/centre-for-economic-evidence/guidelines-cost-benefit-analysis>). It is mandatory to undertake a CBA when producing a business case to support a regulatory proposal.
- The CBA should have regard to the NSW Guide to Better Regulation https://arp.nsw.gov.au/assets/ars/222d8a66c9/TPP19-01_Guide_to_Better_Regulation.pdf and should consider costs imposed by regulatory requirements, including unnecessary regulation (or 'red tape'). Costs may be borne by businesses, government, and the community, and include:

- administrative compliance costs associated with demonstrating compliance with a regulation (such as paperwork and record-keeping costs);
 - substantive compliance costs related to required capital and production expenditure (such as equipment and training expenses);
 - financial costs which are payments made directly to the government (such as fees, levies and fines); and
 - indirect costs relating to the impact that regulation has on market structures, and consumption patterns (such as restrictions on innovation and barriers to entry through licensing) and the cost of delays.
- The Commonwealth undertook an impact analysis (effectively a CBA) on the introduction of the SOCI Act as well as the most recent amendments to the SOCI Act. The fact that the SOCI Act also dealt with high consequences of negative outcomes did not mean that a CBA was not necessary.

Yours faithfully



Robert Mckimm

Head of Compliance