



Department of Home Affairs
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Dear Department of Home Affairs

Submission on Consultation Paper – Proposed amendments to enhance the Critical Infrastructure Risk Management Program Rules

Introduction

The Independent Competition and Regulatory Commission (the commission) welcomes the opportunity to provide input into the Department of Home Affairs' consultation on proposed enhancements to the Critical Infrastructure Risk Management Program (CIRMP) Rules.

The commission regulates water and energy utilities in the ACT, including setting regulated prices and associated allowances for Icon Water, the ACT's sole water utility, to support its capital investment and operations.

The commission supports the overarching objective of strengthening the security and resilience of critical infrastructure. However, we also consider it critical that clear and measurable compliance criteria are developed for impacted industries. Without such clarity, the commission is concerned that proposed amendments risk imposing significant costs on regulated utilities and creating uncertainty in regulatory processes, with flow-on impacts for consumers.

The commission also has concerns regarding the proposed implementation program, including the speed and frequency of required investments and the commission's ability, as an economic regulator, to assess those investments. The commission's regulatory framework is based on 5-year reviews of assets with operating lives of 40 years or more, whereas the proposed program envisages rapid responses to security risk assessments of such assets that may be updated multiple times each year.

Risk of over-investment

A key concern for the commission is the lack of clearly defined and measurable criteria to demonstrate compliance with the proposed CIRMP requirements for water and energy utilities. This concern is compounded by the relatively short timeframe for compliance, with utilities required to meet the enhanced CIRMP obligations by 30 June 2028. Compliance is also expected to be certified by utility boards, who typically have limited experience assessing security-specific frameworks, rather than by the Department of Home Affairs.

Collectively, these factors are likely to encourage utilities to adopt a highly conservative interpretation of the rules to mitigate compliance risk. This is likely to result in over-investment in systems, processes, and asset upgrades that go beyond what is necessary to meet the intent of the legislation. In addition, a conservative investment approach may result in so-called 'gold plating', where solutions exceed what is reasonably required to manage identified risks.

The compressed implementation timeframe may further limit utilities' ability to stage, prioritise, and efficiently plan required works, increasing the likelihood that solutions are pursued quickly rather than optimally. This pressure arises at a time when utilities are already proposing historically high levels of capital investment to address population growth and ageing assets. In this context, constraints in skilled labour, specialist contractors, and construction materials are likely to exacerbate delivery risks, increasing the probability of cost escalation as utilities pay premiums to secure scarce resources or accelerate delivery to meet the CIRMP compliance deadline.

Cost pass-through to consumers

Costs incurred to meet compliance will ultimately be recovered from consumers through regulated prices. Water and energy utilities operate under statutory obligations to comply with legislative and regulatory requirements. Where new obligations arise that are not funded through existing regulatory allowances, utilities will generally seek cost recovery through established regulatory mechanisms, such as pass-through applications.

In the ACT, the commission allows regulated utilities to recover the costs of unplanned or unforeseen expenditure via pass-through applications. Pass-throughs apply to costs that were not included in approved revenue allowances at the time of a price determination and are necessary to fulfill new legislative or regulatory obligations. Utilities submit detailed applications, which are assessed by the commission for prudence, efficiency, and direct causal linkage to the obligation or event.

Historically, Icon Water has successfully recovered significant costs through pass-through mechanisms, demonstrating that expenditures for legislative compliance can be effectively passed onto consumers. The commission expects that Icon Water will similarly seek cost recovery for expenditure incurred in complying with the CIRMP Rules, as these costs were not included in the current revenue allowances. This would place the commission in the position of assessing applications for significant, complex, and security-related projects. Other economic regulators with pricing responsibilities are likely to face the same situation.

The lack of clear and measurable compliance benchmarks within the CIRMP Rules would make it particularly challenging for regulators to assess the prudence and efficiency of such expenditure. Regulators would be required to determine whether costs were reasonably incurred, appropriately scoped, and proportionate to the risks addressed, without a clear reference point for what constitutes compliance. This increases the risk of inconsistent regulatory outcomes and reduced transparency for consumers.

Implications for regulatory efficiency and consumer outcomes

The proposed rule changes also raise broader concerns about cost allocation and regulatory integrity. In the absence of clear boundaries around what constitutes CIRMP compliant expenditure, there is a heightened risk of cost shifting between projects and between different regulatory obligations. This may lead to instances of double counting, where costs are recovered more than once through overlapping compliance, assurance, or investment frameworks.

The proposed rule changes are therefore likely to increase regulatory burden on both utilities and economic regulators. For regulators, assessing CIRMP-related pass-through applications would require additional resources, specialist expertise, and engagement with security-focused consulting services.

From a consumer perspective, these challenges heighten the risk that inefficient or excessive costs are ultimately reflected in water and energy prices. This outcome would be inconsistent with the commission's

objective of protecting consumers from unnecessary cost increases while maintaining essential service standards.

Conclusion

The commission encourages the Department of Home Affairs to consider the regulatory and pricing implications of the proposed CIRMP enhancements, particularly for regulated utilities. Clear, measurable, outcome-focused compliance criteria and guidance would help reduce the risk of over-investment, limit unnecessary cost escalation, and support more effective regulatory assessment. Without such clarity, there is a significant risk that costs associated with CIRMP compliance will be inefficiently incurred and ultimately borne by consumers through regulated prices.

If you have any questions about this submission, please contact [REDACTED] on [REDACTED] or via email at [REDACTED]

Yours sincerely,

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