



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

Office address (inc courier deliveries):
Level 5, 100 Market Street,
Sydney NSW 2000

Mail address for Sydney office:
GPO Box 9827,
Melbourne VIC 3001

Tel: +61 1300 935 075

www.asic.gov.au/

Critical Infrastructure Security Centre

Department of Home Affairs
PO Box 25
Belconnen ACT 2616

1 May 2026

Dear Sir/Madam

**Consultation on proposed amendments to the Ministerial Directions Powers in Part 3
of the Security of Critical Infrastructure Act 2018 – Measure 4**

The Australian Securities and Investments Commission (ASIC) welcomes the opportunity to provide this submission in response to the Department of Home Affairs' consultation on proposed amendments to the Ministerial Directions Powers in Part 3 of the Security of Critical Infrastructure Act 2018 (SOCIA Act). ASIC supports the need for Measure 4.

ASIC supports the Government's objective of ensuring the directions framework remains credible, agile, proportionate and capable of addressing serious national security risks to critical infrastructure in a dynamic threat environment - an environment in which frontier AI models (such as Claude Mythos Preview) are accelerating cyber risk by shrinking the time between vulnerability discovery and exploitation and scaling attacks at lower cost and skill, increasing the risk of fast-moving incidents and correlated disruption via shared dependencies.

In relation to the measures outlined in the consultation paper, it is a matter for Government the measures that are settled upon, but we wish to surface some operational matters forward for consideration.

Some relevant considerations when designing the solution for Measure 4

1. **Option 2 is ASIC's preferred model:** ASIC considers that national security decisions should sit with the agency and decision-maker with the appropriate remit and expertise. While ASIC stands ready to assist government in implementing its preferred solution, we are not the relevant agency for making decisions on matters of national security.

2. Should Option 1 be implemented, to overcome the limitation of us not being experts on matters of national security we would recommend the **insertion** of a relevant provision in the Corporations Act, requiring us to act on the basis of a **Ministerial Direction** to exercise the power in s111AT. This would require careful legal consideration, and the final design should address legal and operational issues such as enforceability, deferral or removal of gazettal requirements, retrospective effect, liability exposure and consequences for capital raising and financial reporting, supported by clear guidance for industry.
3. Option 1 remains an **incomplete legal mechanism** due to a lack of enforceability to ensure the non-disclosure of matters relevant to national security, and the inability of the power to act retrospectively. Further, carving out disclosure will impact an entity covered by such an order from undertaking capital raising and other corporate activities that occur on the basis of the market being in receipt of all relevant information. These challenges may prevent the Government from realising the full benefits of the proposed measure.
4. Whichever option is adopted by Government, ASIC considers that the power should be **narrow in scope, supported by a high threshold test and used only for the shortest period necessary**. Any exemptions should be considered on a case-by-case basis and will depend on the specific facts and circumstances of the matter. It should be confined to circumstances where disclosure would be reasonably likely to prejudice national security or materially compromise response activities, with the decision supported by appropriate national security advice. The framework should also provide for clear review mechanisms, an explicit end point or renewal test, and careful consideration of whether a neutral holding disclosure may in some cases be preferable to complete silence. These thresholds should be clarified publicly in guidance for accountability and transparency.
5. Further, we note that it is not known by ASIC **whether other sectoral specific legislation may override the Corporations Act**, leading to potential regulatory overlap and intervention by other agencies where reporting obligations exist. It is therefore critical that all relevant agencies are part of the decision-making pathway, are consulted early where their regimes may be engaged, and that exemption or direction terms are drafted in a manner that avoids conflicting obligations. It is important to clarify what role (if any) the Government intends the relevant market operator to undertake as a part of this process.
6. We recommend consideration be given to potential legal mechanisms which may be available that address or mitigate the risk of liability of the Commonwealth, ASIC and/or an individual entity from shareholder class actions or commercial partner claims that arise because of loss incurred due to the provision of an exemption or direction.

Clear and comprehensive guidance to uplift industry understanding

7. Regardless of the approach settled upon by Government, ASIC considers the development of clear and comprehensive guidance to assist regulated entities

to understand and interpret their obligations is essential to reduce uncertainty and the risk of inadvertent non-compliance.

8. This approach would align with the recommendations of the [Final Report of the Independent Review of the SOCI Act](#), and suggest that guidance would be most effective as part of a detailed regulatory guide that includes worked examples. Meaningful input from industry through consultation will benefit final guidance outputs.
9. This will provide clarity to industry but also serve regulators in the discharge of their statutory obligations. The exercise of a continuous disclosure carve out may unintentionally hinder the long-term application of ASIC, or other regulators, enforcement powers where some malfeasance is suspected in meeting regulatory standards.

Conclusion

ASIC continues to welcome engagement with Government on these matters and will assist as required working through the practical implementation needs of the approved option.

Yours sincerely,

Australian Securities and Investments Commission