



WATER SERVICES
ASSOCIATION OF AUSTRALIA



**Submission to the
Proposed Amendments to
the Ministerial Directions
Powers in Part 3 of the
SOCl Act**

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Submission to the proposed amendments to the Ministerial Directions Powers in Part 3 of the *Security of Critical Infrastructure Act 2018*

Adam Lovell

Executive Director

Water Services Association of Australia

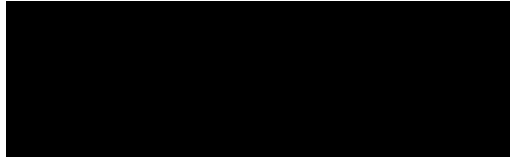
Level 6, 75 Elizabeth Street

Sydney NSW 2000

Luke Sawtell

Industry Co-Chair

Water and Sewerage Sector Group



Disclaimers

This document represents the consensus position on key issues for water utilities members of the Water Services Association of Australia (WSAA) and the Water and Sewerage Sector Group (WSSG) across Australia. This document does not reflect the views of, and is not endorsed by, any Australian Government members of the Water and Sewerage Sector Group.

This submission complements any individual submission from Australian water utilities, but it does not override any individual water utility submission, which should be assessed on its merits.

This water sector submission neither represents the response, nor views of the wholly Western Australian Government owned 'Water Corporation' due to regulatory duplication and significant unnecessary regulatory costs enlivened by misaligned regulatory requirements.

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INTRODUCTION

The water sector welcomes the opportunity to provide a submission on the proposed amendments to the Ministerial Directions Powers in Part 3 of the *Security of Critical Infrastructure Act 2018* (SOCl Act). As outlined in previous WSA and WSSG submissions on SOCl-related reforms, the water sector broadly supports measures to appropriately strengthen national security and resilience for higher-risk critical infrastructure assets, including critical water and wastewater services.

Water and wastewater services are foundational to public health, community wellbeing and economic stability. The sector recognises that the evolving threat environment – including heightened cyber threats, supply-chain vulnerabilities and risks associated with foreign ownership, control and influence (FOCI) – requires a regulatory framework that enables timely, proportionate and effective intervention where material national security risks cannot be adequately mitigated through existing mechanisms.

At the same time, the water sector has a strong and long-standing record of managing material risks through mature governance, operational, safety and emergency management frameworks, and has consistently demonstrated a willingness to engage constructively with Government to address emerging threats. As such, the sector supports reforms that retain a principles-based approach, provide clear statutory guardrails, and maintain confidence that the use of Ministerial powers will be proportionate, consultative and aligned with broader regulatory and economic settings.

General observations

The water sector acknowledges the Government's intent to refine the Ministerial directions framework to improve clarity, agility and effectiveness, particularly in response to time-sensitive or systemic national security risks that cannot be addressed through regulatory compliance alone. The sector also notes positively the emphasis placed in the consultation paper on consultation, proportionality, judicial oversight and whole-of-government coordination.

However, based on experience with the implementation of other SOCl reforms, the sector emphasises that the effectiveness and legitimacy of expanded or refined Ministerial powers will depend critically on:

- clear thresholds, definitions and statutory intent;
- robust procedural safeguards and accountability mechanisms;
- alignment with existing sectoral regulation and jurisdictional governance frameworks; and
- practical feasibility for state and territory-owned, price-regulated water utilities operating within fixed funding envelopes.

Interaction with state and territory regulatory frameworks

Water utilities operate within complex and well-developed state and territory regulatory environments governing public health protection, drinking-water quality, wastewater management, environmental compliance, dam safety, emergency management and economic regulation. These frameworks impose statutory duties on responsible entities to ensure continuity of essential services and to manage operational risk in accordance with jurisdictional laws and directions.

The water sector is concerned that expanded Ministerial directions powers, if exercised without careful coordination, may duplicate, overlap with, or in some cases conflict with existing state and Territory arrangements, that are already designed to manage safety-critical and public-health risks. While the consultation paper notes mandatory consultation with state and territory Ministers, clear operational protocols will be essential to ensure Commonwealth directions complement—rather than unintentionally override or undermine—existing jurisdictional controls. Without such coordination, there is a clear risk of regulatory fragmentation; conflicting priorities; uncertainty for operators; and delays in implementation, when clarity and speed are essential.

Risk of unintended public-health consequences and cascading impacts

Water and wastewater services are uniquely safety-critical, with tightly coupled systems and complex dependencies spanning treatment processes; distribution networks; energy supply; chemical availability; workforce access; and emergency response arrangements. Directions issued to manage national security risks—particularly those involving rapid operational change, vendor restrictions, system isolation or reconfiguration—may carry unintended consequences for safety and public health if not informed by detailed operational understanding.

The water sector is therefore concerned about the risk that a direction issued without adequate consultation with the responsible entity could inadvertently create or exacerbate public-health risks, including disruption to potable water supply, wastewater treatment performance, or compliance with health-based standards. Compounding and cascading impacts may not be immediately apparent without genuine consultative engagement with operators who understand the interdependencies across assets, systems and regulatory obligations.

For this reason, the sector strongly supports the continued emphasis on good-faith negotiation, proportionality and consultation prior to the exercise of Ministerial directions powers. These safeguards are particularly critical for the water sector, where unintended service disruption can be immediate, widespread and difficult to reverse. Ensuring directions are informed by operational realities will be essential to achieving national security objectives without creating secondary risks to public health and community safety.

The water sector also notes that measures do not provide any legal defence against civil or criminal legal action taken against a responsible entity acting under a Ministerial direction. This lack of defence is particularly problematic if the entity has provided advice about potential adverse consequences that has been ignored or disregarded by the Minister.

MEASURE 1 – AMENDMENTS TO THE EXISTING DIRECTIONS POWER IN SECTION 32

The water sector broadly supports efforts to improve the operability of section 32 where existing procedural requirements may impede timely responses to serious national security risks. In principle, the sector recognises the merit in allowing the Minister to rely on tailored ASIO threat advice, rather than being constrained to the formal Adverse Security Assessment (ASA) framework, particularly where risks are evolving, systemic or not readily captured by a single adverse finding.

The proposed recalibration of the ‘regulatory exhaustion’ requirement—from a strict legal precondition to a requirement that the Minister consider whether other mechanisms could more effectively mitigate the risk—also responds to longstanding concerns regarding delay and procedural complexity. The sector supports this adjustment, provided the SOCI directions power continues to operate as a measure of last resort, exercised only after good-faith engagement and the Minister’s consideration of advice on potential consequences; alternative regulatory; or voluntary measures, that may provide an appropriate level of risk mitigation.

Given the breadth of the proposed Ministerial powers over water service operations, directions should be tightly framed: limited to defined SOCI legislative areas, proportionate to the relevant threat and risk (with due regard to safety and continuity of essential services), and subject to clear accountability (reasons, scope/timeframes and oversight or review). The legislation should also require meaningful consultation with affected entities and relevant state and territory Ministers, except where genuinely urgent circumstances justify an accelerated process.

It remains critical that statutory thresholds and decision-making criteria are clearly articulated. Continued requirements for consultation with affected entities, relevant state and territory Ministers and portfolio agencies are essential to ensure directions are informed by operational, safety and service-delivery realities, particularly for safety-critical infrastructure such as water and wastewater services.

Response to consultation questions

How closely does the scenario align with how similar risks or dependencies are managed within your organisation?

The scenario broadly aligns with how the water sector currently seeks to manage comparable risks, in that responsible entities prioritise early engagement, voluntary mitigation and layered controls to address national-security concerns. Where offshore access or managed service arrangements introduce elevated risk, water utilities typically work with vendors to restrict access, enforce contractual controls, enhance monitoring and apply compensating safeguards.

However, a key difference is that water utilities currently rely on existing regulatory frameworks and voluntary cooperation, rather than ministerial intervention, to resolve such risks. In practice, implementation timelines, sequencing and risk treatments are shaped by safety, public-health requirements, operational dependencies and funding approvals that are not captured in the simplified scenario.

What non-regulatory or lighter-touch approaches could reasonably achieve a similar outcome?

In many circumstances, similar outcomes could be achieved through:

- targeted Government security advice supported by clear threat articulation;
- independent assurance of access controls and identity management;
- contractual amendments restricting offshore or privileged access;
- enhanced CIRMP obligations and oversight; and
- time-bound, voluntary remediation plans agreed in good faith.

These approaches are generally feasible and effective where constructive engagement and alignment between Government, vendors and responsible entities have been established.

Ministerial directions must remain a last-resort mechanism, activated only where these measures demonstrably fail.

What internal steps and timeframes would be needed to implement a direction?

Implementation of a direction of this nature would typically require:

- Board and executive approval, including risk-appetite and public-health considerations;
- detailed architectural assessment of IT and OT dependencies;
- procurement and vendor renegotiation processes;
- staged migration and testing to avoid service disruption; and
- coordination with state and territory regulators.

Realistic timelines would range from 12 to 24 months, depending on complexity, vendor constraints and change windows. Key schedule drivers include system interdependencies, safety-critical commissioning cycles, procurement lead times and regulator approvals.

What benefits or risk-reduction outcomes would result?

Expected benefits may include:

- reduced exposure to hostile influence via privileged access;
- improved visibility over access pathways;
- strengthened assurance of identity and access management; and
- increased resilience against covert cyber compromise.

However, these benefits are only realised where implementation is properly sequenced and resourced. Poorly timed intervention could increase operational risk.

What costs and constraints would apply?

Costs would include:

- architectural redesign and migration;
- contract re-papery;
- vendor replacement or re-engineering; and
- ongoing assurance and monitoring.

Key constraints include:

- legacy OT environments;
- limited qualified vendor alternatives;
- safety and public-health tolerances; and
- fixed funding envelopes under jurisdictional price determinations.

Board, market and evaluation considerations

Directions of this nature would trigger:

- board-level approvals and potentially whole-of-organisation risk reassessment;
- potential impacts on customer prices or service continuity during transition; and
- cumulative burden when combined with other SOCI, safety and regulatory obligations.

Government-provided guidance on acceptable reference architectures, milestones and success indicators would significantly assist compliance.

MEASURE 2 – CONDITIONS POWER

The water sector acknowledges that persistent governance or control-related risks—whether foreign or domestic—may arise after initial regulatory approvals and may not be adequately addressed through existing mechanisms. In this context, a targeted conditions power has the potential to provide a more proportionate and enduring response than repeated or open-ended general directions under Section 32.

The water sector supports the concept of a graduated escalation pathway, beginning with Critical Infrastructure Risk Management Program (CIRMP) obligations and voluntary mitigation and progressing to tailored conditions only where material national security risks persist. Conditions should be narrowly scoped, time-limited, subject to regular review, and supported by clear statutory factors, including consideration of economic, commercial and operational impacts.

For the water sector, it is particularly important that governance-related conditions recognise existing statutory duties on boards and executives, including obligations arising under state ownership frameworks and, where applicable, the Corporations Act 2001. Conditions should complement—not duplicate or conflict with—these obligations and should avoid creating unintended governance or accountability challenges.

Response to consultation questions

General response

The water sector supports a graduated, governance-focused conditions power where persistent national-security risks cannot be adequately addressed through CIRMP obligations or voluntary engagement.

However, conditions must be:

- narrowly scoped and time-limited;
- clearly linked to an identified material risk;
- compatible with directors' duties and state ownership frameworks; and
- subject to regular review and consultation.

Conditions that intrude unnecessarily into corporate governance or duplicate state and territory controls risk creating legal and operational uncertainty without improving security outcomes.

Consultation scenario questions (Measures 2)

The sector's response to the scenario aligns closely with the response to Measure 1:

- most water utilities already control access to sensitive materials via role-based access, non-disclosure agreements and governance controls;
- imposing conditions without consultation risks undermining emergency and service-delivery decision-making; and
- realistic implementation depends on board cycles, legal instruments and workforce constraints.

MEASURE 3 – RESTRICTIONS ON THE USE OF HIGH-RISK VENDORS, PRODUCTS OR SERVICES

The water sector recognises that systemic supply-chain risks may arise where critical infrastructure relies on globally integrated vendors, managed services or technologies subject to opaque ownership structures or foreign coercion. The sector accepts that entity-level risk management may be insufficient to address risks that are systemic across an asset class or sector.

In principle, the sector supports a coordinated, sector-wide mechanism to address genuinely high-risk vendors or technologies where risks are based on credible intelligence and cannot be mitigated through less intrusive measures. The ability to consider transition timeframes and compensating controls is particularly important for water utilities, given long asset lifecycles, safety-critical operations and limited vendor diversity in some markets.

However, any such power must be exercised with a high degree of transparency, evidentiary rigour and consultation. Water utilities generally do not have access to the intelligence required to independently assess vendor-level national security risk. Accordingly, Government-led determination and clear guidance will be essential to avoid inconsistent interpretation, inefficient investment or unintended impacts on service continuity and public health.

Response to consultation questions

General response

The sector acknowledges that systemic vendor risk may require coordinated Government action where entity-level mitigation is insufficient.

In principle, the water sector supports a sector-wide power where:

- risks are based on credible, intelligence-informed assessment;
- Government leads vendor risk determination; and
- transition timeframes and compensating controls are available.

However, utilities generally lack access to intelligence necessary to independently assess vendor-level national-security risk. Without Government-led clarity, there is a risk of inconsistent interpretation and inefficient reinvestment.

Consultation scenario questions (Measure 3)

Vendor-specific restrictions would interact strongly with:

- long asset lifecycles;
- limited supplier markets (particularly chemicals and OT);
- safety accreditation requirements; and
- emergency response obligations.

Transition timelines would likely span several years, with significant cost and operational impacts if not carefully sequenced. Government guidance on acceptable interim controls, assurance standards and priority pathways would be essential.

MEASURE 4 – DELAY OF CONTINUOUS DISCLOSURE REQUIREMENTS

The sector acknowledges the complexities associated with cyber incidents that carry potential national security or systemic implications. While transparency and timely disclosure remain important, the sector recognises that premature public disclosure in rare, high-risk circumstances may inadvertently exacerbate harm or disrupt coordinated incident response.

The sector is open to a highly constrained, time-limited mechanism to delay disclosure where clearly justified on national security or public-safety grounds. Any such mechanism must be supported by strong safeguards, clear thresholds, short maximum durations, mandatory review and coordination with existing notification regimes. Clear guidance will be required to assist boards and executives to navigate potentially competing disclosure and security obligations.

Response to consultation questions

Is a delayed disclosure power necessary?

The sector recognises that, in rare and exceptional circumstances, delayed disclosure may be necessary to avoid exacerbating national-security risk or undermining coordinated response activities.

Option 1 vs Option 2

The sector prefers Option 1 (ASIC-led exemption) where feasible, as it:

- minimises duplication of powers;
- leverages existing regulatory mechanisms; and
- avoids introducing additional SOCI-specific complexity.

A SOCI-based ministerial power (Option 2) should only apply where ASIC mechanisms are demonstrably insufficient.

Any delayed disclosure mechanism must include:

- strict time limits;
- clear thresholds;
- mandatory review;
- coordination with privacy and incident-notification regimes; and
- post-incident transparency once risks are mitigated.

Clear guidance will be essential to support Leaders in balancing disclosure duties and national-security considerations.

MEASURE 5 – INCREASED CIVIL PENALTY PROVISIONS

The water sector acknowledges the rationale for aligning civil penalty settings for non-compliance with Ministerial directions under Part 3 with those applying to other SOCI obligations. However, the sector cautions that increased penalties, in isolation, do not necessarily improve security outcomes.

Effective compliance is more likely to be achieved where expectations are clearly articulated, directions are practicable and fundable, and entities are supported through guidance and engagement. Increased penalties should therefore be accompanied by clarity on how directions will be framed, exercised and enforced, to avoid unintended consequences or risk-averse behaviour that may detract from service continuity and public health objectives.

Response to consultation questions

Penalty increase assessment

The water sector understands the rationale for increasing maximum penalties to align with other SOCI provisions. However, penalties alone do not drive better security outcomes.

Compliance is most effective where:

- obligations are clear and achievable;
- directions are proportionate and funded; and
- Government provides guidance and support.

The water sector cautions against penalty escalation without corresponding clarity on how directions will be exercised, particularly where non-compliance may arise from funding or operational constraints rather than unwillingness.

CONCLUSION

The water sector supports a SOCI Framework that enables Government to act decisively where serious national security risks cannot be mitigated through existing regulatory or voluntary measures. At the same time, the legitimacy and effectiveness of expanded Ministerial powers depend on clarity, proportionality, consultation and coordination with existing state and territory frameworks.

The sector remains committed to constructive engagement with Government to refine the proposed reforms in a manner that strengthens national resilience while safeguarding public health, service continuity and affordability for the communities that water utilities serve.

SUBMITTING ORGANISATIONS

About the Water Services Association of Australia

The Water Services Association of Australia (WSAA) is the peak body representing the Australian water sector. Our members provide water and wastewater services to over 24 million customers in Australia and New Zealand and many of Australia's largest industrial and commercial enterprises. WSAA facilitates collaboration, knowledge sharing, networking and cooperation within the water sector. The collaborative approach of WSAA members has led to sector wide advances to national water issues.

About the Water and Sewerage Sector Group

The Water and Sewerage Sector Group (WSSG) is the water industry group that forms part of the Australian Government's Trusted Information Sharing Network. The WSSG comprises the Risk, Security and Resilience experts from across the Australian water sector, focused on the enhancing the resilience of the national water sector. The WSSG works with the Department of Home Affairs as the primary conduit between Government and the water sector, to translate Government security and resilience policy into contextualised outcomes and activities for the water sector. This work includes improving understanding and resilience of cross sector interdependencies with other critical infrastructure sectors.

The WSSG has been the coordination point for the water sector's response to the SOCI legislation since its inception and will continue to play a lead role in developing the standard and guidelines that will guide the water sector in its approach to operationalising the SOCI legislative requirements.

This submission does not reflect the views of, and is not endorsed by, any Australian Government members of the WSSG.

Contact

WSAA and WSSG welcomes the opportunity to discuss this submission further.

Adam Lovell

Executive Director

Water Services Association of Australia

Level 6, 75 Elizabeth Street

Sydney NSW 2000

Luke Sawtell

Industry Co-Chair

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