



Australian Government  
Department of Home Affairs

# Security of Critical Infrastructure Act 2018

*2020-21 Annual Report*



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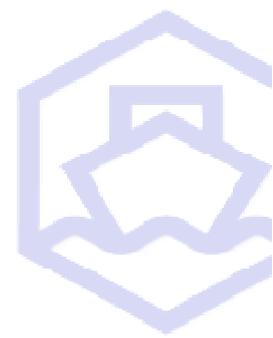
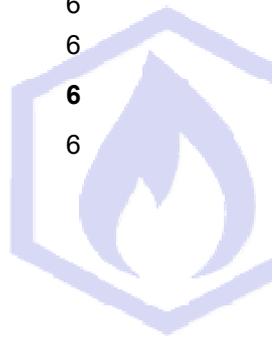
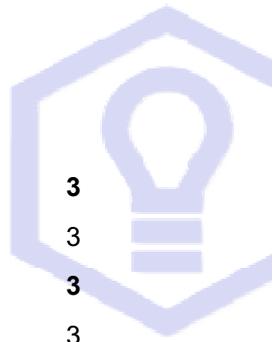
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# Background

On the 11 July 2018, the *Security of Critical Infrastructure Act 2018* (the Act) came into force. The Act is designed to manage the national security risks of espionage, sabotage and foreign interference arising from foreign involvement in Australia's critical infrastructure.

The Act applies to infrastructure assets in the electricity, water, gas and ports sectors which if destroyed, degraded, or rendered unavailable for an extended period, would have a significant impact on:

- maintaining status quo operations for large population hubs;
- national economic interests;
- Government operations; and
- Defence capabilities.

In addition, the *Security of Critical Infrastructure Rules 2018* (the Rules) specify thresholds for electricity generation stations and gas transmission pipelines, prescribe critical infrastructure assets and provide further information requirements for reporting.

## Key Measures

The Act has three measures to manage national security risks related to critical infrastructure:

- The Register of Critical Infrastructure Assets (the Register), provides the Government visibility of who owns and controls the assets, enabling better targeting of our risk assessments.
- The information gathering power, provides the ability to obtain more detailed information from owners and operators of assets in certain circumstances.
- The Ministerial directions powers, provides the ability to intervene and issue directions in cases where there are significant national security concerns that cannot be addressed through other means.

The powers in this Act enable government to better assess the extent of vulnerability across our high priority assets, and work collaboratively with industry to address the kinds of vulnerabilities identified, while maintaining open economic settings and imposing only a minimal and targeted regulatory burden.

# Current Status

## Notifications

The notification requirements in sections 23 and 24 of the Act articulate the initial and ongoing obligations of a reporting entity to report specific information on a critical infrastructure asset to the Department of Home Affairs (the Department). A total of 223 notifications were made during the 2020-21 financial year to the Department.

**Table 1:** Total number of notifications made to the Department in the 2020-21 financial year.

Notifications	Total
Number of notifications made to the Department	223

### New Notifications (Initial Obligations)

The initial obligation to give information under section 23 of the Act requires a reporting entity to report the ownership and operational information in the approved form to the Secretary. Under section 23(3) information must be given by the end of 30 days after the day the entity becomes a reporting entity for the asset.

During this financial year, the Department received **eleven** new notifications (initial obligations) in relation to critical infrastructure assets across Australia.

**Table 2:** Breakdown of new notifications made to the Department in the 2020-21 financial year.

Type of notification	Number of notifications
New Notification – Direct Interest Holder	6
New Notification – Responsible Entity	5
<b>Total:</b>	<b>11</b>

### Notification of Change (Notifiable Events)

The ongoing obligation to give information under section 24 of the Act requires a reporting entity to report a notifiable event in relation to the asset which is captured on the Register. A notifiable event occurs when any information in relation to the original notification is either invalid, incorrect or outdated. The reporting entity is therefore required to submit a 'notification of change' in the approved form by the end of the 30 days after the event occurs.

During this financial year, the Department has received **212** notifications of change (notifiable events) in relation to critical infrastructure assets on the Register.

**Table 3:** Breakdown of the notifications of change made to the Department in the 2020-21 financial year.

Type of notification	Number of notifications
Notification of Change – Direct Interest Holder	124
Notification of Change – Responsible Entity	88
<b>Total:</b>	<b>212</b>

### Ministerial Directions Power

Section 32 of the Act allows the Minister for Home Affairs (the Minister) to issue a direction to an owner or operator of critical infrastructure assets to mitigate national security risks, where the risks cannot be managed through existing collaboration with owners and operators or via existing regulatory frameworks.

The directions power is only able to be used where:

- there is a risk identified which is prejudicial to security
- through collaboration, the owner or operator does not or cannot implement mitigations to address the risk
- there are no existing regulatory frameworks that can be used to enforce mitigations.

Before issuing a direction, the Minister must be satisfied of certain matters, consult, and give consideration to a number of factors, including:

- giving primary consideration to a mandatory Australian Security Intelligence Organisation adverse security assessment
- being satisfied that 'good faith' negotiations have occurred
- consulting directly and giving consideration to any representation made by the relevant First Minister, state or territory minister and the affected entity to which the direction applies
- considering the costs and consequences to services in implementing the mitigation
- ensuring the direction is a proportionate response to the risk.

These safeguards reinforce the Australian Government's collaborative approach to managing national security risks from foreign involvement. It also ensures the Ministerial directions power is only exercised when the risk cannot be addressed through other means.

**Table 4:** Ministerial Directions issued in the 2020-21 financial year.

Ministerial Direction	Issued
Number of directions given under section 32	0

## Information Gathering Power

Section 37 of the Act provides the Secretary of the Department of Home Affairs (the Secretary) with the power to request ownership and operational information from direct interest holders, responsible entities and operators of critical infrastructure assets.

This enables the Secretary to:

- inform risk assessments conducted by the Department
- identify any gaps on the Register
- assist with determining whether any powers under the Act should be used, including enforcement measures relating to the Register or Ministerial directions.

Information that is obtained using this power is protected and confidential and will not be publicly disclosed.

**Table 5:** Information Gathering Powers used in the 2020-21 financial year.

Information Gathering Power	Issued
Number of information gathering requests issued by the Secretary under section 37	0

## Enforcement Powers

Part 5 (enforcement) of the Act states that civil penalty orders may be sought under Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act) in relation to contraventions of civil penalty provisions of the Act.

Enforcement undertakings to comply with civil penalty provisions of the Act may be accepted and enforced under Part 6 of the Regulatory Powers Act.

**Table 6:** Enforcement actions taken in the 2020-21 financial year.

Enforcement Actions	Issued
Number of enforcement actions issued under section 49	0

## Private Declarations

Section 51 of the Act permits that the Minister may privately declare an asset to be a critical infrastructure asset if the asset is not otherwise a critical infrastructure asset and relates to a relevant industry.

The Minister must also be satisfied that:

- the asset is critical infrastructure that affects national security
- there would be a risk to national security if it were publicly known that the asset is critical infrastructure that affects national security.

**Table 7:** Private declarations made during the 2020-21 financial year.

Private Declarations	Issued
Number of private declarations made under section 51	0

## Industry engagement

The Act aims to safeguard critical infrastructure in Australia and strengthen existing engagement and information sharing partnerships between industry and Government.

In the 2020-21 financial year, the Department has continued to engage with state and territory and industry, through stakeholder meetings, telephone, email and formal website enquiries. The Department has participated in numerous teleconferences and face-to-face meetings, and answered frequent enquiries from industry and state and territory government stakeholders.

## Guidance Material

The Department has a dedicated webpage to facilitate information sharing with industry which contains guidance material on the operation of the Act, including how stakeholders can best meet their obligations.

This material includes:

- information on the Critical Infrastructure Centre and fact sheets explaining the Act, reporting requirements and coverage
- frequently asked questions