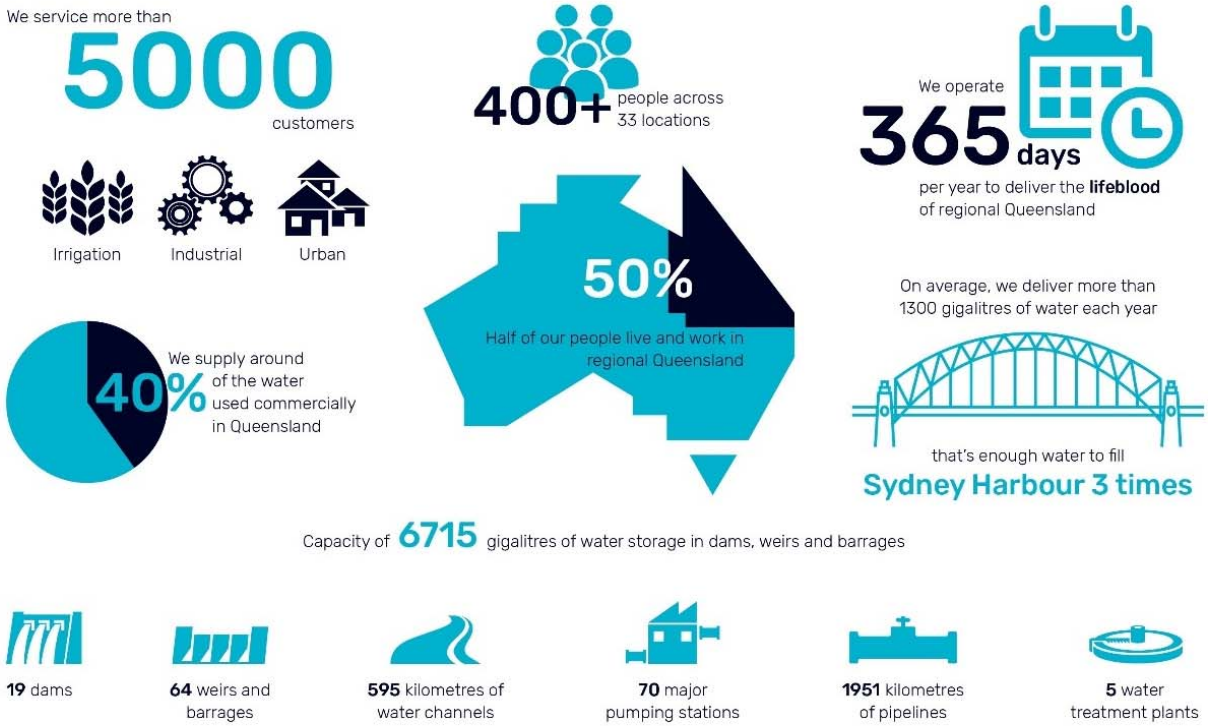
**Security Legislation Amendment (Critical Infrastructure) Bill 2020**
**Sunwater summary of key issues for submission to Home Affairs (27 November 2020)**

Sunwater welcomes the opportunity to comment on the consultation draft of the *Security Legislation Amendment (Critical Infrastructure) Bill 2020*.

Sunwater is a Government Owned Corporation, fully owned by the Queensland Government.

Sunwater owns and operates 24 bulk water and irrigation supply schemes across Queensland. As a regional water entity, we have 33 offices and depots across Queensland. Our assets capture and deliver around 40 per cent of the water used commercially in Queensland to more than 5,000 urban (local council), irrigation and industrial customers. Our operations can be summarised as presented in the following diagram.




Our existing key priorities include ensuring our $13.7 billion worth of assets deliver efficient operations, meet safety standards and withstand extreme weather events.

The table below sets out key issues, from the perspective of Sunwater, arising from the November 2020 Exposure Draft of the *Security Legislation Amendment (Critical Infrastructure) Bill 2020* (***Draft Bill***).

| | Issue | Sunwater's position |
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| 1 | **Potential conflict between a direction under the Draft Bill and other obligations of Sunwater** | If the Minister gives a Ministerial authorisation under section 35AB of the Draft Bill, the relevant entity (e.g. Sunwater) must comply with a direction that results from the Ministerial authorisation (***Direction***).<br><br>A future Direction may be in conflict with:<br><br>• a requirement or direction of Sunwater's shareholding ministers;<br>• Sunwater's statutory obligations, including pursuant to:<br>  o the *Water Act 2000* (Qld);<br>  o the *Water Supply (Safety and Reliability) Act 2008* (Qld); and<br>  o the *Work Health and Safety Act 2011* (Qld); and/or<br>• Sunwater's duties at common law.<br><br>The Draft Bill does not provide any mechanism to overcome that potential conflict. Given the urgency with which a relevant entity may be required to comply with a Direction, the Draft Bill should expressly address the manner in which an entity must respond to a Direction that conflicts with other obligations of that entity. |
| 2 | **Impact of a 'critical infrastructure risk management program' on an existing dam safety management framework** | Sunwater's current dam safety risk management framework is prepared for the purpose of, and is compliant with, an existing suite of dam safety obligations, including under the *Water Act 2000* (Qld), *Water Supply (Safety and Reliability) Act 2008* (Qld) and the common law. Sunwater requests that the future co-designed rules for a 'critical infrastructure risk management program' applying to the water and sewerage sector be cognisant of existing risk management frameworks and seek to enhance rather than contradict or replace these frameworks.<br><br>Sunwater has a current proposed Dam Improvement Program valued between $1 Billion and $1.4 Billion and which is based on existing dam safety obligations. Sunwater is concerned that any future 'critical infrastructure risk management program' could increase such costs without a measurable or material benefit to its dam asset risk profile. |
| 3 | **Fit for purpose approach to risk management (i.e. no one size fits all approach)** | Sunwater is a regional bulk water supplier with a geographically spread asset base. That asset base also comprises a variety of assets with differing risk profiles.<br><br>Sunwater is concerned that this asset spread and base, which includes many small dams, weirs and barrages in regional areas as well as commercial pipeline and channel and drain infrastructure, is not reflective of most other participants in the water and sewerage sector (predominantly being urban water retailers). The definition under the Draft Bill of a 'critical water asset' (being the collective water |

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| | | assets of Sunwater) may not accommodate the significant differences between, for example, a small regional weir or barrage supplying a handful of agricultural customers and a large dam that supplies drinking water to a major city.<br><br>The requirements of the 'critical infrastructure risk management program' that is to be implemented for the water and sewerage sector should permit sector participants to develop a risk management framework that is fit for purpose and allows for differing levels of risk and risk tolerance associated with its own particular assets.<br><br>There is a risk that Sunwater will be required to 'gold plate' or otherwise pay 'new' and undue attention to its lower risk asset base. Due consideration should be given to ensure that an entity's 'critical water asset' as a whole is used for the 'materiality' test under the 'critical infrastructure risk management program'.<br><br>We request that sector consultations undertaken by Home Affairs take place broadly and consider the particular circumstances of Sunwater (and other bulk water suppliers operating predominantly in regional Australia). |
| 4 | **Use of terminology in relation to 'critical infrastructure risk management programs'** | Part 2A of the Draft Bill, relating to 'critical infrastructure risk management programs', uses terminology that is at times inconsistent with best practice terminology used by risk practitioners. Sunwater recommends that Home Affairs' consultations consider the language and terminology used in Part 2A.<br><br>For example, section 30AH(1) of the Draft Bill states that a 'critical infrastructure risk management program' has a purpose of minimising or eliminating any material risk of a hazard occurring so far as it is reasonably possible to do so. Sunwater considers it would be more helpful to use the widely-recognised formulation (used in section 17 of the *Work Health and Safety Act 2011* (Qld)) that risks should be eliminated so far as is reasonably practicable and, if it is not practicable to eliminate risks, to minimise those risks so far as is reasonably practicable. That Act also includes, in section 18, a definition of 'reasonably practicable'.<br><br>Sunwater also considers that due attention should be given to risk 'outcomes' rather than to 'hazards to the asset'. An 'outcomes' approach can best accommodate an entity's resilience and redundancy provisions that are integral to managing risk. |
| 5 | **Annual report regarding 'critical infrastructure risk management program'** | Section 30AG of the Draft Bill requires entities to provide an annual report in relation to its 'critical infrastructure risk management program', and provides that the annual report must be signed by each member of the board, council or other governing body of the entity.<br><br>Sunwater considers that it would be more consistent with usual governance practice for the report to be signed by *a*, rather than *all*, directors of an entity. Sunwater considers an approach such as used in Section 13(2) of the *Modern Slavery Act 2018* (Cwth) would provide a similar level of assurance through a more practical approach. |
| 6 | **Regulatory duplication** | Sunwater is aware that, under section 35AB(1)(d) of the Draft Bill, the Minister may not give a Ministerial authorisation unless he or she is satisfied that no existing regulatory system of the Commonwealth, a State or a Territory could be used to provide a practical and effective response to the relevant cyber security incident. |

| | Issue | Sunwater's position |
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| | | Sunwater considers that this principle should be applied more broadly in the Draft Bill – for example, that sector specific rules may not contradict or duplicate the requirements of existing regulatory systems of the Commonwealth, a State or a Territory. |
| 7 | Disclosure of information | Sunwater proposes that the Draft Bill should re-consider, and broaden, the exceptions to the unauthorised use or disclosure of protected information under section 46 of the *Security of Critical Infrastructure Act 2018* (Cth) (***SCI Act***).<br><br>Sunwater notes that section 47 of the SCI Act provides that an entity is not to be required to disclose protected information to a court, tribunal, authority or other person that has the power to require the answering of questions or the production of documents.<br><br>Sunwater considers that the combination of sections 46 and 47 do not sufficiently clarify an entity's obligations when the entity would otherwise be required to disclose information (for example, under State freedom of information or safety legislation, or in response to a requirement of Sunwater's shareholding ministers or other State government laws, policies or requirements). |
| 8 | Reporting of cyber breaches | Sunwater accepts that critical cyber security incidents must be notified to ASD as soon as practicable and within 12 hours after the entity becomes aware of the incident. However, Sunwater considers that the 24-hour reporting obligation in respect of other (non-critical and hence less serious) cyber security incidents would impose an unreasonable burden on an entity in the position of Sunwater (for example, by requiring the mobilisation of staff over a weekend or holiday period). Sunwater considers that a '2 business day' reporting obligation for non-critical incidents is appropriate. |
| 9 | Judicial review | Sunwater's view, which it understands to be shared by other water and sewerage sector participants (for example, the Water Services Association of Australia), is that it is not appropriate that the Draft Bill excludes judicial review of decisions pursuant to the SCI Act. For example, as Sunwater is already extensively regulated by Queensland legislation, it is appropriate that the Minister's decision be capable of judicial review for appropriateness should the Minister fail to adequately take into consideration the extent to which such regulation sets parameters for Sunwater's activities. |
| 10 | Period to comply with reporting obligations | Paragraph 264 of the Explanatory Document to the Draft Bill states that entities will have six months to comply with their reporting obligations once their obligations commence. Particularly if the 'critical infrastructure risk management program' requirements necessitate material changes to an entity's risk management framework and practices (for example, policies, procedures, business approaches and reporting requirements), Sunwater considers that the six month period may be inadequate.<br><br>Subject to finalisation of the sector specific rules, Sunwater considers that a period of 12 months would be preferable  The resource and cost implications of the reporting requirements is currently an unknown |

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| 11 | Compliance costs | The Draft Bill has the potential to cause material compliance costs for Sunwater (that has the potential to impact our customers) – for example if:<br>• Sunwater is required to adopt a 'critical infrastructure risk management program' that diverges from, or imposes requirements in addition to, Sunwater's existing risk management framework and processes;<br>• Sunwater is required to materially increase its asset maintenance standards;<br>• Sunwater is designated as a responsible entity for systems of national significance and is required to comply with the enhanced cyber security obligations; or<br>• enhanced IT resources are required to ensure that cyber security incidents are notified within short timeframes and other cyber-related obligations are met.<br>If Sunwater assets were declared to be a system of national significance, Sunwater would be prohibited from disclosing that fact, including, for example, to pricing regulators. Sunwater may be impeded in seeking to recover its increased compliance costs.<br>Home Affairs should focus on reducing unnecessary or avoidable compliance costs as it develops the Draft Bill. |