



WATER SERVICES
ASSOCIATION OF AUSTRALIA



WSAA SUBMISSION

Review of the Security of Critical
Infrastructure Bill 2017

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
Canberra ACT 2600

RE: “Review of the Security of Critical Infrastructure Bill 2017”

Thank you for the opportunity to provide comment to the Review of the Security of Critical Infrastructure Bill 2017.

I confirm that this submission can be made available in the public domain.

WSAA welcomes the opportunity to discuss this submission further. Please contact Mr Greg Ryan, Manager Utility Excellence [REDACTED]

Yours sincerely

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About WSAA

The Water Services Association of Australia (WSAA) is the peak body that supports the Australian urban water industry. Our members provide water and sewerage services to over 20 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 urban water industry. The collegiate approach of its members has led to industrywide advances to national water issues.

WSAA welcomes the opportunity to provide a submission to the Review of the Security of Critical Infrastructure Bill 2017. To ensure a robust submission WSAA has sought security expertise and advice from water utility owners and operators, along with the Water Sector Services Group.

Legislative intent

The overall intent of the legislation is clear, to address national security risks to critical infrastructure. However, in doing this it focuses squarely on foreign ownership, control and access without regard to other risks. This appears contra to other published views such as the World Economic Forum Global Risks Perception Survey 2017-18 in relation to critical infrastructure. The legislation directs that water utilities to view foreign ownership as a critical risk, in line with many other normal risks such as extreme weather and failure to supply safe drinking water. This approach appears to support a particular direction, without a robust recognition that the consideration of wider and existing prioritised risks have higher risk ratings and operational impacts.

In addressing foreign ownership risks the legislation provides the commonwealth with potentially unlimited power to direct the operation of water utilities, without a clear mechanism for appeal and without consideration of how the required changes will be paid for. This is done through a Risk Assessment undertaken by the Critical Infrastructure Centre (CIC). To ensure these powers are optimally applied the following modifications are recommended:

1. That a trigger is placed into the legislation such that for a Risk Assessment to be requested by the Commonwealth there must first be an adverse ASIO Security Risk Assessment for the organisation.
2. The scope of a Risk Assessment and appeal mechanism in relation to the findings of a Risk Assessment should be clearly documented in Regulations.

Interdependencies with other agencies

The current approach to classifying critical water infrastructure based on numbers of property connections highlights a fundamental lack of understanding of the way water infrastructure works and links to other critical infrastructure. In particular, a number of smaller water businesses supply what the industry and TISN would consider to be infrastructure of national significance including major power stations, export and domestic industries. Risks around these interdependencies are central to the entire critical infrastructure supply chain,

and need to be included in understanding foreign involvement risk, including the critical chemical supply interdependency, which is completely unrecognised. This seems to have been overlooked in other recent Federal legislation with the consultation paper for the Possible Amendments to Telecommunications Carrier Powers and Immunities Act. The proposed amendments to this Act are supportive of improving infrastructure performance and efficiencies for one sector, while compromising infrastructure security control standards for others like water. Further dialogue is required to develop a more robust criteria for defining critical infrastructure and its interdependencies to ensure greater protection for all Australians.

Cost

WSAA would like to highlight the lack of detailed consultation with industry in the preparation of the bill. Particularly the approach taken to use the 'inform' mode of consultation rather than collaborate or empower. Unfortunately this has led to the generation of a bill, which while it appears reasonable in intent, lacks sufficient detail to enable an effective assessment of the full impacts to water sector owners and operators. It also appears to have taken a one size fits all approach to water infrastructure that has an incredible diversity in nature and consequential impact.

It is the view of the water industry that the Regulatory Impact Statement costs in the legislation are based on a simplified view of the industry, and doesn't consider wider interpretation, significantly underestimating the likely cost to water businesses. For example, it is quite unclear the level of input and information that will be required to support the development of the initial asset register and the subsequent risk assessment, along with its upkeep. If the entire utility / organisation is taken as an 'asset', then tracking and reporting international Board members and alliance contractors is a relatively low cost issue.

However, when the full depth and breadth of water utility operations are taken into account, the number of contractors and interacting agencies with potential international involvement can run into the hundreds. Keeping track of and reporting on each of the personnel from the agencies, changes in shareholdings or contractual arrangements is likely to require at a minimum one to two full time personnel. Not to mention support systems and ongoing assurance of the implementation and ongoing management of proposed mitigations. Controls over such personnel are a separate and seemingly unaccounted for issue.

Clarity in these requirements are essential. This could be done through a detailed set of supporting regulations. The present situation is likely to see the Boards of water utilities take a conservative view of the requirements. This has the potential to impose unnecessary costs that are ultimately borne by on water business customers.

Federal/State Government Interaction

If a significant expenditure of funds is required by a water utility to undertake a Risk Assessment and implement remedial measures it is clear the utility will pay for these, not the Commonwealth. However, the mechanism by which this payment will be achieved is not

clear. The utility will need to seek the funds from the customers, via their economic regulator. The economic regulator is a State jurisdiction responsible to the State Government.

There is currently no proposed mechanism for liaison between the Federal and State Governments, and no clear authority for the Federal Government to impose such indirect costs on the States. This needs to be resolved as a priority. The water industry believes this to be a significant flaw in the current legislation. This is magnified by the different approaches to critical infrastructure security and resilience in the different states, based up on their specific geographic and situational risk profiles, and a lack of an informed understanding of potential costs to owner /operators from proposed additional mitigations, beyond their current agreed security risk standards with State Police agencies and Regulators.

This impacts State Government, but without any direct impact on the Federal Government. Such lack of consequence and therefore feedback mechanism to the Federal Government presents a weakness in the legislation. The overarching weakness in the legislation is the lack of two way dialogue to support the development of realistic mitigations and associated costs. Utilising forums like the Water Sector Services Group (WSSG) and other Trusted Information Sharing Network (TISN) sector groups to craft the framework and potential outputs and associated costs would be more beneficial to ensuring an effective and more acceptable outcome.

Security of Information

A final issue is the security of information supplied to the CIC. The sensitive information protections currently existing at the State/Territory level are inconsistent, to prevent sensitive Critical Infrastructure information from being released into the public domain (e.g. through State Audit reports, Regulatory Reports or Freedom of Information requests). Therefore the need to ensure a consistent approach to sharing and protection of critical infrastructure related information is imperative and an obvious gap in the current legislation.

Recommendations

WSAA in representing the industry requests the opportunity to present to the Committee directly. Our objectives are to seek:

- Clarification on the scope of the proposed mitigations for the risks from this Bill, and ensure relevant water sector subject matter expertise input in the final outline on the application of this legislation to the Australian water industry. This includes utilising the TISN sector groups to workshop scenario and proposed mitigations within the Bill to improve outcomes.
- An opportunity for extensive and ongoing engagement in the development of the implementing regulations, to ensure that compliance costs to industry and the community are well understood and commensurate with the assessed level of risk. This would include clarification on the details of the proposed approach, using this information to undertake a robust cost / benefit analysis regarding the application to the water industry.

- To modify the Act to require an ASIO Adverse Risk Assessment prior to a CIC Proactive Risk Assessment being requested.
- To develop a clear, agreed and documented approach to resolving cross jurisdictional disputes in relation to the Act. Ensuring the relevant details are embodied in sensible and clear regulations underpinning the Act, to provide clarity of accountabilities / requirements between Federal Government, State Governments and Critical Infrastructure Owner Operators, through a thorough consultative approach.
- To develop a more rational definition of critical water supply infrastructure. Ensuring that objectives and outcomes of the CIC Bill are not inconsistent with other Critical Infrastructure legislation and federal / state government objectives. Additionally that there are adequate and effective protections around sensitive information collated under the directions of this Bill

Please contact Greg Ryan, Manager Utility Excellence on (03) 8605 7611 or greg.ryan@wsaa.asn.au to discuss further.