



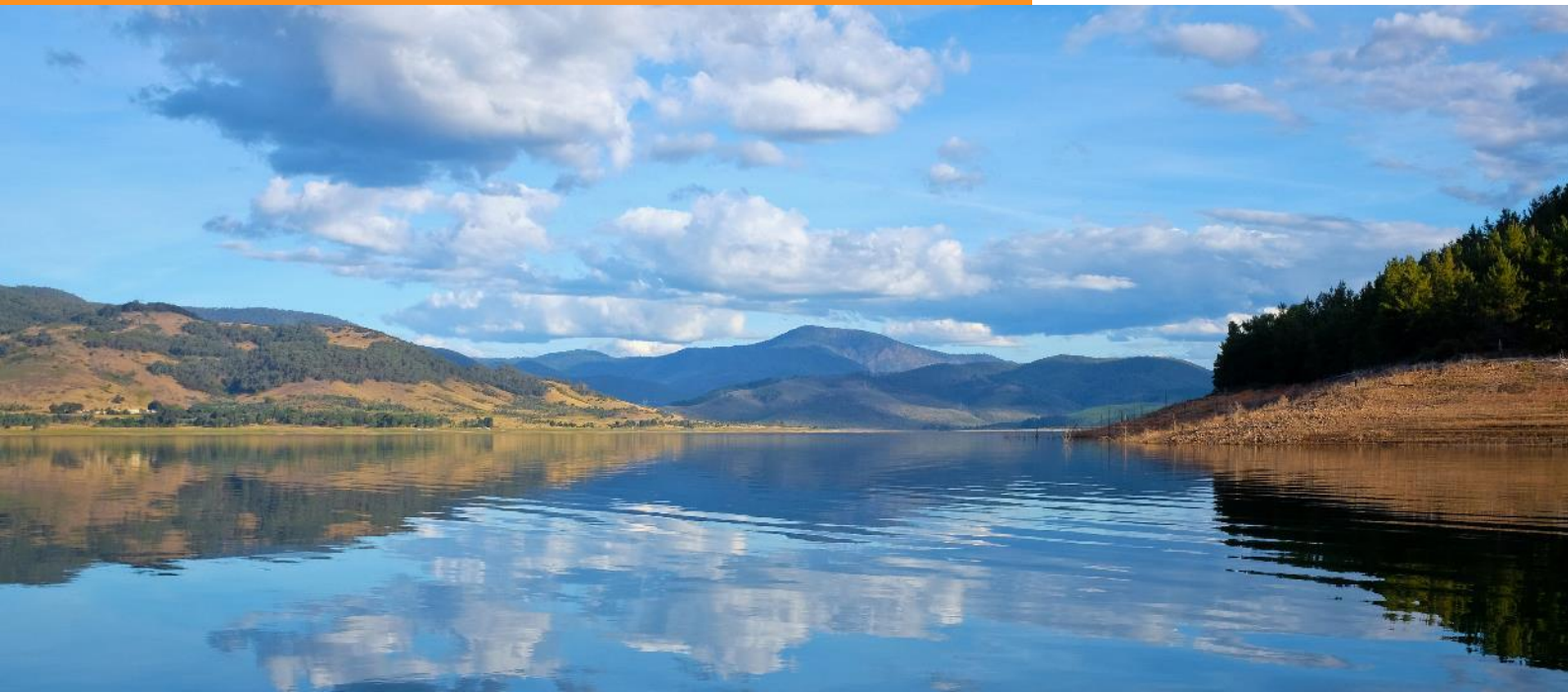
**WATER SERVICES**  
ASSOCIATION OF AUSTRALIA



# **WSAA Submission**

Evaluation of Foreign Investment  
Reforms

Public Consultation





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**SUBMISSION: Evaluation of the Foreign Investment Reforms**

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

## **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 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 urban water industry. The collegiate approach of its members has led to industry wide advances to national water issues.

WSAA supports strengthening Australia's national security and welcomes the opportunity to provide a submission on the Evaluation of Foreign Investment Reforms. This submission should be read in conjunction with WSAA's submission Foreign Investment Reform Bill 2020 dated September 2020.

## **Foreign Investment Reform Consultation**

The Department of Treasury is seeking stakeholder views on the impact of foreign investment reform, in particular the Foreign Investment Reform (Protecting Australia's National Security) Bill 2020 and the associated regulations and guidance. Of the 6 key areas identified in the consultation paper, it is national security and the "Call In" power that is of most relevance to the water industry and is the focus of this submission.

## **WSAA's submission**

WSAA remains concerned about the uncertainty of reviewable national security actions that can be "Called In". The Treasurer can "Call in for review" actions (including "significant actions") which are not otherwise notified if the Treasurer considers that the action may pose national security concerns. The review can occur:

- If the action is still proposed
- Up to 10 years after the action has been taken

A "significant action" is defined in legislation and includes significant agreements which relates to:

(a) the leasing of, the letting on hire of, or the granting of other rights to use, assets of the business;

(b) the participation by a person in the profits or central management and control of the business.

The Department of Treasury have prepared guidance notes to assist affected parties understand the impact of the reforms including the "Call in" power. In particular, there is water industry sectoral guidance in the National Security Guidance Note 8. Whilst WSAA supports the guidelines and the inclusion of sector specific guidance, it is disappointing that neither WSAA nor any impacted water entities, nor their jurisdictional Government owners, were consulted during the drafting of guidance. The guidance requires further clarification on the water industry specific circumstances that might trigger the "Call in" powers such as:

- significant agreements with foreign owned entities such as for the provision of operation and maintenance of water or sewage treatment plants.
- typical exemption or voluntary notification approval criteria for significant agreements with foreign entities. It is understood that the intent of the foreign investment reform is to primarily address actions which give foreign persons potential influence and rights over an Australia entity, such as the ability to influence or participate in the central management of policy or direction of the entity. The guidance should explicitly state that the term 'significant agreements' does not apply to agreements with a foreign owned entity in circumstances where the contract or agreement does not confer any ability to influence or participate in the central management of policy of an entity.
- The suggestion that a third party overseas investment vehicle requires “national security” risk assessment and subsequently is subject to the Treasurers “call in” powers is concerning and unnecessary, as these third party financial investment platforms have no manifest ability to functionally nor piratically operate or control a water business.

Without further clarification, the Call In power has the potential to:

- Require additional government approvals and result in an increased regulatory burden on water utilities.
- Contribute potential time and cost implications associated with contracting delays.
- Create investment uncertainty for foreign owned firms providing services to the Australian water industry and this risk may increase the cost for service delivery.
- create significant cost impost on water businesses through the need to cancel contracts and honour early pay out clauses. Such funds would typically be paid through increased costs to water business customers. The Act and amendments are currently silent on the ability of an affected entity to claim recompense from the Commonwealth should the Call In power be enacted.

WSAA advises that under the Security of Critical Infrastructure Act 2018, the definition of a critical water asset, (servicing 100,000 connections) there would no foreign investment approach which would practically meet that threshold. All foreign investments in the water sector relate to specific single point elements not systems, nor schemes, therefore any suggestion that the Treasurers “call in” powers are relevant, extends the Treasurer’s powers beyond those intended and defined of a “national security business.”

There is further work required to define the reviewable national security actions and the “Call in” power. Consequently, WSAA requests a meeting with The Department of Treasury to discuss further clarification in the water industry sectoral guidance to address the concerns above. Greater clarification would limit water industry costs, minimise uncertainty and ensure a proportionate response by government.

If you would like to discuss the key aspects of this proposal further please contact James Goode, [james.goode@wsaa.asn.au](mailto:james.goode@wsaa.asn.au) or 0434 609 618.