

**Application for interim and final  
authorisation under s 88(1) of the  
*Competition and Consumer Act 2010 (Cth)***

Lodged by:

**Water Services Association of Australia**  
on behalf of itself and its members

13 December 2023

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## 1 Summary

### 1.1 Background

This application is made to the Australian Competition and Consumer Commission (**ACCC**) by the Water Services Association of Australia (**WSAA**), on behalf of:

- (a) itself;
- (b) those of its members who are water utilities that procure gaseous chlorine (see Schedule 1) (**Current WSAA Members**); and
- (c) any other future member of the WSAA that is a water utility that procures gaseous chlorine (**Future WSAA Members**),

(the **Participants**).

The water sector is a critical infrastructure sector that plays an essential role in ensuring Australian communities have access to safe and reliable drinking water. The Participants seek urgent interim and final authorisation under section 88(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) to engage in the conduct described in section 3 of this application.

The Proposed Conduct is intended to assist the water sector to improve the resilience of the supply chain for gaseous chlorine, a chemical used to treat water for safe drinking, and to ensure the fair and equitable distribution of gaseous chlorine between Current WSAA Members and Future WSAA Members in the event of a material shortfall. The WSAA estimates that the water sector accounts for approximately 80% of the demand for gaseous chlorine in Australia.

There is currently only one single source of gaseous chlorine to water authorities being manufactured in Australia (Ixom Operations Pty Ltd (**Ixom**), operating out of Laverton, Victoria). The lack of alternative manufacturing facilities within Australia poses a material risk to critical national infrastructure. This is because disruptions in gaseous chlorine supply could risk access to safe and reliable drinking water, resulting in serious public health consequences for Australian communities, particularly vulnerable members of the community such as individuals who are elderly or who are immune compromised.

The Participants are working with representatives of the Department of Climate Change, Energy, the Environment and Water (**DCCEEW**), the Office of Supply Chain Resilience (**OSCR**) and the Department of Home Affairs (**DHA**), to explore solutions for strengthening the resilience of Australia's supply chain for gaseous chlorine through the collective importation of gaseous chlorine into Australia, and/or collective negotiation with chlorine suppliers in respect of the construction of a new gaseous chlorine bottling and drumming facility in Australia (**Working Group**). It is proposed that any authorised conduct would occur at, be in preparation for, or would arise out of meetings of this Working Group,<sup>1</sup> to be observed by a representative of the DCCEEW.

### 1.2 Application for urgent interim authorisation

The Participants have undertaken preliminary work to progress these urgent issues. They believe that further steps now require ACCC authorisation. Given the importance of these issues to critical national infrastructure and safe drinking water, the Participants request that the ACCC grant interim authorisation on an urgent basis by 31 January 2024. This is discussed in further detail in section 3.3 below. Except for emergency supply arrangements, the Participants only seek interim authorisation to engage in discussions, share information and/or enter in principle

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<sup>1</sup> Emergency supply arrangements would be tabled at meetings of the Working Group or otherwise notified to the Working Group within 48 hours.

agreement in respect of collective importation or collective arrangements with suppliers of chlor-alkali products. Interim authorisation is not sought to give effect to these arrangements.

## 2 Parties to the Proposed Conduct

### 2.1 Applicant

The WSAA was formed in 1995 as a non-profit organisation to foster the exchange of information between industry, government and the community, to promote sustainable water resource management and to facilitate collective action and collaboration in respect of national water issues.

The WSAA is the peak body that supports the Australian urban water industry, including by facilitating collaboration, knowledge sharing, networking and cooperation. Its structure of committees and networks allows it to undertake a wide range of projects, ranging from unfunded voluntary projects undertaken by a small group of interested members, to large international projects that include members and non-members in some cases.

In addition, the WSAA provides members and industry with best practice national codes and standards. These are widely adopted by its members and have assisted in moving Australia's water industry towards best practice in the creation of water and sewerage network infrastructure.

The WSAA's contact details are set out in Schedule 1.

Further information is available at <https://www.wsaa.asn.au/>.

### 2.2 Other persons who propose to engage in the Proposed Conduct

As noted above, the WSAA makes this application on behalf of itself, Current WSAA Members and Future WSAA Members who are water utilities and who procure gaseous chlorine.

Together, Current WSAA 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.

The vast majority of Current WSAA Members are public water authorities with specified statutory functions. For example, in metropolitan Melbourne, Melbourne Water manages storage reservoirs and supplies water to water retailers (Yarra Valley Water, South East Water and Greater Western Water), who in turn supply water to consumers. Equivalent structures are in place for rural and urban water corporations.

Importantly, Current WSAA Members do not compete with each other in relation to the supply of water or water services as:

- generally, each member has a separate geographic area it is responsible for which is provided for under statute (for example, Yarra Valley Water is responsible for the supply of water across approximately 4,000 square kilometres from Wallan in the North of metropolitan Melbourne to Warburton in the east)<sup>2</sup>; and
- where there are overlaps in geographic areas of responsibility, two water authorities would typically have different functions in relation to that area (for example, one authority might manage bulk water storage and the other might manage the retail supply of water for that area).

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<sup>2</sup> The Department of Energy, Environment and Climate Action has prepared a map setting out which water corporation supplies each geographic area in Victoria. See Department of Energy, Environment and Climate Action, 'Find your water corporation', *Victorian Government* (Web Page, 8 September 2023) <<https://www.water.vic.gov.au/for-households/find-your-water-corporation>>.

Current WSAA Members generate revenue from a number of sources, including payments from other water businesses for provision of services (for example, reservoir management), end-consumer charges (for example, water supply charges in water bills), development contributions from land developers, sale of land/assets and government grants. These funds are used for a broad variety of purposes, including to cover operating costs and capital works programs or are remitted back to state or territory governments.

As providers of essential services, water authorities are heavily regulated and accountable to the relevant minister for water in each state or territory. This regulation extends to prices water authorities may charge, with prices typically determined or recommended by independent regulators. For example, in Victoria, the Essential Services Commission issues price determinations that approve the maximum prices water businesses may charge their customers<sup>3</sup> and water authorities are required to prepare detailed annual reports which are provided to the relevant Water Minister and published online.<sup>4</sup>

The contact details of each of the Current WSAA Members are set out in Schedule 1.

### 3 The Proposed Conduct

#### 3.1 Background

##### (a) Treatment of drinking water in Australia

Water corporations or utilities in Australia use chlorine to disinfect water for safe drinking and to remove contaminants.

There are two forms of chlorine that are used to treat water on a large scale: gaseous chlorine and sodium hypochlorite (also known as liquid chlorine).

Gaseous chlorine is the water sector's preferred form of disinfectant for larger volumes of water as it is able to treat water more efficiently and effectively than liquid chlorine. Relevantly, as liquid chlorine is not pure chlorine (but is a liquid solution consisting of only 10-15% weight per volume of chlorine), much greater volumes of liquid chlorine are needed to disinfect water than if gaseous chlorine is used. For example, for sodium hypochlorite containing 12.5% chlorine, approximately eight times the volume of sodium hypochlorite is needed to be equivalent to one volume of liquefied chlorine gas. In addition, liquid chlorine cannot be stored for long periods of time as it loses its potency. Transitioning from a reliance on gaseous chlorine to liquid chlorine would require extensive changes to water treatment facilities and processes which would be cost prohibitive and extremely time consuming. For these reasons, the WSAA and its members do not consider liquid chlorine to be a viable substitute, at scale, for gaseous chlorine. The WSAA estimates that the water sector could only reduce its reliance on gaseous chlorine by a maximum of 5-10% by using liquid chlorine.

For completeness, the WSAA notes that bromide can also be used to disinfect water in pools, spas and cooling towers. However, it is not a suitable disinfectant for municipal drinking supplies due to costs, its taste and potential public health risks where it reacts with organic substances.

##### (b) What happens if water is not disinfected?

The immediate impact of a failure to disinfect water is that the relevant jurisdictional public health authority would issue a 'boil-water notice' to the public advising them to boil water before consumption. In the event an individual failed to adhere to a boil water notice and consumed

<sup>3</sup> See 'Tariffs for Victorian water businesses', *Essential Services Commission* (Web Page, 2023) <<https://www.esc.vic.gov.au/water/water-prices-tariffs-and-special-drainage/water-tariffs/tariffs-victorian-water-businesses>>.

<sup>4</sup> See, eg, 'Annual reports', *Yarra Valley Water* (Web Page) <<https://www.yvw.com.au/about-us/reports/annual-reports>>.

untreated water, that individual would be at risk of experiencing health problems from micro-organisms and chemicals, including severe gastroenteritis (vomiting or diarrhoea) that can last for several weeks.

Disruptions in gaseous chlorine supply could therefore have serious public health consequences for Australian communities, particularly vulnerable members of the community such as individuals who are elderly or who are immunocompromised. More broadly, if multiple state or territory public health authorities had to issue a boil water alert this could trigger a national public health emergency situation necessitating an oversight framework similar to the one implemented by the Commonwealth Government in response to the pandemic.

**Case study: Potential gaseous chlorine supply chain disruption in the United States**

In September 2022, the gaseous chlorine supply chain in the United States was on notice that it could be disrupted by railroad strikes.

The potential railroad strikes stemmed from an ongoing labour dispute between major railroads and labour unions. In an effort to avoid a strike, President Biden signed a resolution based on an agreement between the unions and freight rail companies that averted the strike.

However, prior to this point in time, the water sector industry in the United States had to prepare for shipments of gaseous chlorine to be halted as railroads started pulling shipments of hazardous materials, such as this chemical, off their lines so they would not be left unattended if there was a work stoppage.

The railroads began to prioritise delivering essential chemicals and products that were already in transit and, if a stoppage were to have occurred, they planned to prioritise shipping these products once it ended.

In addition, the water sector security team advised water utilities to first assess the implications of a disruption in the delivery of chlorine and other essential treatment chemicals, including by taking inventories and calculating the number of days of available supplies. In addition, it advised that, depending on these assessments, the utilities should consider:

- coordinating with suppliers regarding deliveries;
- conserving existing supplies;
- working with mutual aid and assistance contacts;
- consulting the state primacy agency to discuss steps that can be taken; and
- communicating potential impacts to treatment operations to the public, especially if boil water advisories became necessary.

**(c) Gaseous chlorine supply chain**

Gaseous chlorine is manufactured in chlor-alkali plants. These plants also produce other products, including liquid chlorine, caustic soda, hydrochloric acid and hydrogen. Australia has three major chlor-alkali producers: Coogee Chemicals Pty Ltd (**Coogee Chemicals**), Ixom and Omega Chemicals. The WSAA estimates that the water sector accounts for an estimated 5-8% of the overall market for the acquisition of chlor-alkali products, with other buyers being the herbicide, pesticide, chemical, mining, mineral processing and galvanising industries. However, for *gaseous chlorine*, the WSAA estimates that the water sector accounts for the **vast majority** (approximately 80%) of demand in Australia and, for gaseous chlorine that is packed at a drumming and bottling facility, an **even greater proportion** of demand.

Once gaseous chlorine is produced:

- For industrial customers, gaseous chlorine is typically piped to the relevant customer.
- For other customers, such as Current WSAA Members, gaseous chlorine is packaged by the producer in specially designed cylinders, drums and bulk tankers for transport and

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storage. As the chemical is hazardous, it cannot be safely transported and stored without this packaging. Therefore, a critical part of the gaseous chlorine supply chain is the availability of chlorine drumming and bottling facilities.

### (d) Supply chain resilience issue

With only one chlor-alkali drumming and bottling facility in Australia, the WSAA and Current WSAA Members, together with the Department of Home Affairs, DCCEEW and Department of Industry, Science and Resources (*DISR*), consider that urgent action is required to address a national supply chain issue affecting gaseous chlorine. The Commonwealth Attorney-General's Department, Critical Infrastructure Program for Modelling Analysis Report on the Chlorine Supply Chain – Implications for the Water Sector, identified the single production point as a significant problem for the water sector.<sup>5</sup>

Relevantly:

- in 2015, two bottling and drumming plants in Botany and Kwinana, Australia operated by Ixom and Coogee Chemicals respectively, were closed down as they were no longer seen to be economically viable;
- as a result of this closure, there is only one drumming and bottling facility in Australia: a facility located in Laverton, owned and operated by Ixom;
- as Ixom owns the only drumming and bottling facility in Australia, it is also the water sector's sole supplier of gaseous chlorine: Coogee Chemicals and Omega Chemicals do not manufacture gaseous chlorine and do not have the ability to package and store this chemical;
- in 2021-22, the South Australian railway was cut off due to flooding and this caused significant issues in relation to the transporting of gaseous chlorine around Australia (which usually occurs by train); and
- in the past year, other chemicals used in the water treatment process, such as carbon dioxide, have been in short supply.

The events above sparked concern about the risks inherent in relying on one drumming and bottling facility/supplier, including the serious supply chain disruptions that would result in the event of any of the following at the Ixom plant:

- equipment failure;
- loss of experienced operators;
- force majeure events; and/or
- Ixom withdrawing from the market (noting that Ixom is a privately owned corporation).

<sup>5</sup> Attorney-General's Department, *Critical Infrastructure Program for Modelling and Analysis: Chlorine Supply Chain Implications for the Water Sector* (Report, 10 October 2016) 5.

**(e) Previous attempts to improve supply chain resilience**

To address this supply chain risk, Current WSAA members have previously approached Ixom and Coogee Chemicals to request that they construct additional bottling and drumming facilities. These efforts resulted in Ixom and Coogee Chemicals being granted funding in 2022 from the Australian government as part of the Supply Chain Resilience Initiative Round 2. Ixom was granted \$2,000,000 to build a 'separate contingency Australian liquified chlorine gas plant' in NSW and Coogee Chemicals was granted \$2,000,000 to build a 'Kemerton Chlorine Bottling Facility' in WA.<sup>6</sup> It is understood that Coogee Chemicals has decided not to proceed with the Kemerton plant. Progress in relation to Ixom constructing a second plant has not materially progressed. WSAA understands that the cost of a bottling and drumming facility is in the order of \$12-15 million. Given the high capital outlay required, even with a government grant, WSAA considers it is highly unlikely that any potential supplier would commit to constructing a bottling and drumming facility without commitments from customers to acquire sufficient volumes of bottled and drummed gaseous chlorine under long-term supply contracts. Given that the water sector accounts for the vast majority of demand for gaseous chlorine that is packed at a drumming and bottling facility, WSAA submits that discussions between these suppliers and Current WSAA Members and/or Future WSAA Members regarding supply arrangements are therefore critical to supporting the construction of any new bottling and drumming facility in Australia.

**(f) Alternative supply options**

In order to mitigate the risks outlined above, the Australian water sector wishes to diversify the sources from which it acquires gaseous chlorine. The WSAA has identified the following potential options for supply:

- (a) the importation of gaseous chlorine into Australia from overseas;
- (b) the construction of an additional drumming and bottling facility in Australia (by Ixom, or another existing supplier of chlor-alkali products); or
- (c) a combination of options (a) and (b) above.

**3.2 The Proposed Conduct**

The Participants seek final authorisation under the CCA for the WSAA, Current WSAA Members and/or Future WSAA Members to discuss, enter into or give effect to any contract, arrangement or understanding between them, or engage in any conduct, which has the purpose of:

- securing adequate supplies of gaseous chlorine for the Australian water sector;
- ensuring or improving security of supply of gaseous chlorine in Australia for the Australian water sector; and/or
- ensuring an equitable distribution of gaseous chlorine (or an acceptable alternative chlorine product) to water utilities in Australia in the event of a Material Threat to Supply (as defined below);

and which falls into one or more of the following categories:

<sup>6</sup> See 'Supply Chain Resilience Initiative: Round 2 grant recipients', *Australian Government* (Web Page, 26 August 2022) <<https://business.gov.au/grants-and-programs/supply-chain-resilience-initiative-round-2/grant-recipients>>.



- (a) **Collective importation of gaseous chlorine:**
- (i) jointly negotiate, enter into or give effect to a contract, arrangement or understanding to acquire and import into Australia gaseous chlorine from a supplier located outside of Australia, including where Current WSAA Members and Future WSAA Members may be subject to substantially the same price and non-price terms and conditions as relevant; and/or
  - (ii) propose, discuss or exchange information with each other for the purpose of the activities described in 3.2(a)(i), including in relation to:
    - (A) the volumes of gaseous chlorine required by one or more Current WSAA Member(s) or Future WSAA Member(s);
    - (B) the amount of gaseous chlorine one or more Current WSAA Member(s) or Future WSAA Member(s) has stockpiled or ordered; and/or
    - (C) domestic or overseas market supplier experience and opportunities.
- (b) **Collective negotiation with suppliers of chlor-alkali products:**
- (i) jointly negotiate, enter into or give effect to a contract, arrangement or understanding under which a supplier of chlor-alkali products will:
    - (A) construct a new bottling and drumming facility in Australia; and/or
    - (B) supply Current WSAA Members and Future WSAA Members with gaseous chlorine, including under which Current WSAA Members and Future WSAA Members may be subject to substantially the same price and non-price terms and conditions where relevant; and/or
  - (ii) propose, discuss, or exchange information with each other for the purpose of the activities described in 3.2(b)(i), including in relation to:
    - (A) the volumes of gaseous chlorine required by one or more Current WSAA Member(s) or Future WSAA Member(s);
    - (B) the amount of gaseous chlorine one or more Current WSAA Member(s) or Future WSAA Member(s) has stockpiled or ordered; and/or
    - (C) supplier experience and opportunities.
- (c) **Emergency supply arrangements:**
- (i) in the event of a Material Threat to Supply to one or more Current WSAA Member(s) or Future WSAA Member(s), propose, discuss, enter into or give effect to a contract, arrangement or understanding with each other:
    - (A) to allocate volumes of gaseous chlorine or an acceptable alternative chlorine product between Current WSAA Members or Future WSAA Members; and/or
    - (B) in respect of logistical arrangements to distribute gaseous chlorine or an acceptable alternative chlorine product to one or more Current WSAA Members or Future WSAA Members; and/or
  - (ii) propose, discuss or exchange information with each other for the purpose of the activities described in 3.2(c)(i), including to determine whether or not there is a Material Threat to Supply,

(the *Proposed Conduct*).

For the purposes of this application, a **Material Threat to Supply** occurs when, in respect of one or more Current WSAA Members or Future WSAA Members, WSAA forms the view (acting reasonably) that:

- demand for gaseous chlorine exceeds supply within a 12 month projection; or
- stockpiles are projected to fall below six weeks of supply within a 12 month projection.

Importantly, the Proposed Conduct:

- does not prevent any individual Participant from exploring the acquisition of gaseous chlorine in their own right; and
- is not compulsory, and any Participant can opt out of the proposed collaboration under the authorisation.

Interim authorisation is also sought for the Proposed Conduct, except that with respect to categories (a) and (b) above, it would be limited to discussions, sharing information, and/or entering into principle agreement with respect to those matters. Interim authorisation is not sought with respect to giving effect to any contract, arrangement or understanding regarding the matters in categories (a) or (b) above (**Proposed Interim Conduct**).

For the duration of the interim and final authorisation, the Participants propose that the Proposed Conduct and Proposed Interim Conduct (as applicable) be limited as follows:

- (a) in respect of categories (a) and (b) above, the Proposed Conduct or Proposed Interim Conduct (as applicable) must occur at, in preparation for, or arise out of, meetings of the Working Group, which as noted above is to be observed by a representative of DCCEEW; and
- (b) in respect of category (c) above, details of the relevant emergency supply arrangement must be tabled at a meeting of the Working Group or otherwise notified to members of the Working Group within 48 hours of WSAA, Current and/or Future WSAA Members entering into the relevant contract, arrangement or understanding.

### 3.3 Application for interim authorisation

The Participants submit that urgent interim authorisation is sought for the Proposed Interim Conduct for the following reasons. WSAA seeks interim authorisation by 31 January 2024.

- (a) **Further work to improve the resilience of the gaseous chlorine supply chain cannot be completed without authorisation**

The WSAA has conducted significant exploratory work to identify ways to improve the resilience of the gaseous chlorine supply chain. The alternative supply options identified at 3.1(f) above are the result of this work.

The WSAA considers that:

- the collective importation of gaseous chlorine; and/or
- collective negotiation with suppliers of chlor-alkali products

are the two most viable longer term solutions. The Participants consider that the next step is to commence sharing demand and other relevant information and engaging in discussions so that they can engage in meaningful discussions with potential importers and/or suppliers regarding potential long term arrangements. The Participants cannot take this step unless and until they are granted authorisation to do so.

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The Participants have considered whether it would be feasible for additional steps to be taken with respect to negotiations with importers and domestic suppliers (eg, the Proposed Conduct and the Proposed Interim Conduct set out at 3.2(a) and (b) above) *before* authorisation is granted. However, discussions regarding long term supply arrangements are likely to be critical to supporting the construction of any new bottling and drumming facility in Australia. In addition, pooling volume requirements is also likely to be important to securing importation at scale for the water sector. Accordingly, to engage in meaningful discussions with potential suppliers and/or importers, WSAA submits that progressing either of these long term solutions requires WSAA, Current WSAA Members and/or Future WSAA Members to be able to engage in discussions, share information and, where relevant, reach in principle agreement about these supply arrangements. In addition, the WSAA requires the input and expertise of its members in order to be able to progress these discussions.

In addition, the WSAA has also identified a need under interim authorisation to discuss emergency supply arrangements in the event a Material Threat to Supply occurs before a longer term solution is achieved. In the event that a Material Threat to Supply occurred prior to any final ACCC authorisation being received (which could be up to 6 months under the ACCC's authorisation guidelines), the WSAA, Current WSAA Members and/or Future WSAA Members would be unable to agree emergency supply arrangements to ensure equitable distribution of gaseous chlorine or an acceptable alternative during this period.

[REDACTED]

As set out at section 3.1(d) above, currently the Australian water sector is reliant on one sole bottling and drumming facility in Australia and one supplier from which it can acquire gaseous chlorine which is used to disinfect water for safe drinking.

[REDACTED]

under the oversight of the working group observed by

DCCEEW.

[REDACTED]

(d) **Urgent authorisation for the Proposed Interim Conduct is important**

The Participants submit that urgent interim authorisation is required in respect of the Proposed Interim Conduct (as set out at 3.2 above). Relevantly, it is important to progress diversification of the sources of gaseous chlorine (ie, the Proposed Conduct and the Proposed Interim Conduct set out at 3.2(a) and (b) above) in parallel with emergency supply arrangements (ie, the Proposed Conduct and the Proposed Interim Conduct set out at 3.2(c) above), because:

- urgent steps are required to diversify the sources of gaseous chlorine supply, particularly the need for a second bottling plant within Australia if possible, given the high risks involved in relying on only one source of supply for gaseous chlorine, and the significant lead-times involved in establishing additional supply from the Proposed Conduct and the Proposed Interim Conduct set out at 3.2(a) and (b) above (for example, gaseous chlorine containers have limited availability in Australia and long lead-times to procure). Accordingly, scaling up a sufficient volume of gaseous chlorine containers in the case of a Material Threat to Supply could be extremely difficult); and
- a Material Threat to Supply could occur without warning. It is therefore important to establish arrangements to ensure the equitable distribution of gaseous chlorine in these circumstances (ie, the Proposed Conduct and the Proposed Interim Conduct set out at 3.2(c) above).

Importantly, under the Proposed Interim Conduct, the Participants would not give effect to any contract, arrangement or understanding until final authorisation is granted and the Proposed Interim Conduct (as well as the Proposed Conduct) would occur under the oversight of the working group observed by DCCEEW.

If, while interim authorisation is in place, the ACCC is concerned about the effectiveness of the Proposed Interim Conduct, it will be open to the ACCC to revoke that authorisation at any time.

### 3.4 Rationale

As noted above, authorisation is sought to improve supply chain resilience in relation to gaseous chlorine in Australia. The Proposed Conduct and the Proposed Interim Conduct will enable the Participants to work together to explore supply chain diversification to ensure that the Australian public continues to have access to safe drinking water.

### 3.5 Provisions of the CCA which might apply to the Proposed Conduct and the Proposed Interim Conduct

As set out above at section 2.2, generally speaking, the Participants do not compete in relation to the supply of any product or service as the customers they serve are designated by legislation and regulations and there is no competitive overlap between them. However, there may be limited scenarios in which they do compete. In particular, the Participants may compete in relation to the acquisition of gaseous chlorine and other inputs to their operations.

Accordingly, in the absence of authorisation, the Proposed Conduct and the Proposed Interim Conduct risks giving rise to contraventions of the CCA, including provisions of the CCA relating to:

- (a) cartel conduct (Division 1 of Part IV) (ss 45AD, 45AF, 45AG, 45AJ, and 45AK of the CCA); or
- (b) contracts, arrangements or understandings, concerted practices, exclusive dealing and other conduct that have the purpose, effect or likely effect of substantially lessening competition (ss 45(1), 46(1) and 47(1) of the CCA).

### 3.6 Term of authorisation sought

The Participants seek authorisation to engage in the Proposed Conduct for a period of five years from the date of a final determination by the ACCC.

The Participants consider that this period will enable it to build resilience in the supply chain for gaseous chlorine, noting that:

- (a) negotiating and giving effect to agreements to acquire gaseous chlorine from overseas or to construct an additional bottling and drumming facility in Australia is expected to take several years; and
- (b) the ACCC could, under s 91B of the CCA, revoke authorisation should there be a material change in circumstances.

## 4 Persons who may be directly impacted by the Proposed Conduct and the Proposed Interim Conduct

The persons who may be directly impacted by the Proposed Conduct and the Proposed Interim Conduct include suppliers or potential suppliers of gaseous chlorine to the Participants, Current WSAA Members and Future WSAA Members.

## 5 Counterfactual

In the absence of the Proposed Conduct and the Proposed Interim Conduct, there may be a material limitation on the ability of the Participants to explore supply chain diversification in respect of gaseous chlorine. This is because the volumes of gaseous chlorine used by many Current WSAA Members are likely to be insufficient to explore solutions such as importation of gaseous chlorine or negotiating with suppliers in relation to the construction of an additional bottling and drumming facility and/or the cost of doing so would be prohibitive.

This means that, without the Proposed Conduct and the Proposed Interim Conduct, it is less likely that effective steps can be taken to improve the resilience of the gaseous chlorine supply chain. Although historically a number of chlor-alkali suppliers proposed to build a further bottling and drumming facility (see above at 3.1), these plans appear either to have been terminated or not materially progressed, and, given the likely costs of the facility, the WSAA considers that an ability to collectively negotiate with these suppliers is critical to securing the construction of a second bottling and drumming facility being built or being built in a timely manner.

In addition, to the extent that some Current WSAA Members or Future WSAA Members were able to explore alternative supply options individually:

- (a) this would occur in a less timely and efficient manner than if Australian water authorities were permitted to act together and engage in the Proposed Conduct and the Proposed Interim Conduct; and
- (b) the costs of alternative supply would likely be higher than if Current WSAA Members or Future WSAA Members explored those solutions collectively, with those higher costs being passed onto consumers of drinking water.

Finally, some Current WSAA Members and Future WSAA Members may not have sufficient resources to investigate alternative supply options at all.

## 6 Public benefits

The Participants submit that the Proposed Conduct and the Proposed Interim Conduct will result in significant public benefits, namely:

- (a) The Proposed Conduct and the Proposed Interim Conduct will enable the Participants to improve the **resilience** of Australia's gaseous chlorine supply chain which is currently supplied by a single supplier. This is because the pooled demand of the Participants is sufficient to successfully support an overseas supplier importing gaseous chlorine into Australia and/or to collectively negotiate with suppliers of chlor-alkali products to build a new bottling and drumming facility in Australia (increasing sovereign capability). In addition, the Proposed Conduct and the Proposed Interim Conduct enables the Participants to cooperate in respect of allocations and/or logistical arrangements in the event of a Material Threat to Supply. This also improves the resilience of the supply chain by ensuring that, in addition to supply chain diversification, the water sector can cooperate to ensure an equitable distribution in the event that there is a material projected shortfall.
- (b) A more resilient supply chain (see (a)) **reduces the risk of supply disruptions** which could threaten the access of Australian communities to safe drinking water, giving rise to significant public health risks, particularly for vulnerable members of the community. In addition, if there were a disruption to the supply of gaseous chlorine and the jurisdictional public health authorities issued boil water notices on a large scale, this would likely result in a **significant loss of confidence in the water sector** along with jurisdictional governments, coupled with the likely declaration of a national emergency. In turn, this could lead to an increased reliance on plastic bottled water with related **negative environmental impacts**. The Proposed Conduct and the Proposed Interim Conduct makes these events and impacts less likely.
- (c) Water is an essential service and the activities of water authorities are regulated by statutes in each state and territory. The WSAA's members comprise 86 metropolitan and regional water authorities from around Australia. The Proposed Conduct and the Proposed Interim Conduct will ensure that supply chain diversification can be taken in an efficient and timely manner, and that in the event of a Material Threat to Supply, available supplies can be distributed equitably among Current WSAA Members and Future WSAA Members. In this way, the Proposed Conduct and the Proposed Interim Conduct gives rise to **efficiencies and reduced transaction costs** for water utilities which is an additional public benefit. This will enhance the efficient use of resources of public water utilities.
- (d) In respect of the Proposed Conduct and the Proposed Interim Conduct at 3.2(a) and (b), in the absence of collective action:
  - (i) some larger water authorities may have the resources and ability to import required volumes of gaseous chlorine from overseas, however, the costs involved in doing so would likely be **prohibitive** for smaller water authorities, increasing the risk of gaseous chlorine supply risks for those smaller water authorities and their customers as compared with the larger water authorities;
  - (ii) even if some larger water authorities were able to secure importation of gaseous chlorine, any such acquisition would likely result in higher costs (which would be passed onto consumers). As such, the Proposed Conduct and the Proposed Interim Conduct would **avoid these higher costs**; and

- (iii) it is unlikely any single water authority (large or small) would have enough demand for it to be commercially viable for a supplier to agree to construct an additional bottling and drumming facility based on that water authority's demand alone. This means that, without the Proposed Conduct and the Proposed Interim Conduct, it is less likely that an additional bottling and drumming facility would be built, or built in a timely manner.
- (e) Finally, in the event of a Material Threat to Supply, the Proposed Conduct and the Proposed Interim Conduct in 3.2(c) above will enable Current WSAA Members and Future WSAA Members to allocate and ration supply between them in an equitable way. Being able to respond to a Material Threat to Supply is an additional public benefit, ensuring that the WSAA would be able to facilitate cooperation between water utilities in the event that one or more water utilities had insufficient supply. Being able to respond to a Material Threat to Supply will also further enhance confidence in Australia's water sector.

## 7 Public detriment

The Participants submit that the Proposed Conduct and the Proposed Interim Conduct will result in a significant net public benefit.

The Participants consider that there is limited potential for the Proposed Conduct and the Proposed Interim Conduct to give rise to public detriments, namely:

- (a) Current WSAA Members **do not compete** in relation to the supply of any product or service as the customers they serve are designated by legislation and regulations and there is no competitive overlap between them. To the extent Current WSAA Members compete in relation to the acquisition of chemicals and other business inputs, the Proposed Conduct and the Proposed Interim Conduct relates to the acquisition of a single product (gaseous chlorine) of which there is currently only a single monopoly supplier. In these circumstances, it is difficult to see how the Proposed Conduct and the Proposed Interim Conduct could reduce competition between Current WSAA Members for the acquisition of gaseous chlorine. If anything, by enhancing diversity of supply in Australia, the Proposed Conduct and the Proposed Interim Conduct is likely to increase competition among Current WSAA Members for the acquisition of gaseous chlorine in the future.
- (b) The water industry is estimated to consume only 5-8% of the overall market for the acquisition of chlor-alkali products in Australia (despite accounting for the vast majority of demand for gaseous chlorine that is packed at a chlorine drumming and bottling facility). The Participants therefore submit that any **impact on their incumbent supplier** of gaseous chlorine is likely to be low.
- (c) The Proposed Conduct and the Proposed Interim Conduct will be subject to **government oversight** as a representative from DCCEEW will observe meetings of the Working Group and the Proposed Conduct and Proposed Interim Conduct is limited to conduct which occurs at, in preparation for or arises out of meetings of the working group. In addition, any emergency supply arrangements agreed among WSAA, Current and/or Future WSAA Members is required to be tabled at meetings of the working group or otherwise notified to its members. In addition, Current and Future WSAA Members are also themselves *public* water authorities who are heavily regulated and accountable to the relevant minister for water in each state or territory. This means that there is significant degree of oversight of the Proposed Conduct and Proposed Interim Conduct.

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In light of the significant public benefits outlined above and limited public detriment, the Participants submit the Proposed Conduct and the Proposed Interim Conduct will result in a significant net public benefit.

8 Contact details of relevant market participants

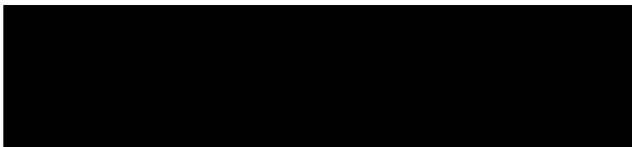
Name	Contact details (phone number and email address)
Coogee Chemicals	[Redacted]
Ixom	[Redacted]
Omega Chemicals	[Redacted]

9 Declaration by applicant

The undersigned declares that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertakes to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned is aware that giving false or misleading information is a serious offence and is aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code Act 1995* (Cth).



James Goode  
**Asset Management Program Coordinator**  
Water Services Association of Australia  
This thirteenth day of December 2023



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**Schedule 1**

**DETAILS OF PARTIES TO THE PROPOSED CONDUCT AND THE PROPOSED INTERIM CONDUCT**

**1 Applicant's contact details**

Name, address (registered office), telephone number and ACN	Contact person's name, position, telephone number and email address
Water Services Association of Australia Limited (ACN 117 907 285)  Level 8, 401 Docklands Drive, VIC, 3008  Ph: (03) 8605 7600	Dr Greg Ryan  Director Business Excellence [REDACTED]  James Goode  Asset Management Program Coordinator [REDACTED]

**2 Email address for service of documents in Australia**

Rosannah Healy  
 Partner  
 Allens

[REDACTED]

**Current WSAA Member Details**

Name	Contact person's name, position and email address	Description of business activities
Central Coast Water	Jamie Loader, Director, [REDACTED]	Water and sewerage services
City of Gold Coast	Justin Barnes, Coordinator Issue Management and Security, [REDACTED]	Water and sewerage services
Coliban Water	Damien Wells, CEO [REDACTED]	Water and sewerage services
Central Gippsland Regional Water	Sarah Cumming, CEO, [REDACTED]	Water and sewerage services
Gladstone Area Water Board	Darren Barlow, CEO, [REDACTED]	Water and sewerage services

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Goulburn Valley Water	Sarah Thompson, CEO, [REDACTED]	Water and sewerage services
Logan City Council	Darren Scott, CEO, [REDACTED]	Water and sewerage services
Redland City Council	Andrew Chesterman, CEO, [REDACTED]	Water and sewerage services
Shoalhaven City Council	Stephen Dunshea, CEO, [REDACTED]	Water and sewerage services
Sunwater	Glen Stockton, CEO, [REDACTED]	Water and sewerage services
Toowoomba Regional Council	Brian Pidgeon, CEO, [REDACTED]	Water and sewerage services
Townsville City Council	Seren McKenzie, GM Water and Waste, [REDACTED]	Water and sewerage services
Tweed Shire	Brie Jowlett, Manager water and wastewater operations, [REDACTED]	Water and sewerage services
Sydney Water	Sanjeev Mohan, Category Manager - Chemicals and Water Treatment, [REDACTED]	Water and sewerage services
Water Corporation, Western Australia	Stephen MacCarthy, Manager - Corporate Security Risk & Assurance, [REDACTED]	Water and sewerage services
Urban Utilities	Scott Summerville, Head of Procurement and Supply Finance, [REDACTED]	Water and sewerage services
Seqwater	Jessica McDonald, Water Supply Systems Technical Officer, [REDACTED]	Water and sewerage services
Unity Water	Sebastian Burgman, Head of Corporate Development, [REDACTED]	Water and sewerage services
Central Highlands Water	Chris Peters, Category Manager, [REDACTED]	Water and sewerage services

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Wannon Water	Les Johnson, Manager Corporate Contracts & Projects, [REDACTED]	Water and sewerage services
Barwon Water	William Buchanan, Manager Asset Systems and Environment, [REDACTED]	Water and sewerage services
Hunter Water	Sally Drayton, Delivery Manager, [REDACTED]	Water and sewerage services
Icon Water	Guy Richardson, Manager Business Continuity, [REDACTED]	Water and sewerage services
Melbourne Water	Craig Dixon, General Manager Infrastructure Operations, [REDACTED]	Water and sewerage services
Greater Western Water	Judy Wignell, Manager Property and Procurement, [REDACTED]	Water and sewerage services
South East Water	Tara McCormack, Senior Manager, [REDACTED]	Water and sewerage services
Yarra Valley Water	Glenn Wilson, GM Service Futures, [REDACTED]	Water and sewerage services
Suez	Mark Lautre, VP Operations and Delivery, [REDACTED]	Water and sewerage services
Taswater	James Macartney, Department Manager - Supply Chain Services, [REDACTED]	Water and sewerage services
SA Water	Anthony Warner, Category Lead - Operations (SA Water) [REDACTED]	Water and sewerage services
Power and Water	Nazrul Islam, Senior Manager – Asset Management Water Services, [REDACTED]	Water and sewerage services