

27 November 2020

Critical Infrastructure Reforms Team
Department of Home Affairs

By email: ci.reforms@homeaffairs.gov.au

Dear Sir/Madam,

Exposure Draft Security Legislation Amendment (Critical Infrastructure) Bill 2020

The Australian Investment Council welcomes the opportunity to contribute to the Department of Home Affairs' exposure draft bills, *Security Legislation Amendment (Critical Infrastructure) Bill 2020* and *Intelligence Services Regulations 2020*.

The Council reiterates the concerns raised in its 16 September 2020 submission to the Department (included below) regarding the proposed changes to the critical infrastructure legislation.

To support Australia's economic recovery and transition out of the prevailing downturn, we need reliable and workable policies and legislation that help facilitate business growth and development, which allows businesses and entrepreneurs to partner with local and offshore investors. As a net importer of capital, Australia's economy relies on a dependable and steady flow of foreign capital to drive economic growth and job creation. In our view, the proposed changes to the *Security of Critical Infrastructure Act 2018* (SOCI Act), through its links to the *Foreign Acquisition and Takeovers Act* (FATA), have the potential to impede the ability of Australian business to access this vital funding.

We note that the explanatory memorandum to the *Foreign Investment Reform (Protecting Australia's National Security) Bill 2020*, explicitly references the SOCI Act and the potential for changes in the scope of that Act having flow on effects to the foreign investment review regime. Specifically, the explanatory memorandum states:

1.45 The first three categories incorporate concepts of businesses that are direct interest holders in assets or responsible entities for assets under the *Security of Critical Infrastructure Act 2018* or subject to the *Telecommunications Act 1997*. The FATA adopts the key considerations relating to which businesses are considered important for national security purposes under those Acts. **[Definition of national security business, paragraphs 10A(2)(a) and (b) of the FATR]**

1.46 If additional businesses come into the scope of those Acts, those added businesses will be included in the corresponding FATA categories. If businesses are removed from the scope of those Acts, they will be excluded from these categories of the definition, and if they are not within any other category in the definition of national security business, from the scope of the definition. Importantly, the word 'entity' in paragraph 10A(2)(b), has the broader meaning of the *Security of Critical Infrastructure Act 2018*, rather than the narrower FATA meaning of a corporation or unit trust.

Ongoing uncertainty regarding the SOCI Act (and Australia's foreign investment review regime) continue to have a direct impact on the preparedness of investors to support Australian businesses.

While we will always be supportive of targeted policies that service a clear purpose of enhancing the integrity of Australia's foreign investment and national security protocols, in our opinion these reforms risk materially increasing the regulatory burden on Australian businesses, both directly and indirectly, for what appears to be little gain from a national security perspective.

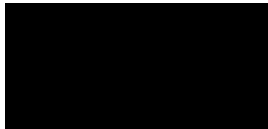


The private capital industry's main concerns relate to the definitions incorporated within these reforms, which we believe would likely capture a wide range of firms, many of which are small and pose no security risk. While the private capital industry understands this is not the Department's intent, unnecessarily broad or ambiguous definitions will likely have flow on affects in relation to investor perceptions and the FATA.

The Council encourages the government to carefully consider all elements of the feedback at both a high level and a more granular transactional level. It is vitally important that policy changes in this area are calibrated to deliver the right long-term outcomes for the nation, and we feel that important changes can be made to the direction of these reforms which will increase the likelihood of realising the overarching policy objectives.

We look forward to participating in future discussions about the proposed reforms, including the development of sector specific guidance. If you have any questions about the recommendations or any specific points outlined in this submission, please do not hesitate to contact me or Brendon Harper, the Australian Investment Council's Head of Policy and Research, on [REDACTED].

Yours sincerely



Yasser El-Ansary
Chief Executive