

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
INVESTMENT COMMITTEE**

Investment policy related to national security

Notification by Australia

23 October 2018

On 6 September 2018, Australia notified the OECD of a new investment policy related to national security pursuant to its obligations under the Codes of Liberalisation and the National Treatment instrument. This document reproduces the notification, which will support discussions of the measure at Freedom of Investment Roundtable 29 on 23 October 2018.

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Investment policy related to national security Notification by Australia

1. Security of Critical Infrastructure Act 2018

Pursuant to its obligations under the OECD investment instruments, Australia notifies the OECD that the Australian Government has passed the *Security of Critical Infrastructure Act 2018 (SOCI Act)*, on 11 April 2018. The SOCI Act entered into force 11 July 2018.

Critical infrastructure provides services that are essential for everyday life such as energy, food, water, transport, communications, health and banking and finance. Secure and resilient infrastructure supports productivity, and helps to drive the business activity that underpins economic growth. A disruption to critical infrastructure could have serious implications for business, governments and the community through impacting supply security and service continuity.

National security risks to critical infrastructure are complex and have continued to evolve over recent years. Rapid technological change has resulted in critical infrastructure assets having increased cyber connectivity, and greater participation in, and reliance on, global supply chains, with many services being outsourced and offshored.

Foreign involvement in Australia's critical infrastructure brings many benefits, but in some cases can increase a malicious actor's ability to access and control Australia's critical infrastructure in a way that is much more difficult to detect or attribute. This can in turn enable them to target activity in a way that can have subtle effects on the continuity of services to citizens, as well as extreme consequences for other dependant infrastructure or defence assets.

The SOCI Act provides a framework to address and manage risks to national security relating to critical infrastructure, by:

- improving the transparency of the ownership and operational control of critical infrastructure in Australia in order to better understand those risks; and
- facilitating cooperation and collaboration between all levels of government, and regulators, owners and operators of critical infrastructure, in order to identify and manage those risks.

Powers under the SOCI Act include:

- establishing and maintaining a register of information in relation to critical infrastructure assets (the register will not be made public);
- requiring certain entities relating to a critical infrastructure asset to provide information in relation to the asset, and to notify if certain events occur in relation to the asset;

- as a last resort, enabling the Minister for Home Affairs (the Minister) to require certain entities relating to a critical infrastructure asset to do, or refrain from doing, an act or thing if the Minister is satisfied that there is a risk of an act or omission that would be prejudicial to security;
- authorising the Secretary of the Department of Home Affairs to require certain entities relating to a critical infrastructure asset to provide certain information or documents; and
- authorising the Secretary of the Department of Home Affairs to undertake an assessment of a critical infrastructure asset to determine if there is a risk to national security relating to the asset.

The SOCI Act applies equally to both Australian and foreign owners and operators of critical infrastructure. It also provides business with greater certainty by clarifying which critical infrastructure assets are most likely to require safeguards, and by providing a collaborative approach to managing national security risks. The SOCI Act applies to approximately 165 assets, both foreign and domestic-owned, in the electricity, gas, water, and port sectors. Owners and operators of relevant critical infrastructure assets will have six months from 11 July 2018 to register ownership and operational information on the register.

The full text of the Security of Critical Infrastructure Act 2018 is available on the Australian Government Federal Register of Legislation, Security of Critical Infrastructure Act 2018. No. 29, 2018: <https://www.legislation.gov.au/Details/C2018A00029>

Proposed addition to the list of measures reported for transparency under the National Treatment instrument

Australia requests to include a new entry under item A/I of the list of measures reported for transparency under the [National Treatment instrument](#) as follows:

“A. Measures Reported for Transparency at the Level of National Government

I. Measures based on public order and essential security considerations

a. Investment by established foreign controlled enterprises

Trans-sectoral: The Security of Critical Infrastructure Act 2018 creates a framework for managing critical infrastructure by establishing a non-public register of critical infrastructure assets, and by collecting and updating – via reporting obligations for interest holders – information on the operation, ownership and control of the assets in the register. The rules are asset-specific and ownership-neutral and hence apply to domestic and foreign owners alike. The Act also gives the Minister for Home Affairs a power of “last resort” to direct the operator of a listed asset in the registry to do or not do a specific thing to manage an identified national security risk in certain circumstances.

Authority: Security of Critical Infrastructure Act 2018, as passed by the Australian Parliament 11 April 2018, (C2018A00029 No. 29, 2018).”

2. Review process of acquisitions of electricity transmission and distribution assets, and some generation assets

Further, Australia notifies the OECD that the Australian Government announced, on 1 February 2018, clarifications to the administration of the review process of acquisitions of electricity transmission and distribution assets, and some generation assets, by foreign buyers.

Proposed addition to the list of measures reported for transparency under the National Treatment instrument

Australia requests to include a new entry under item A/I of the list of measures reported for transparency under the National Treatment instrument as follows:

“A. Measures Reported for Transparency at the Level of National Government

I. Measures based on public order and essential security considerations

On 1 February 2018, the Australian Government clarified how it administers the investment review process of acquisitions of electricity transmission and distribution assets, and some generation assets, by foreign buyers. Ownership restrictions or conditions may be imposed on such acquisitions on a case by case basis on national security grounds.

Authority: [Joint media release with the Minister for Home Affairs Minister for Immigration and Border Protection, 005/2018](#)”

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