

**To: Senate Standing Committees on Economics – Senate Economics Legislation Committee**

**Re: Foreign Investment Reform (Protecting Australia’s National Security) Bill 2020 and Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020 [Provisions]**

**9 November 2020**

## Introduction

AMEC appreciates the opportunity to provide a submission to the Senate Economics Legislation Committee inquiry regarding the recently announced draft *Foreign Investment Reform (Protecting Australia’s National Security) Bill 2020* (FIRB), the associated draft Regulations, to give effect to the *Foreign Acquisitions and Takeovers Act 1975*, and subsequent draft *Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020*. The Bills, due for implementation from 1 January 2021, present an overhaul to existing legislation that will have a significant impact on Australia’s economy, particularly the mineral exploration and mining industry.

## About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national industry body representing over 345 mining and mineral exploration companies across Australia.

The mining and exploration industry make a critical contribution to the Australian economy, employing over 255,000 people. In 2018/19, these companies collectively paid over \$39 billion in royalties and taxation, invested \$36.1 billion in new capital and generated more than \$283 billion in mineral exports. In 2019/20, \$2.8 billion was spent on minerals exploration, representing an 18% increase from the previous year.

## Proposed reforms

### General Feedback

AMEC made two submissions to the Department of Treasury’s FIRB reforms consultation process; we are yet to see a response to our legitimate concerns regarding financing of projects<sup>1</sup>. In our submissions, we highlighted concerns with the extent of the reforms, representing an almost complete overhaul of the current foreign investment framework, risking the viability and future prosperity of Australia’s mineral exploration and mining industry.

AMEC supports the need to protect Australia’s national interest and security while simultaneously acknowledging the importance of foreign investment. Foreign investment benefits industry both

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<sup>1</sup> <https://secureservercdn.net/198.71.233.51/0h5.0cf.myftpupload.com/wp-content/uploads/2020/09/Submission-to-FIRB-review.pdf>

directly and indirectly, particularly through job creation, a skilled workforce and high export market, translating to benefits for the communities where these projects are located, and the wider Australian economy.

In 2016 the Department of Treasury reported that less than 10% of Australian mining projects underway at the time were solely Australian owned<sup>2</sup>. AusTrade also reported in 2018 that Australia's mining sector held \$366B of foreign investment, equating to 38% of the total stock value of foreign direct investment in Australia<sup>3</sup>. These statistics reflect Australia's minerals and mining sector's investment attractiveness to date.

The level of foreign investment into the mining and quarrying sector is almost triple that of the next closest industry, manufacturing. It is probable with the extent of reforms proposed, mining and quarrying will be the most adversely impacted sector. A reduction in investment attractiveness through these reforms will be to the detriment of the industry that has been credited by State, Territory and Commonwealth Governments as the industry to support Australia's economy through the COVID-19 recession much of the world is experiencing.

Australia's investment environment is already considered restrictive; to further restrict it raises concern that Australia's existing, relatively stable foreign investment environment will be destabilised and perceived to discourage foreign investment. In 2012 a paper produced by Treasury estimated that a reduction in capital inflow and investment equal to 1% of Gross Domestic Product (GDP) would reduce Australia's gross national income by approximately 0.5% per year, over a ten-year period<sup>4</sup>.

Measures to restrict Australia's economy will likely result in a reduction of the wellbeing of citizens. Industry is concerned the significant proposed reforms will have widespread, yet to be identified, negative impacts that will risk Australia's current strong economic position and standards of living.

Protecting national interests should be a Government priority. Given the majority of foreign investment into Australia is legitimate and does not threaten sensitive industries or national security, to subject all of these applications to possible review under the proposed reforms will provide very marginal benefits for the excessive requirements. Industry also questions the Department's ability to process applications in a timely manner, so as not to create further delays and additional costs for business and Government alike.

### **Role of the Commonwealth**

AMEC has asked the Commonwealth Government to answer a significant policy concern, as to what their responsibility is should FIRB decide to reject an investor? The rejection will delay and potentially derail a project from proceeding, foregoing substantial economic and social benefits, with the State and local community bearing the cost.

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<sup>2</sup> <https://www.tai.org.au/content/undermining-our-democracy-foreign-corporate-influence-through-australian-mining-lobby>

<sup>3</sup> <https://www.austrade.gov.au/news/economic-analysis/global-investors-stay-keen-as-australia-s-fdi-stock-reaches-a-970-billion>

<sup>4</sup> Gali, J. and Taplin, B, 2012, *The macroeconomic effects of lower capital inflow*, Economic Roundup Issue 3, 2012.

Sourcing early capital investment required to develop mineral exploration and mining projects is a challenging task. Mineral exploration, required to discover new mines to replace depleting existing resources, is an inherently risky and long-term investment. Certain countries have shown a greater risk appetite and willingness to commit to investments at an early stage, and agree to offtake and other commercial arrangements. If the Commonwealth will reject these early investments under the proposed new FIRB powers, conversation about how this investment will be replaced is necessary. Both tranches of proposed FIRB reform materials have not considered this reality, nor have they acknowledged that foreign investment does not directly result in control.

### **Protecting Australia's national security**

Protecting Australia's national interest and security is supported, as is the concept that foreign investment should not risk either of these priorities. AMEC welcomes more consideration of measures that will protect the nation's priorities without inadvertently diminishing foreign investment attractiveness. Industry's serious concerns about the extent of proposed FIRB reforms and the unintended repercussions their application will have on the sector, and more broadly, Australia's economic position, are yet to be addressed.

Australia already has broad and relatively low thresholds for foreign investment screening, considered among the most restrictive of advanced economies. Screening foreign investment applications to protect national security is a concept AMEC supports in theory, however the new provisions are considered to extend beyond reasonable expectation. The new national security test to specifically consider foreign investment under new categories defined as "sensitive national security business" and "national security concerns" can be broadly applied, due to limited guidance as to their interpretation. It is this broad interpretation that concerns industry; specifically, that any foreign investment application could be deemed by FIRB to compromise national security by involving a 'sensitive' industry at any point along the supply chain.

### **Critical minerals**

Critical minerals are a priority of Commonwealth and State Governments, the subject of recent announcements and incentives into their downstream and manufacturing potential. Growth in this sector could, but should not, be restricted by FIRB reforms.

Under the proposed provisions and broad definitions, all transactions could be subject to review regardless of their actual or implied threat to national security. As demand for renewable energy sources to power computers, mobile phones and cars increases, all of which are used by intelligence and defence agencies, there is no certainty that these industries will not be hampered by the new FIRB requirements.

Australia's great critical minerals resources and industry needs foreign investment, or the Commonwealth to guarantee alternate sources of funding, in order to achieve the growth required to meet demand, and solidify Australia as a world-leading critical minerals supplier and developer. Legitimate investment should not be discouraged by the rushed introduction of extensive regulatory reforms.

Importantly, as Australia tries to secure its place as a leading nation in the critical and battery minerals global supply chain, creating restrictions that may limit our ability to develop strong commercial

partnerships, built around investment, processing and offtake with overseas partners, is not to Australia's short or long term benefit.

### **Need for investor certainty**

The possibility that any foreign investment into industry will constitute grounds for review under the guise of national security removes the level of certainty investors require, without applicants needing to voluntarily notify; the voluntary notification process adds significant administration to an already complex process. Without this transparency into decision making, there is legitimate concern that investors will seek alternate jurisdictions who provide certainty minimise administrative burden to their investment regimes. The mine discovery to production timeline is already considerably long, averaging 13 years. We do not support reforms that will create further delays and costs, prolonging the discovery of future mines to replace depleted resources.

Industry generally prefers non-prescriptive, risk-based assessments; however, the need for an element of certainty so as not to discourage genuine investment into industry is called for in this situation. Tightening and providing more clear and detailed policy guidance about sectors that will predominantly be subject to national security screening will provide industry, regulators and potential investors with the basic element of confidence required to commit to an investment decision. AMEC would as an example, welcome the identification of a specific list of commodities FIRB is not interested in, to provide necessary investor and industry confidence.

### **Final comments**

Australia's mineral exploration and mining sector has a strong history and great future prospects, reliant on the ability to raise capital to fund the discovery and development of future mines. These mines provide the royalties and tax revenues that create schools, hospitals and public resources.

Any measures to restrict investment into industry will jeopardise Australia's investment attractiveness, diminishing the certainty required for developing minerals projects to attract subsequent investment, and increase Australia's current low sovereign risk rating. To retain this rating, more clarity as to the intent and application of the FIRB reforms is required by businesses and potential investors alike.

Legitimate, non-compromising investments need to remain welcomed, aligning with the Government's acknowledgement that foreign investment provides many benefits to the Australian community.

AMEC continues to advocate to Government the need to run adequate consultations to give due consideration to the implications the extensive proposed FIRB reforms will have on industry, local communities, and the wider Australian economy.

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