

6 July 2021

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
Canberra ACT 2600

By email: pjicis@aph.gov.au

Dear Sir/Madam,

Parliamentary Joint Committee on Intelligence and Security public hearing on the Review of the *Security Legislation Amendment (Critical Infrastructure) Bill 2020* and Statutory Review of the *Security of Critical Infrastructure Act 2018*

The Australian Investment Council welcomes the opportunity to appear at the Parliamentary Joint Committee on Intelligence and Security's hearing into the review of the *Security Legislation Amendment (Critical Infrastructure) Bill 2020* and Statutory Review of the *Security of Critical Infrastructure Act 2018*.

The attached opening statement is provided for the Committee's information ahead of the public hearing.

Regards,

Brendon Harper
Head of Policy and Research



Brendon Harper, Head of Policy and Research, Australian Investment Council Opening Statement

My name is Brendon Harper and I am the Head of Policy and Research at the Australian Investment Council.

The Australian Investment Council is the voice of private capital in Australia. Private capital investment has played a central role in the growth and expansion of thousands of businesses and represents a multi-billion-dollar contribution to the Australian economy. Our members are the standard-bearers of professional investment and include: private equity, venture capital and private credit funds, alongside institutional investors such as superannuation and sovereign wealth funds, as well as leading financial, legal and operational advisers.

The Council is supportive of the intent of the Government's initiatives to enhance security and resilience of critical infrastructure assets and systems of national significance. We do, however, have some reservations regarding the potential impact of the proposed changes on Australia's investment ecosystem.

At this critical juncture in our national response to the COVID-19 pandemic, it is vitally important for our economic recovery, and Australian jobs, that the introduction of new market regulation strikes an appropriate balance between the, sometimes, competing interests of policy and business and market efficiency. In our view, the proposed changes to the *Security of Critical Infrastructure Act 2018* (**SOCI Act**) risk impeding the market efficiency of business investment activity within our domestic economy both now and in the future.

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. To fund our national recovery, Australian businesses need prompt and reliable access to capital from domestic as well as offshore investors. The proposed changes to the 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 vitally important funding.

In balancing our national interests and security, it is important that any new regulatory obligations are proportionate to the risks posed by certain business activities in the market, and the ability of firms to respond in an appropriate way to the requirements being considered. The private capital industry's main concern is that, as currently drafted, the definitions incorporated in these reforms would likely capture a wide range of investment activity, most of which are small and pose no security risk in our view. While the private capital industry understands this is not the government's intent, unnecessarily broad, or unclear, definitions will likely have flow-on effects in relation to investor perceptions and the FATA.

Our analysis shows that of the Australian private equity and venture capital deals between 2010 and August 2020, the number of deals potentially brought within scope of an expanded SOCI Act would:

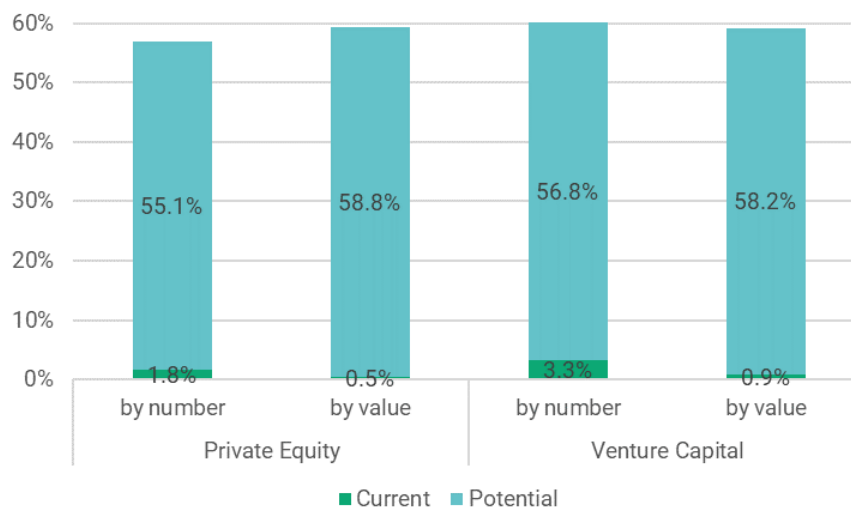
- Increase from 1.8% and 55.1% for private equity; and
- Increase from 3.3% and 56.8% for venture capital (Figure 1).

This would represent a *substantial* increase and supports the industry's view that there will likely be a material increase in private capital activity caught by the SOCI Act and investment deals requiring FIRB approval in the future, based on current design features of the proposed changes.

The Council encourages the Committee 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.



Figure 1: Private Equity and Venture Capital deals currently and potentially captured by (expanded) SOCI Act deals from 2010 to August 2020



Sources: Preqin and Australian Investment Council, 2020