

02 October 2020

**Manager, Policy Framework Unit Treasury  
Langton Cres  
Parkes ACT 2600**

By email: [FIRBStakeholders@treasury.gov.au](mailto:FIRBStakeholders@treasury.gov.au)

## **Re: Submission to Foreign Investment Reforms - Exposure Draft Regulations Consultation**

Dear FIR Consultation,

Thank you for this opportunity to further comment on the proposed major changes to the foreign investment review framework.

The Australian Research Council *Centre of Excellence for Engineered Quantum Systems* was established in 2017 as an initiative between five of Australia's leading research universities: The University of Queensland, The University of Sydney, The University of Western Australia, Macquarie University, and The Australian National University. Our founding vision is to conduct world-leading research to exploit the potential of quantum science and develop a range of transformational technologies that will benefit society.

I am the Program Manager for the Translational Research Program in the *Centre of Excellence for Engineered Quantum Systems (EQUS)*. The Translational Research Program encourages and facilitates the translation of EQUS' research outputs into societal impacts which benefit Australia. An important pathway to realise these benefits is commercialisation of our technologies, which brings employment and economic returns.

Australia's quantum technology sector is at an early stage of development but is very active with a significant flow of technology from our publicly funded researchers seeking commercialisation. Crucial to the continued development of quantum technology as a commercial sector, and necessary for our ability to retain talent and IP, is the ready availability of investment into local startups seeking to commercialise quantum technologies.

The proposed definition of 'national security business' in section 10A of the *Foreign Acquisitions and Takeovers Regulations 2015* is sufficiently broad and subjective that a quantum technology startup may find it difficult or even impossible to determine whether

**Translational Research Program, a flagship program of ARC Centre of Excellence for Engineered Quantum Systems**

**Email** [trl@equs.org](mailto:trl@equs.org)

**web** [equs.org/translation-research-lab](http://equs.org/translation-research-lab)

**Postal Address** Rm 303, Bldg 7  
University of Queensland  
St Lucia, Qld 4072  
Australia



they are a 'national security business'. This poses a compliance hurdle and regulatory risk for investors which are barriers to seeing these businesses flourish in Australia.

The draft Regulations provide for two new types of exemption certificates which are intended to reduce the regulatory burden for foreign persons. These certificates will provide that a program of actions or kinds of actions that would otherwise meet the definition of 'notifiable national security action' or 'reviewable national security action' are exempt from being notified or reviewed.

Australian businesses should be similarly relieved of uncertainty and regulatory burden by establishing mechanisms which allow them to engage with multiple prospective investors on a level footing, by:

- 1) Providing a binding determination of whether a business is a 'national security business';
- 2) Providing that the business may be subject to actions or kinds of actions that would otherwise meet the definition of 'notifiable national security action' or 'reviewable national security action' and such actions are exempt from being notified or reviewed;

By establishing certainty about a business' status, without having to tie this determination to any particular investment or investor, early stage businesses are freed from the added risk and regulatory burden which may hamper their access to foreign capital. Certainty would be added to the fundraising process for many quantum businesses and startups, and this information will help the business triage prospective investors and streamline compliance by making the counterparties aware of their now certain notification obligations and review risks.

There appears to be no indication in the draft legislation or regulations that the nature, identity, or origin of an investor will change the assessment of whether a business is a 'national security business'. So, this determination can be made prior to a potentially 'notifiable national security action' or 'reviewable national security action', and even before an investor is identified. This also delivers the added benefit of allowing the subjective definition of 'national security business' as applied to a particular business to be converted to an objective fact prior to any parties relying on it.

Please address any queries or requests to the undersigned by email: [harvey@equs.org](mailto:harvey@equs.org).

Yours sincerely,

*Michael Harvey*

by email

**Dr Michael Harvey**

**Program Manager**

**Translational Research Laboratory**

**The ARC Centre of Excellence for Engineered Quantum System**