

# THE NEW CRITICAL INFRASTRUCTURE CENTRE AND IMPLICATIONS FOR THE FOREIGN INVESTMENT APPROVAL PROCESS

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Legal Briefings - By **Malika Chandrasegaran and Danielle Eliatamby**

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The *Security of Critical Infrastructure Act 2018* (the **SCI Act**) was recently passed and will commence on 11 July 2018. In this article we explain the effect of the SCI Act and what it will mean for FIRB approvals going forward.

## IN BRIEF

- The *Security of Critical Infrastructure Act 2018* was recently passed to support the role of the Critical Infrastructure Centre.
- The SCI Act, which commences on 11 July 2018, establishes a register of critical infrastructure assets, intended to provide a deeper understanding of who owns, controls and has access to these assets.
- Owners and operators of critical infrastructure assets will have six months, up to 11 January 2019, within which to report information on to the register.
- FIRB will continue to assess sales of critical infrastructure to foreign investors where the relevant thresholds are met, and the Centre will complement that process by providing early national security advice.

# UPDATE ON THE CRITICAL INFRASTRUCTURE CENTRE AND THE SCI ACT

As outlined in our [earlier publications on this topic](#), the Critical Infrastructure Centre (**Centre**) was established at the start of last year to assist the safeguarding of Australia's critical infrastructure from national security risks of sabotage, espionage and coercion.

The Security of Critical Infrastructure Act 2018 (the **SCI Act**), which was passed earlier this year and is due to come into effect on 11 July 2018, supports the role of the Centre. The SCI Act applies to specific critical infrastructure assets, and will be supplemented by rules (**Rules**).

The SCI Act provides for three key measures to manage national security risks related to critical infrastructure:

1. establishing a register of critical infrastructure assets (**Register**), intended to provide a deeper understanding of who owns, controls and has access to critical infrastructure assets;
2. providing the Secretary of the Department of Home Affairs with power to request certain information from owners and operators of critical infrastructure – information obtained using this power is protected information and will not be publicly disclosed; and
3. giving the relevant Minister power to require owners and operators of critical infrastructure to do, or refrain from doing, anything that the Minister considers would be prejudicial to security – the Minister can only give the direction if particular criteria are met and certain consultation has been undertaken.

## WHAT ARE CRITICAL INFRASTRUCTURE ASSETS?

Critical infrastructure assets include the following:

### Critical electricity assets:

- Generation stations that generate electricity above specific jurisdictional megawatt thresholds set out in the Rules.
- Any generators providing system restart services.

- Electricity transmission networks or distribution systems that ultimately service at least 100,000 customers.

### **Critical ports:**

- The 20 ports specifically named in the SCI Act.

### **Critical water assets:**

- One or more water or sewerage systems or networks managed by a water utility which ultimately service more than 100,000 connections.

### **Critical gas assets:**

- Gas processing facilities with a capacity of at least 300 terajoules per day.
- Gas storage facilities with a maximum daily quantity of at least 75 terajoules per day.
- Gas distribution networks which ultimately service at least 100,000 customers.
- Gas transmission assets which meet the threshold set out in the Rules.

### **Other assets:**

Any other assets declared to be critical infrastructure assets, and assets prescribed by the Rules.

## **THE REGISTER**

Reporting entities (see further below) will be required to report information on the Register within six months of the SCI Act commencing, that is by 11 January 2019. If an asset becomes a critical infrastructure asset after this six-month period, the reporting entity will have up to six months (from the date the asset becomes a critical infrastructure asset) to report the required information.

Reporting entities are also required to update the register for notifiable events within 30 days of that event occurring.

'Notifiable events' include events where reported information becomes incorrect or incomplete, an entity becomes a reporting entity for the asset or an entity becomes an entity to which the SCI Act applies (for example, where there is a change to the entity's structure causing it to meet the definition of entity in the SCI Act).

A 'reporting entity' is either:

- a **direct interest holder**, being any entity (including an individual, a body corporate, a body politic, a partnership, a trust, a superannuation fund or an unincorporated foreign company) that:
  - together with any associates holds an interest of at least 10% in the asset; or
  - holds an interest in the asset that puts the entity in a position to directly or indirectly 'influence or control' the asset,

noting that moneylenders with security over the asset would generally not be considered direct interest holders, unless the moneylender is in a position to directly or indirectly influence or control the asset; or

- a **responsible entity**, being a body licensed to operate the critical infrastructure asset. In particular:

- for a critical electricity or gas asset, the entity that holds the licence, approval or authorisation to operate the asset to provide the service to be delivered by the asset;
- for a critical water asset, the water utility that holds the licence, approval or authorisation under a law of the Commonwealth, a State or Territory, to provide the service to be delivered by the asset;
- for a critical port, the port operator (within the meaning of the *Maritime Transport and Offshore Facilities Security Act 2003*) of the port.

Direct interest holders will be required to report their ownership and control information, and responsible entities will be required to report operational information. The register itself will remain confidential and will not be publicly disclosed.

## **RELATIONSHIP WITH THE FOREIGN INVESTMENT REVIEW BOARD (FIRB)**

FIRB will continue to assess acquisitions of interests in critical infrastructure to foreign investors where the relevant thresholds are met.

We understand that the Centre will complement the foreign investment review process by providing early national security advice to inform the Treasurer's decision on foreign investment proposals.

It is understood that FIRB and the Centre will also work closely with investors to address any national security concerns raised through the review process.

This should hopefully prevent situations arising where crucial national security issues are discovered late into the FIRB approval process.



## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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