



Australian Government  
Department of Home Affairs

# **Joint Submission to the Senate Economics References Committee on Foreign Investment Proposals**

Department of Home Affairs

Australian Transaction Reports and Analysis Centre

Australian Federal Police

Australian Criminal Intelligence Commission

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## Preface

The Department of Home Affairs (the Department), the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Australian Federal Police (AFP) and the Australian Criminal Intelligence Commission (ACIC) (hereafter 'the Portfolio') welcome the opportunity to provide this joint submission to the Senate Economics References Committee on the inquiry into foreign investment proposals.

This submission engages the Terms of Reference of the inquiry, and specifically addresses the Terms of Reference pertaining to money laundering.

## The role of the Home Affairs Portfolio in reviewing foreign investment proposals

The Department and Portfolio agencies predominantly play an advisory role within the Government's foreign investment review process that is led by the Treasury, and the Australian Taxation Office (ATO) with respect to investments into residential real estate, non-sensitive commercial land and internal reorganisation applications.

Each agency within the Portfolio has particular expertise that is sought on an as needs basis where certain risk thresholds are met (referral criteria), or when factors within a proposal otherwise align with the expertise of an agency. These factors may include a proposal involving a piece of critical infrastructure, a heightened risk of criminal involvement, and risk indicators of money laundering or tax evasion, such as the use of complex corporate structures and secrecy jurisdictions.

### Department of Home Affairs: Critical Infrastructure Centre

The Critical Infrastructure Centre is situated in the Department, and is regularly consulted by the Treasury on foreign investment applications made under the Foreign Acquisitions and Takeovers Act 1975 (FATA). The Department conducts national security risk assessments on applications that relate to critical infrastructure. This includes, physical facilities, supply chains, information technologies and communication networks which, if destroyed, degraded or rendered unavailable for an extended period, would significantly impact the social or economic wellbeing of the nation or affect Australia's ability to conduct national defence and ensure national security. Further, the Critical Infrastructure Centre consults the Office of the National Counter Foreign Interference Coordinator where there is a potential risk of foreign interference.

The Department does not review all foreign investment applications. To guide the referral process, the Critical Infrastructure Centre has issued referral criteria for the types of applications that should be referred to the Department. For the period 1 July 2019 to 29 February 2020, 380 foreign investment applications were referred by the Treasury to the Department.

In considering these referrals, the Department follows an established national security risk assessment process. More information about how the Department conducts risk assessments is available at [www.cicentre.gov.au](http://www.cicentre.gov.au).

In addition, in cases where the Treasurer decides to impose conditions on an approval for a particular transaction, the Department provides support to the Treasury in relation to compliance activities arising under those conditions.

## Australian Transaction Reports and Analysis Centre

AUSTRAC has responsibility for performing the functions of a financial intelligence unit (FIU) and anti-money laundering and counter-terrorism financing (AML/CTF) regulator.

As Australia's FIU, AUSTRAC provides financial transactions data and actionable financial intelligence to law enforcement, national security, human services and revenue agencies (AUSTRAC's partner agencies), as well as international counterparts. Partner agencies use this information to assist them to detect, prevent and disrupt money laundering, terrorism financing (ML/TF) and other serious crime.

As a regulator, AUSTRAC oversees the compliance of more than 15,000 Australian businesses with the compliance and reporting obligations set out in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act) and associated Rules.

AUSTRAC facilitates access to AUSTRAC information by certain agencies in accordance with the requirements under Part 11 of the AML/CTF Act. This includes providing some agencies with direct online access to AUSTRAC information, or proactively disseminating raw transaction reports or tailored intelligence products. AUSTRAC has information-sharing arrangements in place with 47 Commonwealth, State and Territory partner agencies, including the Treasury, the ATO, and the Foreign Investment Review Board.

AUSTRAC currently supports the Foreign Investment Review Board and the ATO through the provision of intelligence reports relating to suspicious foreign investment activities. Access to AUSTRAC information by the ATO supports the ATO's decision making procedures in relation to foreign investment in Australian real estate. AUSTRAC also receives, and responds to, requests for information directly from the Foreign Investment Division of Treasury to support its investigations and decisions. AUSTRAC receives approximately 10 requests for information per annum, and makes an equivalent number of proactive referrals to Treasury following the identification of a matter that may be of interest to the Foreign Investment Division.

AUSTRAC utilises alerts and risk profiles to identify suspicious activities relevant to foreign investment. AUSTRAC's alerting capability is currently being enhanced through the use and application of relevant third party data (such as company and real estate data).

AUSTRAC is in discussions with the Foreign Investment Division of Treasury to explore how AUSTRAC might better support the Treasury in the future, including through the use of proactive tailored alerts to identify cross-border funds movements and activity involving suspicious investment.

The Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019, currently before the Parliament, will amend the information-sharing framework under Part 11 of the AML/CTF Act. These amendments will significantly simplify and consolidate those provisions including expanding the AUSTRAC CEO's authority to specify officials of Commonwealth, State or Territory agencies to access AUSTRAC information. The amendments will also simplify how agencies can use and on-disclose AUSTRAC information.

## Australian Federal Police

The role of the AFP, as Australia's national policing agency, is protecting Australians and Australia's interests. In fulfilling this role, the AFP has an agreement with Treasury and the ATO restricting referrals to, with exceptions, a minimum of \$3 million of investment. For the 2019-20 year to date, the AFP has received 13 referrals from Treasury and 124 referrals from the ATO.

Applications that are referred to the AFP are processed to identify whether any entities that are in relation to a foreign investment application are adversely recorded in AFP indices as being convicted of a Commonwealth criminal offence.

The ability to conduct this check and the accuracy of results is dependent on complete identification information being provided to the AFP. If the check can be undertaken, the AFP advises the referring agency as to whether there are any adverse recordings or not.

Should the AFP be aware of information held by, or of interest to, another Commonwealth agency or law enforcement agency, the AFP will suggest the referring agency make inquiries with that agency. The AFP does not pass on the information directly to the referring agency, but where possible, will include reference numbers or other identification details to assist the referring agency.

The AFP may also, where appropriate, suggest the referring agency seek further clarification and/or information (from other agencies) about certain characteristics of the proposed foreign investment transaction which may indicate a heightened risk of money laundering. This is not based on a detailed assessment as to whether the particular proposal indicates money laundering, but rather, that agencies and institutions (such as AUSTRAC and the Financial Action Taskforce), have identified as indicative of a methodology use for money laundering.

The AFP-led Criminal Assets Confiscation Taskforce (CACT) investigates and litigates criminal assets confiscation matters in relation to breaches of Commonwealth indictable and foreign indictable offences. Any State, Commonwealth or international agency or authority can refer a matter to CACT. The CACT is also responsible for actioning proposed foreign investment transactions that are referred to the AFP by the Treasury and the ATO. Where criminal assets confiscation matters raise issues pertaining to potential breaches of Australia's foreign investment laws, CACT will consult with the Foreign Investment Review Board with the view to de-conflicting possible action in the matter and ensuring that each agency is able to fulfil its legislative mandate.

## Australian Criminal Intelligence Commission

The ACIC is Australia's national criminal intelligence agency. The role of the ACIC is reducing serious and organised crime threats of most harm to Australians and the national interest, and providing national policing information systems and services.

In undertaking this role, the ACIC identifies critical risks for Australia emerging from the effects of globalisation, which increasingly flow from globally networked criminal enterprises that may not be located in Australia, but adversely affect Australia's strategic interests and community. As part of this process the ACIC has examined international syndicates which have used Australian property for money laundering purposes. The ACIC continues to examine groups that abuse the Australian property market for tax evasion and for money laundering.

The ACIC does not receive a referral for every foreign investment application. Rather, the ACIC receives requests for data holdings on particular applicants on an as needs basis, and discloses its criminal holdings on the applicant when appropriate – this may include applicants that have links to money laundering risks. The ACIC has received approximately 10 requests for information per annum from the Foreign Investment Review Board.

When a request is received by the ACIC, the particulars of the application are compared against ACIC data holdings, and if information is identified, the ACIC will assess the legality of disclosing that information in accordance with the *Australian Crime Commission Act 2002*. If disclosure is permitted, the ACIC will follow its disclosure procedures and release that information accordingly.

Should further assistance be required in assessing a foreign investment application, the ACIC may provide further analytical support provided that doing so aligns with the ACIC's priorities.