



26 August 2021

Dear Review Panel

RE: FIRB Review Consultation Process

Thank you for the opportunity to respond to the ongoing evaluation of the 2021 foreign investment reforms.

I am the founder and CEO of Q-CTRL, Australia's first venture-capital-backed quantum technology company. Q-CTRL is heavily active in the defence and space sectors, and maintains relationships with international defence agencies. Our objective is to develop leading-edge sovereign capability in Australia, with select allied US-based investors as key supporters in our global growth.

I believe that business involved in critical technologies with direct national security impacts (e.g. defence supply chains or critical infrastructure) should be subject to meaningful review to protect against threats of foreign influence. As a former professional in the US Department of Defense and Intelligence Community, I am a strong supporter of this policy objective. I also believe it's essential that policies put in place to ensure such protection are effective and efficient, such that businesses are able to make meaningful contributions to national security.

Eight months into implementation, our experience provides regrettable evidence that the new zero-dollar review threshold for "national security" businesses has made Australia a less attractive destination for US capital investment, and now poses an unanticipated risk to future sovereign technical capability that seriously outweighs the benefits of the legislation as implemented. Ultimately this means that the policy implementation is hurting, rather than helping, in the effort to protect against foreign interference.

Among other suggestions, my [2020 submission](#) highlighted the benefits of refining the definition of a national security business to focus on capturing mature, established providers of critical technologies. The objective was to protect *future* sovereign capability by avoiding premature regulation of early stage companies; these businesses are too young to harm national security if disrupted, and at the same time generally unable to bear the compliance burden and regulatory delays imposed by the new foreign investment review processes. Facing early and onerous regulation can force these businesses to avoid engaging in developing sovereign capabilities, or simply incentivise them to redomicile to larger markets like the US.

As a small business owner working hard to compete in a global environment and deliver both strategic advantage and prosperity on shore, my sole objective is to find a way to work with this framework. Sadly, Q-CTRL has been directly impacted in a negative fashion through the reforms, and we are concerned that the impact and process is getting worse rather than better.

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Evidence of negative impact on Q-CTRL:

It was understood that from 1 January 2021 Q-CTRL would be classified as a national security business, irrespective of our level of maturity or lack of acquisition contracts in defence supply chains. We accepted we would be caught by the new national security designation subject to mandatory FIRB notification under certain circumstances.

Q-CTRL planned to embark on a capital raise in early 2022 based on its capital runway. However uncertainty around review timelines and evidence of reviews with US investors taking over six months forced Q-CTRL to accelerate its fundraise in order to accommodate potential delays on capital closing.

We appreciate FIRB's efforts to increase staffing and work towards reducing median review times. Unfortunately, we are forced to plan around the longer potential review period given our reliance on investor capital (rather than customer revenue) as an early stage business. This has directly resulted in negative economic impacts that perversely undermined the accrual of value for Australian shareholders.

First, by requiring an acceleration of fundraising schedules, we were forced to accept a 30-50% valuation discount relative to what we believe was achievable further along our technical roadmap (originally anticipating a capital raise in late 2022).

Next we had at least three US-based investors cite concerns about FIRB as contributing to a decision to not even explore an investment. One specifically cited ministerial call-in powers as a sovereign risk that made investment particularly unattractive. Two others cited the combination of general factors such as distance in addition to a potentially lengthy government investment review period as motivating them to ignore Australian investment opportunities in favor of the wide range of "easier" tech-company investment opportunities within the US.

Ultimately the FIRB reforms as implemented have already - within the first eight months of the policy being implemented - served as a brake on our job-creation and sovereign-capability plans for Australia. We hope that the simple suggested modifications to the policy implementation in the following section of this submission can offset these impacts.

Future amendment

We believe that narrowing mandatory review to the highest-risk businesses is the best way to balance protecting against foreign influence while ensuring growth opportunities for critical technology businesses on shore.

Very young SMEs pursuing early stage R&D in emerging areas, sometimes with Australian or international defence grants, pose negligible threat to Australian national security if they were to be disrupted. Holding on too tightly incentivises them to explore opportunities to domicile in the US - where a much larger pool of capital is available - before they ever have the opportunity to deliver sovereign capability.

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Q-CTRL

A simple solution which balances risk and the need for small high-tech startup companies to access the capital they require would **introduce review thresholds based on company valuation, longevity, or value of Australian defence acquisition contracts.**

This approach will empower young companies to choose to grow on shore and deliver sovereign capability, while also providing strong protection against foreign influence in later-stage businesses whose disruption would pose real risk to security.

Finally, we believe that now is an important time to introduce whitelisting of investor jurisdictions. Because of the substantial negative impact that review delays can pose to early stage national security businesses, whitelisting of US, Five Eyes, and other selected allied-nation investors could be tied directly to a guarantee on review period (e.g. <30-45 days) in order to provide the certainty businesses like mine require.

The team at Q-CTRL embraces our responsibilities as contributors to both national security and mitigation of foreign interference. We ask only for simple modifications that could provide the certainty and facilitation allowing us to grow and meet our own ambitions for Australian sovereign capability. We appreciate your consideration of these suggestions and are happy to engage directly with Treasury.

Yours sincerely,

Michael J. Biercuk
Founder & Chief Executive Officer

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