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Business Council of Australia

Opening statement: Business Council of Australia.

The Business Council of Australia welcomes the opportunity to appear before the Parliamentary Joint Committee on Intelligence and Security for its review of the *Security Legislation Amendment (Critical Infrastructure) Bill 2020*.

We acknowledge and support the ambition of this legislation, which is to both lift the security and resilience of Australia's critical infrastructure. Businesses are ready to work with government on this, as Australia cannot afford to leave critical infrastructure vulnerable and risk serious disruption to businesses and people's lives.

To ensure Australia remains an attractive place for businesses to invest and grow, these reforms should be guided by best practice regulatory principles and contain robust oversight and governance arrangements. Some of the new powers contained in this legislation are substantial increases in government's ability to intervene in what are global assets and services. Proportionality in the regime and appropriate oversight will give businesses confidence to continue to invest in Australia.

Australia remains an attractive location for investment because of the rule of law and the balance and certainty our regulatory regimes provide. In our submissions, we have highlighted several areas where minor changes could be made to ensure the bill remains effective in achieving the government's goals while also reducing uncertainty for businesses. These recommendations are outlined below.

First, we recommend changes relating to the definitions of critical infrastructure provided in the bill, and particularly their relationship to foreign investment regimes. The bill substantially widens the number of sectors captured by the critical infrastructure regimes. However, the definition of 'critical infrastructure' used in the SOCI Act is also used under the *Foreign Acquisitions and Takeovers Act 1975* to define a 'national security business'. We suggest the disentangling of these definitions, as the current automatic and arbitrary tying of these two definitions is not fit for purpose regulatory practice and will create an unnecessarily high hurdle for businesses in a wide array of sectors to invest in Australia.

Second, we recommend several changes to the 'step-in' powers. This includes greater oversight where these powers are used, including through this Committee, as well as establishing an avenue for businesses to suggest alternative approaches to government directions or the use of the 'step-in' powers. In a crisis it is not reasonable to expect the minister or secretary to understand every detail of an operator's networks or the potential flow on implications of a particular course of action. Providing an avenue for critical infrastructure owners and operators to put forward an alternative course of action would alleviate this risk and will support cooperative relationships between businesses and government. This trust and cooperation will be critical to the success of these reforms.

Finally, we recommend the Minister be required to consult with sectoral regulators on relevant decisions taken under the Act. While the level of expertise on cyber security of sectoral regulators may not be as deep as ASD or the ACSC, these regulators do have deep expertise and in many instances are responsible for both the economic regulation as well as overall stability of the sectors they oversee. The proposed reforms will have both security and economic implications. Drawing on the expertise of sectoral regulators will support the best possible outcomes for Australia.

Thank you Chair and Senators for the opportunity to appear today and we look forward to your questions.

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