

Executive Summary

Fujitsu Australia Limited is one of Oceania's leading ICT companies, and stands to be substantially affected by the amendments to the current legislation proposed in the *Security Legislation Amendments (Critical Infrastructure) Bill 2020*.

Of the key industries named in the draft bill, Fujitsu is involved directly in providing information technology services to companies engaged in the Communications, Data Storage or Processing, and the Defence Industry. Fujitsu's recommendations for amending this bill are below.

Background

The current Commonwealth Government legislation, the *Security of Critical Infrastructure Act 2018 (Cth)* (the *SOCI*), designates certain industries as critical infrastructure and enables much more direct Government control over them. Previously, Fujitsu's operations have not been directly impacted by this Act.

As a leading ICT company, Fujitsu Australia Limited submits to the Commonwealth Government changes to the draft Exposure Bill as requested. In the response below we have used the capitalised

Comments on the Exposure Draft – Schedule 1–Security of critical infrastructure

Division 2–Statutory incident response planning 4 obligations

Subdivision B Statutory incident response planning obligations; Division 3–Cyber security exercises; Division 4–Vulnerability assessments

Any requirement which imposes an obligation significantly in excess of the current operations of a Responsible Entity should be adequately compensated by the Government, in order that the ongoing commercial viability of Responsible Entities is maintained.

Part 3A: Responding to serious Cybersecurity Incidents

Division 2–Ministerial authorisation relating to cyber security incident

- This section should contain a more precise definition of "material risk" and "seriously prejudice" to allow a Responsible Entity to understand the circumstances in which the Minister may use their power to be better prepared for the exercise of such power and for the purposes of ongoing risk assessment and management.
- Insert a section explicitly stating that any power or powers exercised by the Minister are subject to procedural fairness and allowing an independent review procedure to ensure any decision the Minister makes is made in good faith and not arbitrary.
- Any Ministerial direction that results in loss (including but not limited to business or revenue loss), or that requires action in excess of the current operations of a Responsible

Entity should be adequately compensated by the Government in order that the ongoing commercial viability of Responsible Entities is maintained.

Division 3—Information gathering directions

- Information gathering should be subject to confidentiality requirements. It should include an obligation on the Secretary to not allow critical data to be made known to anyone who does not have a need to know, or impact a Responsible Entity's market competitiveness. Information which is obtained in this way should be used strictly for the purposes set out in its notice.

Division 5—Access to system information

- Access to system information should be subject to confidentiality obligations. It should include an obligation on the Secretary to not allow critical data to be made known, or impact a Responsible Entity's market competitiveness. . Information which is obtained in this way should be used strictly for the purposes set out in its notice.

Part 2C—Enhanced cyber security obligations

Division 4—Action directions

- Insert a section explicitly stating that any action or direction is subject to procedural fairness and an independent review process is available to ensure any action or direction is made in good faith and not arbitrary.
- Any action direction that results in loss (including but not limited to business or revenue loss), or that requires action in excess of the current operations of a Responsible Entity should be adequately compensated by the Government in order that the ongoing commercial viability of Responsible Entities is maintained.

Division 5—Intervention requests

- Insert a section explicitly stating that any power or powers exercised by the Minister are subject to procedural fairness and an independent review process is available to ensure any decision the Minister makes is in good faith and not arbitrary.
- Any Intervention request that results in loss (including but not limited to business or revenue loss), or that requires action in excess of the current operations of a Responsible Entity should be adequately compensated by the Government in order that the ongoing commercial viability of Responsible Entities is maintained.

Section 35BF Liability

- Any Intervention request that results in loss (including but not limited to business or revenue loss), or that requires action in excess of the current operations of a Responsible

Entity should be adequately compensated by the Government in order that the ongoing commercial viability of Responsible Entities is maintained.

Section 35BD Removal and return of computers etc.

- Any requirement to remove computers must fully compensate the entity, having regard to any and all loss due to the removal, depreciation of the hardware and interruption of regular business.

Part 5 of the *SOCI*

Division 3—Monitoring and investigation powers

- Any monitoring or investigation that results in loss, or materially affects the current operations of a Responsible Entity should be adequately compensated by the Government in order that the ongoing commercial viability of Responsible Entities is maintained.
- Insert a section explicitly stating that any monitoring or investigation exercise by the Secretary are subject to procedural fairness and an independent review process is available to ensure any decision the Secretary makes is in good faith and not arbitrary.
- Monitoring and investigation powers must be subject to confidentiality requirements. It should include an obligation on the Secretary to not allow critical data to be made known, other than to those who have a need to know, or impact a responsible entity's market competitiveness.

Division 4—Infringement notices

- Insert a section explicitly stating that any infringement notice is subject to procedural fairness and an independent review process is available, to ensure any decision the infringement officer makes is in good faith and not arbitrary.

Part 6A—Declaration of systems of national significance by the Minister

- Add in a provision that any declaration or rule that apply to an entity does not inhibit, and allows the entity to maintain, market competitiveness.

Exposure Draft – Generally

- A critical part of Australia's current and future economic success is corporate social responsibility. Any action taken under the *Amendments* or the *SOCI* should have regard to renewable energy and sustainability.
- The new powers granted in the *Amendments* should be re-drafted to narrow their scope and impose more strict limitations on the actions the Government can take.
- The *Amendments* do not adequately consider the market competitiveness or any loss incurred by the responsible entities under the new powers granted to the Government.
- Reporting, monitoring and investigation of responsible entities must have far more strict controls on how this information is used, where it is stored and when it is deleted.