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Ms Jodi Keall  
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The Treasury  
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By email to [beneficialownership@treasury.gov.au](mailto:beneficialownership@treasury.gov.au)

## **ASA SUBMISSION – IMPROVING TRANSPARENCY OF THE BENEFICIAL OWNERSHIP OF COMPANIES**

Dear Ms Keall

The Australian Shareholders' Association (ASA) represents its members to promote and safeguard their interests in the Australian equity capital markets. The ASA is an independent not-for-profit organisation funded by and operating in the interests of its members, primarily individual and retail investors, self-managed superannuation fund (SMSF) trustees and investors generally seeking ASA's representation and support. ASA also represents those investors and shareholders who are not members, but follow the ASA through various means, as our relevance extends to the broader investor community.

We refer to Treasury's consultation paper entitled "Increasing Transparency of the Beneficial Ownership of Companies" (the **Consultation Paper**) dated February 2017.

We are supportive of the move to increase transparency of the beneficial ownership of companies and establish a beneficial ownership register. We note that the impetus behind the introduction of a register of beneficial owners is, at a minimum, to make the information available to financial institutions in conducting their customer due diligence procedures for anti-money laundering purposes, to certain authorities such as police forces and to other persons or organisations who can demonstrate a legitimate interest in the information. This can include regulators such as the Australian Taxation Office (ATO) seeking to ascertain if tax evasion is being undertaken. Registers of beneficial ownership in multiple jurisdictions will help create a global financial system that is transparent and accountable, and that is ultimately also in the interests of shareholders.

Beneficial owners are essentially individuals with significant control (whether direct or indirect) over the company, which is a matter of interest to ASA. Notwithstanding that ownership interests in listed companies appear to be excluded from these requirements, we strongly believe that Treasury should take this opportunity to review the existing disclosure requirements in respect of beneficial

ownership of listed entities. We are also of the view that the Government should ensure that ASIC has sufficient funding and resources to carry out any additional responsibilities without detriment to its other responsibilities.

We acknowledge the Government's objective of providing information to relevant authorities to enable them to counter illicit activities, including tax evasion and money laundering. However, it is important that any information available on a central register is also made available to the general public.

Our comments on the proposals are set out below. Any new legislation should adopt a principles-based approach that is not overly prescriptive, which is then supplemented by relevant guidance provided by ASIC in the form of a Regulatory Guide.

We note the Consultation Paper refers generally to 'Australian companies' and 'share ownership'. It is unclear to us whether the proposed reforms are intended to cover other entities such as managed investment schemes where beneficial ownership information will also be useful to securityholders. ASA recommends that the Government provide clarity as to whether managed investment schemes will be covered.

### **Collection of beneficial ownership information**

We are broadly supportive of adopting a beneficial ownership reporting system similar to that in the United Kingdom, including the definitions and thresholds used. Our view is that any information collected should be about beneficial ownership only, rather than information related to control exerted via means other than owning or having interests in shares or a position held in the company.

We agree with listed companies being exempt from any new requirements to report on its beneficial owners in light of existing obligations on such companies. This exemption should apply to all listed entities which are subject to Chapter 6C of the Corporations Act 2001 (Cwlth) (**Corporations Act**), including listed managed investment schemes and irrespective of the exchange they are listed on, provided the information already reported is publicly available.

Companies should be required to maintain their own register. We also support the establishment and maintenance of a central register of beneficial ownership information which can be readily searched by the public. ASIC would be best placed to operate this register, although we note that given the limited funding and resources currently available to ASIC, a sufficient level of Government funding must be provided to ASIC for it to properly administer the central register to achieve the desired outcomes. While we note that the industry-funding model proposed by the Government could be utilised to address any deficiencies in the regulator's funding, ASA encourages the Government to clarify that the funding of a central register by ASIC has been considered as part of the proposal to introduce a register of beneficial ownership.

We strongly recommend that the register held by ASIC should be free to search, that is, no fees should attach to any searches conducted on the information held on the register.

Those required to report beneficial holding information should be required to report this information to the relevant company as well as directly to ASIC. This ensures that up-to-date information is available to the company, ASIC and the general public. We would expect companies to regularly take steps to ensure the accuracy of information on the central register, including to verify the information on the central register at least on an annual basis. However, we would like a greater emphasis on requiring beneficial owners to report information rather than companies to regularly verify information, as the latter may be difficult given the compliance burden and the practicalities of when a company is able to know if reported information is incorrect.

### **Disclosure of substantial shareholders and tracing beneficial owners**

We have a number of concerns about the current regime of disclosure and reporting of substantial holding information under Chapter 6C of the Corporations Act. Listed companies are required to maintain a register of substantial shareholders. ASA strongly supports this register, which goes to the heart of understanding control of a company. However, even with this register being mandated, it can be difficult for companies to identify shareholders on the register. Tracing through layers of nominees and custodians is challenging to identify the beneficial owner. Companies are required to disclose a list of top 20 shareholders in their Annual Report, however at least in the case of the larger entities, this list does not reveal any meaningful information as many of the top shareholders are nominees or custodians. It would be helpful to be able to rely on that list as a statement of beneficial ownership.

There are tracing provisions in the Corporations Act, but the process itself is time-consuming and expensive — we note that it is shareholder funds that are expended on this process. Many companies commission specialist analyst advisers to trace shareholders on the register. Even with specialist assistance, the information can be out-of-date by the time the company receives it, given that the composition of the register is constantly changing. Moreover, the costs of the specialist analyst advisers can be beyond the resources of smaller listed companies, although many smaller companies have detailed knowledge of their major shareholders, due to the smaller size of the register.

For the investor, we note that the current ASX announcements platform, which contains the substantial holding information for listed entities, is not readily searchable. It is troublesome for an ordinary person to find useful information about substantial shareholders of listed entities without using a paid resource. Furthermore, the information disclosed on substantial holding notices is difficult to understand as it includes information which is repetitive and often undecipherable to the ordinary person.

The current substantial shareholder regime also relies on the accuracy of information provided by those required to report information. At present, there appear to be inadequate sanctions for failing to provide accurate information in a timely manner. As a result, there are circumstances such as in the recent Bellamy's case where even the company did not know the ultimate beneficial owners of the parties who had requisitioned an extraordinary general meeting. That information was only determined following a tracing notice that was issued by Bellamy's under the Corporations Act.

For all the reasons set out above, we question the effectiveness of the current regime of disclosing substantial shareholders and the use of tracing notices. Furthermore, whilst we believe there is reasonable scope in these provisions to find out more information, the use of tracing notices is dependent on the relevant authorities and companies regularly monitoring public disclosures, shareholding patterns and the media in order to determine whether the provision of a tracing notice is warranted.

Our view is that this is an opportune time to reconsider the disclosure of substantial holders for listed entities and merge information disclosed under Chapter 6C of the Corporations Act into a central register that is simple, user-friendly and accessible to the public. ASA strongly recommends that the introduction of a beneficial ownership register be accompanied by reform of the disclosure of substantial shareholders for listed entities.

### **ASIC funding and operation of other registers**

Parts of the ASIC registry's existing technology systems are over 25 years old. This limits service levels, search functionality, and the capacity to access and use the data. Some registrations remain paper-based, and particular data cannot be linked across the 31 registers that form the registry business. Without doubt, without an influx of funds to upgrade and provide ongoing improvement to the IT systems, the ASIC registry will struggle to meet the needs of an advanced economy, so simply adding one more register to this challenged system is unlikely to achieve the desired public policy outcome of the proposed reform in relation to a beneficial ownership register.

As noted above, we believe that if ASIC is to maintain the central register and be able to fully utilise its powers under the relevant legislation to investigate missing information, it is important that ASIC is adequately funded and resourced, and that resources are not redistributed away from ASIC's other activities to fund this new role. We strongly recommend that dedicated funding be provided to ASIC (whether under the industry-funding model or otherwise) to reconsider the operation of the various public registers and whether any information in those registers should be merged into a single register that can be easily accessed.

If you have any questions about this submission, please do not hesitate to contact me on (02) 9252 4244.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J Fox', written in a cursive style.

Judith Fox  
Chief Executive Officer  
Australian Shareholders' Association