

Thursday 1 April 2021

Data Economy Unit
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

via email: regmod@treasury.gov.au

Dear Data Economy Unit,

Modernising Business Registers Program – Draft Data Standard and Disclosure Framework

Thank you for the opportunity to provide comments to Treasury on the draft data standard and disclosure framework as part of the Modernising Business Registers (**MBR**) Program consultation.

The Australian Institute of Company Directors' (**AICD**) mission is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. The AICD's membership reflects the diversity of Australia's director community. Our membership of more than 45,000 is drawn from directors and leaders of not-for-profits, large and small businesses and the government sector.

The AICD supports the objectives of the MBR program which intends to create a new flexible and technology-neutral modern business registry regime. We further support the introduction of a director identification number (**Director ID**) to assist the government's aim to combat illegal phoenix activity.

We acknowledge extensive consultation by Treasury and the Australian Taxation Office (**ATO**) over recent years on these reforms and will continue to support consultation on implementation.

The AICD's comments relate primarily to the Draft Data Standard 2021 (**Data Standard**). We also provide additional comment on our privacy and security concerns regarding public access to directors' personal information, which we understand will be the subject of future consultation on a separate draft disclosure framework.

1. Draft Data Standard

How the Registrar may correct information held by the Registrar

We understand that section 8 of the Data Standard prescribes an application for a Director ID must be made by the individual to whom the application relates, and an agent or other third party cannot apply for a Director ID on behalf of a director unless the Registrar is satisfied that an exception applies.

We also understand that section 9 of the Data Standard enables an individual who has a Director ID to request the Registrar to update their details (for example, name, address and contact information), and must inform the Registrar of any errors or corrections to these details.

However, we note that paragraph 54 of the Data Standard's Explanatory Statement contemplates a company informing the Registrar of a change of details for a director. Accordingly, we recommend that

section 9 of the Data Standard further clarify that an agent or other third party may inform the Registrar of any updates, errors or corrections to a director's details insofar as they relate to a change of address or other contact details (noting that a director's name and date of birth information are linked to the individual's digital identity and will need to be personally updated via an accredited digital identity).

Communication

We note that section 13 of the Data Standard prescribes that the Registrar will communicate electronically with holders and applicants for a Director ID unless the individual cannot communicate electronically.

In our view, having electronic communications as the 'default' method of communication is appropriate. However, consistent with our comments in response to Treasury's Deregulation Taskforce consultation on improving the technology neutrality of Treasury Portfolio Laws, we consider that stakeholders should still be able to elect to receive communications via hard copy mail. We consider this would be best achieved via an 'opt-in' to receive hard copy mail, or in other words, an 'opt-out' of receiving communications electronically by default.

Accordingly, we consider section 13 should further clarify that the Registrar's 'default' method of communications will be electronic, but that an individual who holds or applies for a Director ID may elect to receive communications via hard copy mail. Importantly, we recommend that Treasury ensure consistency with written communication methods across its portfolio laws as part of its Modernising Business Communications consultation.

2. Draft Disclosure Framework

We recognise that the disclosure of Director ID information to a Public Governance, Performance and Accountability (PGPA) body, court or tribunal is necessary to enable those bodies to exercise their functions and powers.

However, we consider that the disclosure of Director ID information in these circumstances should be appropriately confined to only information that is reasonably necessary for the performance of these functions and powers, rather than all information collected by the Registrar for the purposes of an application for a Director ID. We consider this should be clarified in the Draft Disclosure Framework (PGPA Bodies, courts and tribunals) 2021 (**Disclosure Framework**).

In addition, we consider that the Registrar should have the discretion to determine what information would be reasonably necessary for the performance or exercise of functions and powers of the PGPA body as the starting point, instead of the disclosure of *all* Director ID information being the default under this instrument.

While we understand from the Disclosure Framework's Explanatory Statement that each PGPA body will have their own mechanisms for the prevention of misuse of this information, limiting the amount of exposure of an individual's identity information is critical to mitigate the risks of cyber-breaches, unauthorised information access and potential for identity theft. In our view, reducing the breadth of disclosure to PGPA bodies and centralising the storage of Director ID information will reduce the risk of such information being compromised and accessed by third parties.

3. Directors' personal information

As we have advised Treasury in previous submissions, the AICD has long been concerned with the confidentiality and security of information held on existing business registries. In today's digital world, personal identity information is a key exploitation target of cyber and identity criminals.

In particular, expert advice commissioned by the AICD, and shared previously with Treasury and the ATO, confirms that the public availability of personal information (such as residential address, date of birth and place of birth) exposes directors and officers to undue privacy, cyber-security and personal safety risks, including identity fraud.

By way of international comparison, Australian directors are far more exposed than their international counterparts in terms of the degree of public accessibility of personal information. For example, we note that:

- **(Residential address)** the only jurisdiction in the world, other than Australia, that currently requires the residential address to be displayed to the public is New Zealand. However, we understand that New Zealand is currently exploring the removal of the residential address as part of a similar director identification requirement. In the UK, directors have the option to provide a service address in place of the residential address; and
- **(Date and place of birth)** regarding the date and place of birth, no other jurisdiction displays this information on the public record (including New Zealand).

The AICD strongly recommends that the Government prioritise the de-identification of directors' personal data, such as residential address, full date of birth and place of birth in the Director ID disclosure framework that will be subject to separate consultation in 2022. We suggest that:

- **(Residential address)** instead of a full residential address, a service address could be shown (alternatively, a residential suburb and/or state could be shown if necessary to distinguish between multiple individuals with the same name); and
- **(Date and place of birth)** instead of a date and place of birth, the month and year of birth could be shown (which would be consistent with the UK approach).

4. Next steps

We hope our response will be of assistance. If you would like to discuss any aspects further, please contact Laura Bacon, Policy Adviser at lbacon@aicd.com.au.



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