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Data Economy Unit

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TRANSPARENCY INTERNATIONAL AUSTRALIA SUBMISSION TO THE DATA ECONOMY UNIT CONSULTATION PROCESS ON THE MODERNISING BUSINESS REGISTERS PROGRAM

To whom it may concern,

Transparency International Australia (TIA) is pleased to submit some brief comments in response to the Data Economy Unit consultation paper on the proposed amendments to The Corporations Act 2001 (Corporations Act) for the Modernising Business Registers (MBR) Program.

SUMMARY

Transparency International Australia has identified the improvements needed to ensure Australia's corporate register is fit for purpose. This will require substantive changes to ensure a robust approach to due diligence – which is currently lacking. We are pleased to see that momentum has built and the MBR Program has been announced.

We welcome this consultation process to ensure the MBR Program will deliver the reforms that Australia needs to help tackle money laundering and corporate misconduct.

A well-designed and fit for purpose corporate register will help prevent people who have been involved in corruption and other illegal activities registering companies in Australia. In order to help achieve this Australia needs to:

1. Remove excessive costs and allow free access to the register;
2. Close the loophole allowing the anonymous appointment of directors and beneficial shareholders;
3. Verify current data and collect additional data to properly identify and know the individuals registering;
4. Establish a centralised public beneficial ownership register; and
5. Establish a trust register and require full disclosure of beneficial owners and ultimate beneficiaries.

The way these issues are addressed will impact the effectiveness and credibility of the register system with the private sector and wider community.

This submission is to be read in conjunction with:



1. Transparency International Australia's Position Paper: [Australia's Corporate Register: Analysis and Recommendations](#); published in 2021
2. Transparency International Australia's Blog: [Australia's Doors are Wide Open to Money Laundering and Corrupt Conduct](#); published in 2021
3. Transparency International Australia's Webinar: [Doors Wide Open: Australia's Corporate Register](#); recorded in 2021

These provide clear analysis of the flaws of the current system, criteria against which reform can be assessed, and the underlying principles upon which such a system should be based.

The primary function of an effective corporate register is to accurately record the identities of individuals registering associations with private companies. This goes hand-in-hand with preventing people who have been involved in corruption or other illegal activities from registering companies in Australia and subsequently operating in Australia and the region.

TIA prefaces this submission with the following key points:

- The current MBR Program does not yet meet the necessary criteria to render it effective in reforming the system. There are loopholes surrounding nominee directors and shareholders that the program does not address, allowing for anonymity.
- The drivers behind the MBR Program must go beyond reducing regulatory burden, to ensuring robust due diligence and integrity checks. This is vital as tax evasion is often not an isolated financial crime, but is commonly linked to a broad set of activities including money laundering and corruption that can harm society.¹
- Australia must establish a centralised public beneficial ownership register, as transparency of ownership information can play a key role in preventing corrupt conduct and money laundering, as well as tax evasion.

TRANSPARENCY INTERNATIONAL AUSTRALIA

TI Australia (TIA) is part of a global coalition to fight corruption and promote transparency, integrity and accountability at all levels and across all sectors of society, including in government. TIA was launched in March 1995 to raise awareness of corruption in Australia and to initiate moves to combat it. TIA believes that corruption is one of the greatest challenges of the contemporary world. Corruption undermines good government, distorts public policy, leads to the misallocation of resources, harms private and public sector development and particularly hurts the poor. It drives economic inequality and is a major barrier in poverty eradication. Tackling corruption is only possible with the cooperation of a wide range of stakeholders. We engage with the private sector, government and civil society to build *coalitions against corruption*. Coalitions against corruption will help shape a world in which government, politics, business, civil society and the daily lives of people are free of corruption.

TI Australia is the national chapter of [Transparency International \(TI\)](#), the global coalition against corruption, with a presence in over 100 countries. TIA fully supports [TI's Vision, Objectives and Guiding Principles and Mission and Strategy](#). TIA's own [strategy](#) includes tackling corruption and

¹ A Beneficial Ownership Implementation Toolkit: <https://www.oecd.org/tax/transparency/beneficial-ownership-toolkit.pdf>



business integrity. TIA, is registered with the Australian Charities and Not-for-Profits Commission (ACNC).

TI AUSTRALIA POSITION

As the system stands now, Australia has inadequate corporate regulatory systems. This enables people who may have been involved in corruption and other illegal activities to very easily register companies here. Australia is already a 'go to destination' for money laundering, and our lax corporate registration system is exacerbating that risk.² According to the Financial Action Task Force (FATF), Australia's property market is an 'attractive destination' for the proceeds of corruption in the Asia-Pacific region.³ Although the MBR Program is welcome, it does not address key issues that leave the system exposed to corrupt conduct.

Individuals can register a company without any due diligence checks, beneficial ownership disclosure, identification of potential links to politically exposed persons, and a robust assessment of their business activities and legitimacy both in Australia and transnationally. This means that it is far too easy for companies with dubious reputations to register in Australia, do business here, and also use Australia as a launching pad for their business activities in the region.

This lack of transparency, verification and accountability makes it easier for dishonest and criminal individuals to hide corruption, misconduct and crime, including money laundering and embezzlement. When companies are registered in Australia, or listed on the AXS, it creates a shroud of credibility. Assumptions are made that due diligence checks are being done here. Other countries put trust in Australia that a company registered here has gone through some sort of due diligence assessment – but that is simply not the case.

There is a disconnect in that the Australian Transaction Reports and Analysis Centre (AUSTRAC) requires Australian entities to properly identify their customers, yet the corporate register is not required to do so.⁴ This registration system, therefore, enables private companies with opaque business structures to be registered in Australia with no verification of the data supplied by the company or nominee director. Further, a great deal of essential identification data is not collected at all. There is also no way to track or assess if entities registered in Australia have links to politically exposed persons.

The introduction of the Director Identification Number (DIN) is welcome and will assist government agencies in cross checking and exposing complex webs of entities and help to deter phoenixing activities. It will, however not prevent the issue of the control and ownership of private companies in Australia being conducted by anonymous nominees.

² What Can Australia Do to Stop Money Laundering: <https://transparency.org.au/what-australia-can-do-to-stop-money-laundering/>

³ Mutual Evaluation Report Australia: <http://www.fatfgafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Australia-2015.pdf>

⁴ AUSTRAC Annual Report 2019-20: https://www.austrac.gov.au/sites/default/files/2020-10/AUSTRAC_Annual%20Report%202019_2020.pdf



Anonymous nominee relationships can create risks for a number of stakeholders including money laundering, financing of terrorism, and profiting from criminal and/or corrupt behaviour. Given that the nominee 'non-beneficial' owner is merely a legal owner, not liable for tax and with no compulsion to reveal who they are, creates an additional risk of tax fraud. The proposed new MBR regime will continue to allow nominee companies (custodian trustees) to hold and register an investment on behalf of a beneficial owner. These nominee relationships require greater scrutiny, be disclosed and transparent for the system to be effective.

This issue is compounded as Australia has no register for trusts like there is for companies. As noted by the Australian Criminal Intelligence Commission "a lack of transparency and the complexity inherent in legislative and regulatory frameworks surrounding trusts enable serious and organised crime groups and criminal individuals to conceal financial dealings using trust structures and provide anonymity to the beneficial owners".⁵ When shares are non-beneficially held i.e. held by a nominee director or trust, the government does not ask who the beneficial owner is, nor is it required by the Corporations Act to be listed on documents in the company register. This means anyone – including those with links to criminal gangs – can anonymously hold shares in a company – providing the perfect vehicle for money laundering the proceeds of crime and corruption.

The current nominee loopholes in the system allows third party providers to sell nominee director or shareholder services, ensuring that the real identities and ultimate beneficiaries are kept hidden, and allowing opaque business structures to flourish. Senior staff from the Australian Securities and Investments Commission (ASIC) told a Joint Parliamentary Committee in February 2020 "it was not possible to check whether people installed as company directors consented to the appointment, or even existed."⁶ The introduction of the DIN does not prevent this and users of the register, such as banks, legal and accounting firms, and the ATO, will still not know if a person is acting on behalf of another. The public will not be reassured that only those fit and proper are doing business in and from Australia.

Another limitation of the proposed MBR is that the DIN will not be accessible to the public and private sector and will only be available to other government agencies. This is another obstacle for Australian entities to be properly identifying their customers and carrying out robust due diligence.

Further, the high usage cost of Australia's corporate register is another barrier, with it being one of the most expensive in the world to access.⁷ Vital due diligence work which is in the public interest is discouraged by not having free and accessible public information.

The current Corporate Registry System requires only the most basic data to be entered, without being checked or verified, creating a significant flaw in the system. The additional validation steps proposed as part of the MBR Program are welcomed but do not go nearly far enough.

⁵ Money Laundering through Legal Practitioners: <https://www.riskscreen.com/kyc360/wp-content/uploads/2015/09/AUSTRAC-brief-legal-practitioners.pdf>

⁶Homer Simpson Could be Installed As Australian Company Director: <https://www.abc.net.au/news/2020-02-28/homer-simpson-could-be-installed-as-australian-company-director/12010646>

⁷ ASIC Fees Highest in World: <https://www.michaelwest.com.au/asic-fees-highest-in-world/>



It is vital that validation goes beyond software assessing whether the data is in the correct format (eg. a mobile number has the correct number of digits, or an email includes an @ symbol). It does not verify the identity of individuals, entities or their addresses, and takes information provided at face value, without any due diligence or proper verification checks. There is also no proposed increased due diligence for politically exposed persons. This means there is limited transparency around the relationships between directors and multiple companies enabling opaque business structures, phoenix activity and potentially money laundering and other corporate misconduct and crime to thrive in a sought after 'rule of law' jurisdiction.

There has been no information released about what the government intends to do about beneficial ownership transparency as part of the MBR program. Australia has made numerous commitments to progress beneficial ownership disclosure on the global stage, but with no progress. We are still waiting for the implementation of commitments made at the 2014 G20 (High-Level Principles on Beneficial Ownership) and the 2016 UK Anti-Corruption Summit. Efforts to include beneficial ownership disclosure in the third Open Government Partnership National Action Plan were also rejected by Federal Treasury in 2020.⁸ Until the corporate register is fixed and has reliable and accurate information that can be crosschecked and validated - the systems upon which to build a public register of beneficial owners, just does not exist. The MPR Program must ensure verification of data and disclosure of nominee directors and ultimate beneficiaries.

Australia is a founding member of the FATF and has committed to fully and effectively implement its standards for combating of money laundering, specifically in respect of transparency of both companies and trusts. Having robust corporate registers and a public beneficial ownership register would help Australia meet its commitments. It would provide legitimacy and protection to businesses and support regulators to undertake compliance activities. These benefits out way any privacy concerns.

CONCLUSION

In summary, TIA strongly calls for improvements beyond the current MBR Program proposals to Australia's corporate registry to ensure it is fit for purpose.

A well-designed and fit for purpose corporate register will help prevent people who have been involved in corruption and other illegal activities registering companies in Australia. In order to help achieve this Australia needs to:

- Remove excessive costs and allow free access to the register;
- Close the loophole allowing the anonymous appointment of directors and beneficial shareholders, ensuring nominees make their role apparent and reveal who they are a nominee for;
- Verify current data and collect additional data to properly identify and know the individuals registering;
- Establish a centralised public beneficial ownership register; and

⁸ Australia's first and second Open Government Action Plans (2016-2018, 2018-2020) did include a commitment to progress a public register of beneficial ownership, however this was not realised. See <https://ogpau.pmc.gov.au/national-action-plans>



- Establish a trust register and require full disclosure of beneficial owners and ultimate beneficiaries

This is a landmark opportunity to ensure the corporate registry system is set up to help protect Australia against corrupt conduct.

We hope that this submission will prove to be of benefit to this important work. I would welcome the opportunity, as always, to discuss our position with you.

A handwritten signature in black ink, reading "Serena Lillywhite", positioned above a horizontal line.

Serena Lillywhite

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