

Friday 16 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 – Transitional Application Periods

Thank you for the opportunity to provide comments to Treasury on the Transitional Application Periods 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.

While we support the proposed transitional periods for existing directors under the *Corporations Act 2001* (Cth) (**Corporation Act**) and *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (**CATSI Act**), the AICD continues to have concerns about the timeframe, after the transitional period, by which all new directors must have a Director ID prior to their appointment as a director. In our view, the 28 day period for all new directors to apply for a Director ID should become a permanent feature of the Director ID regime. We address our concerns regarding this timeframe below.

1. Existing directors

We support Treasury's proposal to extend the transitional application periods for existing directors under the Corporations Act (that is, those individuals who are eligible officers immediately before the commencement of the Director ID obligations) to apply for a Director ID by 30 November 2022. Similarly, we support the proposed extension of the transitional application for existing directors under the CATSI Act until 30 November 2023.

In our view, given the Director ID provisions under each of the Corporations Act and CATSI Act must have commenced to enable the Registrar to have the legislative basis to conduct live testing of the Director ID application systems, we consider Treasury's proposed extension to the transitional periods preserves the

original intent of the legislation to provide existing directors sufficient time to become familiar with the new requirement and for the director awareness campaign to take effect.

2. New directors

We support Treasury's proposal for all new directors under the Corporations Act and CATSI Act (that is, those individuals who are not a director prior to commencement of the Director ID provisions but are appointed as a director after commencement) to have 28 days after being first appointed a director to apply for a Director ID.

We further support Treasury's proposal to extend the requirement for all new directors appointed between the commencement of the director ID provision under the CATSI Act and 31 October 2022 to have until 30 November 2023.

However, we do not support Treasury's proposal for all new directors (under both the Corporations Act and CATSI Act), after the 12 month transitional period, to be required to have a Director ID prior to their appointment as a director. In our view, such an obligation is unreasonable and particularly onerous given the civil penalties that apply for not complying with this requirement. This is particularly the case given approximately 2.7 million directors will require a Director ID and the director awareness campaign has yet to commence.

We note that the explanatory memorandum of the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020* explains that the 12 month transitional period was designed to provide time for new directors to become familiar with the new Director ID requirement and for any related director awareness campaign to take effect.

However, we do not consider that a 12 month transition period is sufficient to allow for the major director awareness campaign that will be required to inform potential and new directors across companies of all types and sectors of their obligations. We anticipate awareness of these obligations will be an ongoing challenge, particularly for directors in the not-for-profit sector and small to medium sized businesses.

Accordingly, we urge these legislative instruments to allow 28 days for all new directors to obtain a Director ID as a permanent feature of the Director ID regime.

Regardless of the final agreed timeframes, the AICD looks forward to playing a constructive role and supporting Government in the significant communication and director awareness challenge that must be overcome.

3. Directors' personal information

We understand there will be a future consultation on a draft legislative instrument in 2022 outlining the disclosure framework for Director ID personal information. We nevertheless wish to reiterate our privacy and security concerns regarding public access to directors' personal information.

As we have advised in previous submissions, 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. 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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