

16 April 2021

regmod@treasury.gov.au

Attention: Matthew Sedgwick

By email

Dear Sir/Madam,

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Corporations (Director Identification Numbers - Transitional Application Period) Instrument 2021
Corporations (Aboriginal and Torres Strait Islander) (Transitional) Director Identification Number Extended Application Period 2021
Corporations (Transitional) Director Identification Number Extended Application Period 2021 (Instruments)

Who we are:

Governance Institute of Australia is a national membership association, advocating for our network of 40,000 governance and risk management professionals from the listed, unlisted and not-for-profit sectors.

As the only Australian provider of chartered governance accreditation, we offer a range of short courses, certificates and postgraduate study. Our mission is to drive better governance in all organisations, which will in turn create a stronger, better society.

Our members have primary responsibility for developing and implementing governance frameworks in public listed, unlisted and private companies, as well as not-for-profit organisations and the public sector. They have a thorough working knowledge of the operations of the markets and the needs of investors. We regularly contribute to the formation of public policy through our interactions with Treasury, ASIC, APRA, ACCC, ASX, ACNC and the ATO.

Governance Institute is a member of the Modernising Business Registers (MBR) Business Advisory Group and our members have been actively involved in the MBR Project for some time.

The Instruments

Our members have the following comments on the Instruments:

- They support the extension of the transition period for new directors to obtain a director ID to 30 November 2022
- They consider the 28-day period for new directors to obtain a director ID should be a **permanent** feature of the regime. This would also align with the requirements under Part 2D.5 of the *Corporations Act 2001* to notify changes relating to officeholders to ASIC within 28 days.
- They consider the timeframe for extending the regime to new and existing directors of indigenous corporations governed by the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* is appropriate.

Other matters

Extend the scheme to company secretaries

Governance Institute has advocated for some years that this regime should include company secretaries as well as directors and our members still consider that the regime should extend to company secretaries.¹ The introduction of the identification regime with the MBR represents a major change to both the way that company details are available to users, and how they interact with the Registry. Failure to include company secretaries in the regime means there will be a 'missing piece of the puzzle' when it comes to these registers. A company director will be identified by a director ID, which evidences that their identity has been verified but the company secretary will be unverified. This will be confusing for those searching company records for officeholders' details and will raise questions amongst members of the community about why one set of office holders has an identification number while the other set does not. They are likely to draw an adverse inference from the absence of an identification number for the company secretary.

Our members report that, in addition to being the company secretary of a group of companies, they are often also a director of subsidiary companies in a group. Many proprietary companies have a sole director who is also the company secretary. Under the regime, this will create an anomaly on the Register. As director, they will be recorded with a director ID, and as a company secretary their name will presumably be recorded without an identification number.

Company secretaries are frequently those with primary responsibility for dealing and communicating with ASIC and interacting with business registries. Governance Institute considers that from the point of view of administrative efficacy it makes sense for company secretaries to have their identities verified and to be given an identification number at the same time as directors.

Information available on the new register

Our members would welcome clarification about the information which will be available for public search on the new register and information about the cost structure for the new register. One of our members' long-standing concerns is that having this type of information publicly available increases the potential for identity fraud.²

As we have noted previously open publication of birthdates, residential addresses and birth places serves no useful purpose other than for persons with criminal intent. In a world of increasingly faceless transactions, birthdates have become by default the first form of identity check by banks, telecommunications companies and other institutions to ascertain that they are communicating with an authorised person.

To ensure that third parties can enforce their rights against company officers and serve documents on officeholders, the director ID regime will need to require each officeholder to provide an address for service. This address will need to be publicly available on the register. The address for service can be chosen by the officeholder but does not need to be their residential address. In most instances, the company's registered address will be selected as the address for service. The advantages that the identification regime provides for an officeholder's privacy and security intersects neatly with the advantages of using the director ID to deter and

¹ See Submission to the Senate Economics Legislation Committee [Commonwealth Registers Bill 2019 and Treasury Laws Amendment \(Registries Modernisation and other Measures\) Bill 2019](#), 7 March 2019.

² See Submission to the Senate Economics Legislation Committee [Commonwealth Registers Bill 2019 and Treasury Laws Amendment \(Registries Modernisation and other Measures\) Bill 2019](#), 7 March 2019 and Submission [Director Identification Number Data Standard and Disclosure Framework](#), 1 April 2021.

penalise illegal phoenix activity with the ID acting as a unique identifier providing traceability of their relationships across companies.

Our members continue to recommend that personal details such as home address, place and date of birth are not publicly available on the register. The provision of an ID removes the need to make address and date and place of birth data publicly available. It will enable those searching public registers for legitimate business purposes to easily and quickly confirm the identity of officeholders. Provided the risks posed by the availability of historical personal information on the ASIC registers are also addressed, the ID will also protect honest directors and officers from the risk of identity theft and assaults on personal security.

Governance Institute looks forward to continuing our involvement in further deliberations on the MBR and director ID projects. If you wish to discuss any of the issues raised in this letter, please contact Catherine Maxwell.

Yours faithfully,

Megan Motto
CEO