



# Multinational tax integrity: Public Beneficial Ownership Register

Consultation paper

November 2022

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# Consultation Process

## Request for feedback and comments

Interested parties are invited to comment on the policy issues and implementation considerations raised in this paper. Consultation questions are included as a guide only and submissions do not need to be confined to those questions.

While submissions may be lodged electronically or by post, electronic lodgement is preferred.

All information (including name and address details) contained in formal submissions will be made available to the public on the Australian Treasury website, unless it is indicated that you would like all or part of your submission to remain confidential. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain confidential should provide this information marked in a separate document.

A request made under the *Freedom of Information Act 1982* for a submission marked 'confidential' to be made available will be determined in accordance with that Act.

### Closing date for submissions: 16 December 2022

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The principles outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles might operate.

# Implementing Beneficial Ownership Identification and Disclosure Requirements for Corporations Act Entities

## Introduction

The Government is introducing a public register of beneficial ownership information to record who ultimately owns, controls, and receives benefits from a company or legal vehicle operating in Australia. Making the beneficial ownership information available on a public register is intended to increase transparency and discourage the use of complex structures that avoid legal requirements and obscure tax liabilities. The reform is a key element of the Government's commitment to ensuring multinational enterprises pay a fairer share of tax.

Ultimately, the register is intended to support stronger regulatory and law enforcement responses to tax and financial crime, assist foreign investment applications, and facilitate the enforcement of sanctions. Implementation of a beneficial ownership register would broadly align Australia with international approaches to transparency of beneficial ownership information. Currently, Australia is not ranked highly against international benchmarks for the collection and disclosure of beneficial ownership information, including those set out by the Financial Action Task Force (FATF). Australia's ranking in the Organisation for Economic Cooperation and Development (OECD) Global Forum on Transparency and Exchange of Information could also be improved.

The Government's beneficial ownership commitment and the proposals in this paper complement other initiatives in the Government's multinational tax integrity package to address the tax avoidance practices of multinational enterprises, including its recent consultation on Multinational Tax Integrity and Tax Transparency.

## Phased approach to implementation

The Government proposes to adopt a phased approach to implementing beneficial ownership disclosure requirements.

This approach recognises the changes required across businesses and government to collect, verify, store, and access beneficial ownership information. Phased implementation would also provide flexibility to leverage future technological capabilities and enable the development of systems that minimise regulatory burden, while still achieving the overarching policy objective of greater transparency.

The beneficial ownership register regime would deliver the greatest benefit by encompassing a broad range of entities and legal vehicles, including companies (public, both listed and unlisted, and proprietary), trusts and managed investment schemes (MISs). A phased approach would focus on the establishment of beneficial ownership registers for selected entities first, providing the opportunity to establish systems and processes before the register requirements are expanded to other entity types.

Entities proposed for this first phase are those regulated under the *Corporations Act 2001* (Corporations Act), including Australian proprietary companies, unlisted Australian public companies, unlisted Australian registered MISs, and unlisted Corporate Collective Investment Vehicles (CCIVs) (together the ‘regulated entities’). These regulated entities would be required to maintain a register of:

- all natural persons who satisfy at least one of the threshold requirements for registration as a beneficial owner of the relevant entity (proposed in section 2)
- all companies, registered MISs, CCIVs, and trusts that would satisfy at least one of the threshold requirements if they were a natural person.

In future phases, the Government intends to consult on proposed approaches to the:

- disclosure of beneficial ownership of property held through other legal vehicles such as trusts
- centralisation of information on individually maintained beneficial ownership registers in a single public registry, noting the centralised register will require consideration of technical feasibility and the timing of the work to modernise Australia’s business registers.

Figure I.A below illustrates the intended phased approach to considering and implementing beneficial ownership disclosure requirements.

**Figure I.A Phased approach**



This paper seeks views on the potential design features for the first phase of the proposed register requirements for regulated entities. It also seeks views on potential amendments to the substantial holding and tracing notice regimes in the Corporations Act. These regimes impose beneficial ownership disclosure obligations on entities listed on Australian financial markets.

## 1. Existing framework and the case for reform

### Current beneficial ownership disclosure provisions

Australian corporations law currently requires entities listed on a prescribed Australian financial market to collect and disclose beneficial ownership information.

The disclosure of beneficial ownership information is primarily effected through the substantial holding notice and tracing notice regimes (see Boxes 1.1 and 1.2 below). Together, these regimes capture a broad range of beneficial ownership arrangements in listed entities.

Other regulations also facilitate varying levels of beneficial ownership disclosure. For example, unlisted companies must indicate on their member registers if a share is not held beneficially by a member. Proprietary companies must also notify the Australian Securities and Investments Commission (ASIC) of changes to the beneficial ownership status of their top 20 members. These notices are available to the public for a fee.

### Box 1.1: Substantial holding notices

- A person must notify a listed entity and each relevant market operator:
  - if they, together with their associates, acquire or cease to have a relevant interest in five per cent or more of the voting shares or voting interests of the entity (a ‘substantial holding’)
  - if any movement of at least one per cent in their substantial holding occurs.
- ‘Associate’ includes relationships of control and arrangements between persons or persons acting in concert to control or influence a company’s affairs or its board.
- A ‘relevant interest’ captures a range of potential beneficial ownership structures characterised by a capacity to exercise a degree of influence over securities (including company shares and interests in MISs).
- A relevant interest in a security can include:
  - outright legal ownership of the security
  - power to exercise or control the exercise of voting rights attached to the security
  - power to dispose of, or control the exercise of, disposal of the security
  - voting power of over 20 per cent in, or control of, another body corporate or MIS that has a relevant interest in the security.
- Illustrative of the breadth of possible relevant interests in securities, the Corporations Act recognises power and control over voting and disposal can be:
  - express or implied, formal or informal, or solely or jointly held
  - direct or indirect
  - exercised by revocation or breach of a trust, an agreement, or a practice
  - subject to restraint or restriction.
- Notices must be given in the prescribed form and include the person’s name and address, details of their relevant interest or change in relevant interest, the name of each associate with a relevant interest, the nature of the association, and relevant agreements through which the associates have the relevant interest.
- Market operators make the notice available on their public announcements platform.
  - This is the main mechanism by which beneficial ownership information of listed entities is made public.
  - Market operators must provide ASIC with any information about a listed entity made in a public announcement, including substantial holding notices.

### Box 1.2: Tracing notices

- A listed entity and ASIC may obtain beneficial ownership information about the entity by issuing tracing notices directing members of the entity and certain other persons to disclose relevant interests (as explained in Box 1.1 above) in the entity.
  - ASIC must issue such a notice to an entity when requested by a member of the entity unless ASIC considers it would be unreasonable to do so in all the circumstances.
- In response to a notice, a person must disclose details of:
  - their relevant interest in the specified entity and the circumstances giving rise to that interest
  - the name and address of all other persons (if known) with a relevant interest in the entity, the nature of their interest, and the circumstances giving rise to their interest
  - the name and address of all persons (if known) who have given instructions about matters relating to the interest and details of the instructions (if known).
- Listed entities must maintain a publicly accessible register of relevant interest information received in response to a tracing notice.

### Questions

1. Should substantial holding and tracing notices be amended to capture additional beneficial ownership information to identify and disclose the true beneficial owners of listed entities? If so, what additional information should be captured?
2. Should the tracing notice and substantial holding notice regimes be fully aligned so responses to each notice capture the same information?
3. As is the case for tracing notices, should listed entities be required to maintain a register of information collected by substantial holding notices?
4. How could the accessibility and useability of registers maintained by listed entities of information received from tracing notices be improved for users of beneficial ownership information?

## Problem and need for Government action

While the Corporations Act facilitates disclosure of some listed entity beneficial ownership information, Australia does not have a framework for the systematic collection, verification, and release of beneficial ownership information, including for unlisted corporations, unlisted CCIVs, and unlisted registered MISs. This gives rise to potential gaps in regulatory coverage and can create opportunities for exploitation.

The Government recognises there are legitimate reasons for distinguishing the beneficial and legal owners of an asset. However, the absence of a dedicated beneficial ownership disclosure regime for unlisted entities limits public visibility of the underlying ownership of entities, and the persons who influence, control, or benefit from entities' business activities. A lack of transparency gives rise to opportunities to:



- conceal ownership of assets through overseas companies or trusts to evade tax liabilities, debts, or sanctions laws
- launder money and disguise the true ownership of assets acquired with illegally obtained wealth
- conceal related party transactions and other dealings which are not at arm's length.

Internationally, Recommendation 24 of the *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations*, FATF recommends countries ensure there is adequate, accurate, and up-to-date information on the beneficial ownership and control of legal persons that can be obtained or accessed rapidly and efficiently by competent authorities, through either a register of beneficial ownership or an alternative mechanism. Australia is currently assessed as 'partially compliant' with this recommendation. FATF will review Australia's implementation of the FATF Recommendations in its next round of Mutual Evaluations, likely commencing in 2024-25.

Similarly, the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes currently rates Australia overall as 'largely compliant' with the international standard on transparency and exchange of information. However, Australia is only ranked 'partially compliant' with element A.1 of the standard, that countries should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

A register of beneficial ownership information would build on existing disclosure provisions for listed entities and establish a standardised, coherent framework for the collection, verification, and disclosure of beneficial ownership information for unlisted companies, unlisted CCIVs, and unlisted registered MISs. Any such framework would require government regulatory intervention. Responsibility for the regulation of unlisted corporate entities and MISs rests with the Australian Government.

## 2. Definition of beneficial ownership

Beneficial owners are natural persons who ultimately own or control an entity, legal vehicle, or asset. Beneficial owners are not always the legal owners of the relevant entity, vehicle, or asset.

Overseas jurisdictions often adopt share ownership, voting rights, and power to appoint or remove directors as indicators of 'control'. This aligns with guidance by FATF and the OECD for identifying beneficial owners. Relevantly, FATF and the OECD have proposed the use of percentage ownership thresholds to identify control of legal persons.

Beneficial ownership disclosure regulations in other jurisdictions usually also include an additional, broader criterion to capture other forms of control and influence over the operation of an entity, such as the ability to amend the company's business plan.

Consistent with these other models, Australia's beneficial ownership register regime would require 'regulated entities' (section 3 refers) to identify those who have direct or indirect control or ownership of, or influence over, those entities.

Boxes 2.1 to 2.3 below highlight the approach to defining beneficial ownership adopted in the United Kingdom, Singapore, and France.

### Box 2.1: United Kingdom

In 2015, the United Kingdom introduced requirements for companies to identify and collect information about 'Persons with Significant Control' (PSCs). Under the regime, PSCs are defined as individuals having 'significant control' over a company because they meet one or more of the following conditions:

- holding, directly or indirectly, more than 25 per cent of the shares in the company
- holding, directly or indirectly, more than 25 per cent of the voting rights in the company
- holding the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company
- having the right to exercise, or actually exercising, significant influence or control over the company
- having the right to exercise, or actually exercising, significant influence or control over the activities of a trust or a firm, which in turn satisfies any of the conditions above.

In 2022, the United Kingdom introduced requirements for overseas entities seeking to buy, sell or transfer property or land in the United Kingdom to register on a publicly accessible Register of Overseas Entities maintained by Companies House. Overseas entities, including companies, partnerships, or other entities, are defined as legal persons governed by the laws of countries or territories outside the United Kingdom. The register also includes prescribed information about the 'registrable beneficial owners' or managing officers of overseas entities. Registrable beneficial owners may include individuals, legal entities, trustees, and government or public authorities. The register seeks to prevent and combat overseas entities' use of land in the United Kingdom to launder money or invest illicit funds, and to increase transparency and public trust in overseas entities engaged in land ownership in the United Kingdom.

Also in 2022, the United Kingdom Government introduced a Bill which, if enacted, would amend the PSC regime, including by introducing identity verification requirements for persons and legal entities with significant control who are registerable under the PSC regime.

### Box 2.2: Singapore

In 2017, Singapore introduced requirements for certain entities – including companies and foreign companies – to maintain a ‘register of registrable controllers’ (RORC). Since 2020, entities are further required to lodge the information in their RORCs with Singapore’s central RORC, maintained by the Accounting and Corporate Regulatory Authority.

With respect to companies, the RORC regime defines controllers as either a legal entity or an individual with ‘a significant interest in, or significant control over, a company or foreign company’.

- A controller with a ‘significant interest’ in a company with share capital will have either:
  - an interest in more than 25 per cent of the shares in the company
  - an interest in voting shares with more than 25 per cent of the total voting power in the company.
- A controller with a ‘significant interest’ in a company without share capital will hold (directly or indirectly) a right to share in more than 25 per cent of the profits of the company.
- A controller with ‘significant control’ of a company satisfies one of the following:
  - holds the right, directly or indirectly, to appoint or remove company directors who hold a majority of the voting rights at directors’ meetings
  - holds, directly or indirectly, more than 25 per cent of the rights to vote on matters to be decided by a vote of the company’s members
  - has the right to exercise, or actually exercises, significant influence or control over the company.

### Box 2.3: France

In 2017, France introduced requirements for certain entities – including unlisted companies, collective investment vehicles, associations, foundations, endowment funds, sustainability funds and certain trusts – to make a declaration to the Trade and Companies Register on their beneficial owners.

Beneficial owners are defined as natural persons who either ultimately control, directly or indirectly, a customer, or for whom a transaction or activity is carried out.

With respect to companies, beneficial owners are natural persons who hold, directly or indirectly, more than 25 per cent of the capital or voting rights of the company, or exercise, by any other means, a power of control over the company.

With respect to collective investment vehicles, beneficial owners are the natural persons who either hold, directly or indirectly, more than 25 per cent of the units, shares or voting rights of the collective investment, or exercise, by any other means, a power of control on the collective investment, or if the collective investment is not a company, on the management company of the collective investment.

For the purposes of these definitions, control of a company includes:

- holding, directly or indirectly, the majority of the voting rights in general meetings of the company
- actually determining, by voting rights, the decisions in the general meetings of the company
- having power as a member to appoint or dismiss the majority of the members of the administrative, management or supervisory bodies of the company.

A person is also presumed to exercise control if they have, directly or indirectly, over 40 per cent of the voting rights in the company and no other member or shareholder holds, directly or indirectly, a greater fraction.

## Proposed approach

It is proposed that a regulated entity's beneficial ownership register would include details of:

- all natural persons who satisfy at least one of the threshold requirements for registration as a beneficial owner of a regulated entity, as proposed in this section
- all companies, registered MISs, CCIVs, or trusts that would satisfy at least one of the threshold requirements if they were a natural person.

The Government seeks to adopt comprehensive thresholds for registration, in recognition of the multitude of ways in which beneficial owners may have ownership or exercise influence and control over a regulated entity. As noted above, useful indicators of ownership, influence and control include shareholdings and unit holdings, voting power, powers to appoint directors or other management bodies. However, any threshold for registration must also provide for other means of influence or control over regulated entities.

In line with this objective, the Government proposes to adopt the United Kingdom's approach to thresholds for registration on a beneficial ownership register. Under this model, a regulated entity specified in section 3 would include on its beneficial register entities or individuals who either:

- hold, directly or indirectly, 20 per cent of the shares or units in the regulated entity
- hold, directly or indirectly, 20 per cent of the voting rights in the regulated entity
- hold the right, directly or indirectly, to:
  - appoint or remove a majority of the board of directors of the regulated entity (where the regulated entity is an unlisted proprietary or unlisted public company)
  - appoint or remove the regulated entity's responsible entity (where the regulated entity is a MIS)
  - appoint or remove the regulated entity's corporate director (where the regulated entity is a CCIV)
- have the right to exercise, or actually exercise, significant influence or control over the regulated entity.

The first and second limbs of this test establish a 20 per cent minimum threshold. While this is lower than the United Kingdom, it is consistent with existing corporate control and takeover thresholds in Australia, and would leverage an existing body of guidance and stakeholder understanding.

For the fourth limb of the test, it is proposed that 'significant influence' would include having decision rights over the operations of a regulated entity, such as rights to alter the nature of the entity's business, arrange credit or loans on behalf of the entity, and grant options under a share option or other share-based incentive scheme.

The proposed definition would capture forms of beneficial ownership characterised by agreements or arrangements (including formal or customary) to act jointly or in coordination. In these cases, each person who agrees or enters such an arrangement would be registrable on a regulated entity's register, and deemed to hold the total number of securities or voting rights the subject of the agreement or arrangement (even if their direct security holding or voting interest is less than

20 per cent). Similarly, if the arrangement concerns the appointment or removal of a majority of directors, each party to the agreement would be required to be entered on the register individually.

## Questions

5. Are there any elements missing from the proposed definition of beneficial ownership?
6. Are there any potential unintended consequences which could result from adopting a 20 per cent threshold for beneficial ownership?

### 3. Entities subject to beneficial ownership disclosure requirements

The proposals in this paper build on the existing disclosure regimes for listed entities by extending beneficial ownership disclosure requirements to a broader range of entities regulated under the Corporations Act. As a result, over three million additional, unlisted entities would be subject to transparency measures with respect to the disclosure of their beneficial ownership information.

These unlisted entities have existing obligations for maintenance and disclosure of their legal ownership registers. The Government seeks to leverage these existing regulatory frameworks in the first phase of proposed reforms.

The Government intends for the beneficial ownership disclosure regime to remain flexible to accommodate beneficial ownership disclosure of other legal vehicles in the future. Relevantly, beneficial ownership disclosure requirements for property (other than in regulated entities) held on trust will be the subject of consultation in a future phase.

## Proposed approach

It is proposed that the first phase of implementation focus on the following entities as they are regulated by the Commonwealth and are currently required to maintain registers of legal ownership. They therefore have an existing framework that can be applied to the collection of beneficial ownership information.

- Proprietary companies
- Unlisted public companies
- Unlisted registered MISs
- Unlisted CCIVs

(together the 'regulated entities').

Regulated entities would be expected to take reasonable steps to identify and verify their beneficial owners, and to develop and maintain an accurate, up-to-date, publicly accessible beneficial ownership register.

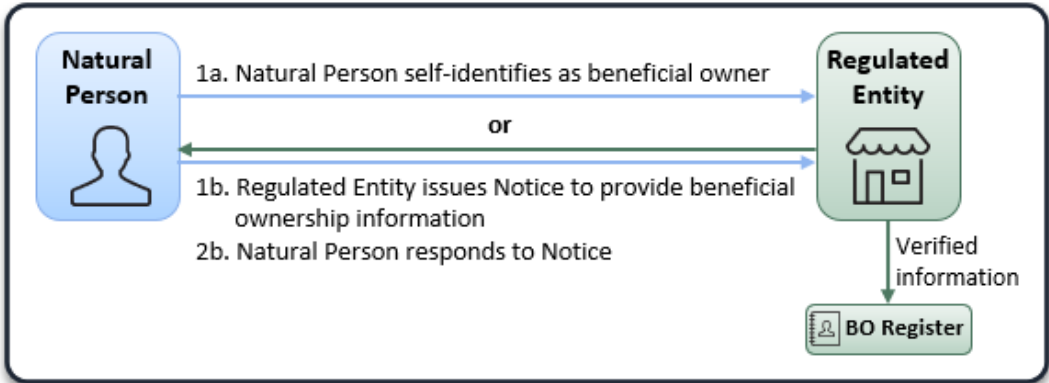
Entities listed on Australian financial markets (including companies and MISs) are expected to continue to identify their beneficial ownership through the substantial holding notice and tracing notice regimes. It is therefore proposed that listed entities would not be required to maintain a beneficial ownership register. However, the Government is considering opportunities to expand and harmonise these regimes (see Consultation Questions 1 to 4 above).

To ensure greater compliance by listed entities with their existing requirements, the Government also proposes to extend ASIC’s restriction powers under the *Australian Securities and Investments Commission Act 2001* (ASIC Act) to non-compliance by listed entities with substantial holding notice and tracing notice requirements (further outlined in section 7).

Further analysis and consultation are required to be undertaken on the implementation for trusts at a future date.

The Government recognises it may not always be possible for regulated entities to be aware of all beneficial owners, particularly those who hold rights or securities, or exercise influence or control through indirect channels. Accordingly, the Government proposes to introduce obligations on Ultimate beneficial owners to identify themselves as beneficial owners and provide relevant beneficial ownership information to regulated entities (similar to the requirements currently under the substantial holding notices regime). Figure 3.1 outlines the flow of information under the proposed regime.

**Figure 3.1 Information flows**



**Questions**

- 7. Should the requirement to maintain a beneficial ownership register be applied to any other entities or legal vehicles (noting beneficial ownership requirements for property not including regulated entities held on trust will be subject to a separate consultation process)?
- 8. Should some entities, such as certain not-for-profit entities, have bespoke or limited beneficial ownership register requirements? If so, what types of entities, and what relief from the general disclosure requirements should be provided?
- 9. What factors would be relevant to determining whether a regulated entity has taken reasonable steps to identify its beneficial owners?

**4. Recording requirements**

Several international jurisdictions require relevant entities to retain beneficial ownership information to ensure that the information housed on a central register is accurate and up to date. In some jurisdictions, such as Singapore, entities are required to maintain their own registers, despite the introduction of a central beneficial ownership register. In other jurisdictions, such as Sweden, Germany, and France, entities are required to keep and maintain records of information on beneficial owners.

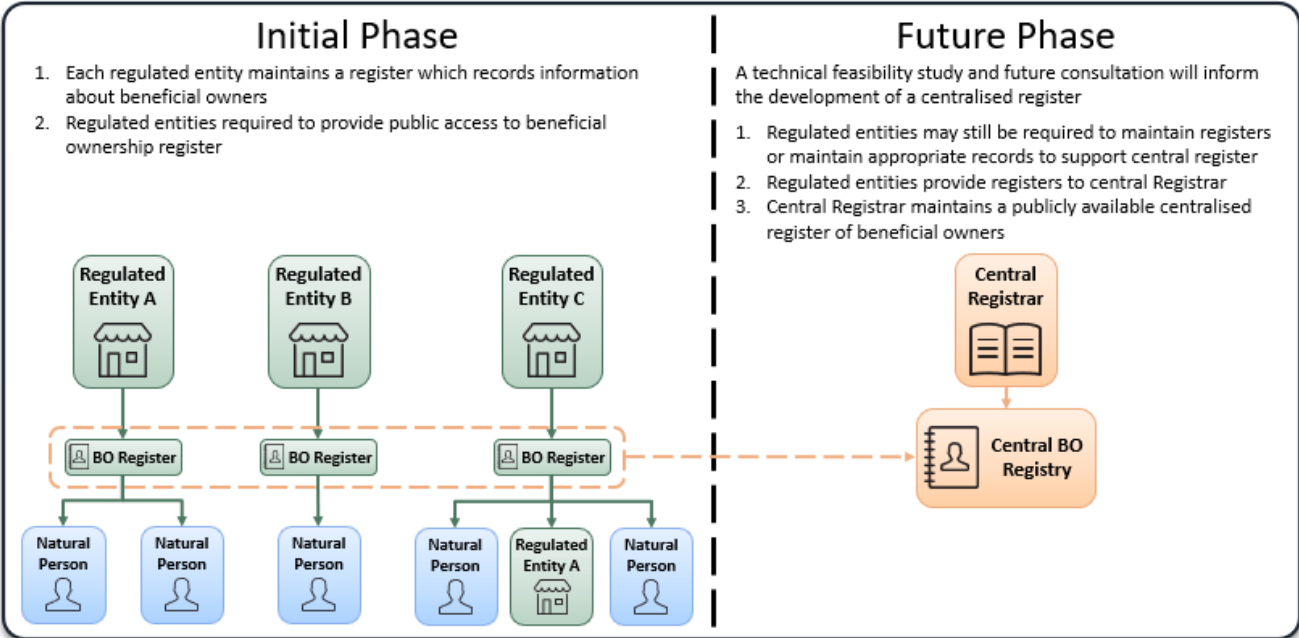
## Proposed approach

The Government proposes to require regulated entities to maintain registers of their beneficial ownership as an important step towards a future central registry, subject to technical feasibility assessments and future consultation.

In the first phase of the proposed approach, each regulated entity would identify on its register the information set out in section 5 with respect to entities and individuals in its beneficial ownership chain.

In future phases, the Government will seek to collate information from each regulated entity’s register onto a public, central register as shown in Figure 4.1 below (subject to technical feasibility specifications and informed by future consultation). At this time, the Government will also consult on any ongoing requirements for regulated entities to individually record and retain beneficial ownership information.

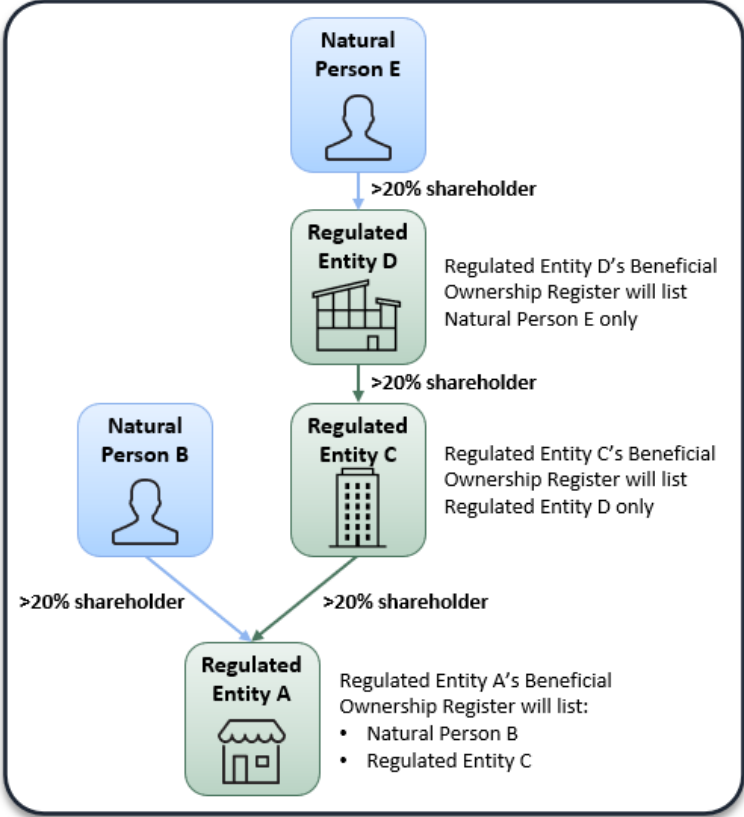
Figure 4.1: Approach to collection of beneficial ownership information



For the avoidance of doubt, a regulated entity’s register would not disclose the beneficial owners of another regulated entity or any listed entity in its beneficial ownership chain. The beneficial owners of the second regulated entity would be identified on the register maintained by that entity. Ownership interests in the listed entity would be disclosed as part of the substantial holder and tracing notice regimes. In the first phase, identifying the ultimate beneficial owners of a particular regulated entity may require examining the registers of multiple regulated entities and public filings of listed entities.

This is illustrated in Figure 4.2 below, where Regulated Entity A’s beneficial ownership register would only list Regulated Entity C and Natural Person B. While Natural Person E is also ultimately a beneficial owner of Regulated Entity A, their status as a beneficial owner of Regulated Entity A can only be ascertained by examining the registers of both Regulated Entity C and Regulated Entity D.

Figure 4.2: Recording requirements in beneficial ownership chains involving regulated entities and natural persons



The proposals in this paper recognise that the beneficial ownership chains of regulated entities often involve one or more trust structures, which are not legal persons for the purposes of the Corporations Act. The Government proposes to require a regulated entity to identify each trust which satisfies a threshold test for inclusion on the entity's beneficial ownership register as outlined in section 2 (unless the relevant trust is a registered unlisted MIS and therefore a regulated entity itself, or a listed MIS and therefore not require further beneficial ownership disclosure). In these circumstances, the regulated entity would be obliged to take reasonable steps to identify all of the trust's beneficiaries, and to record these on its beneficial ownership register.

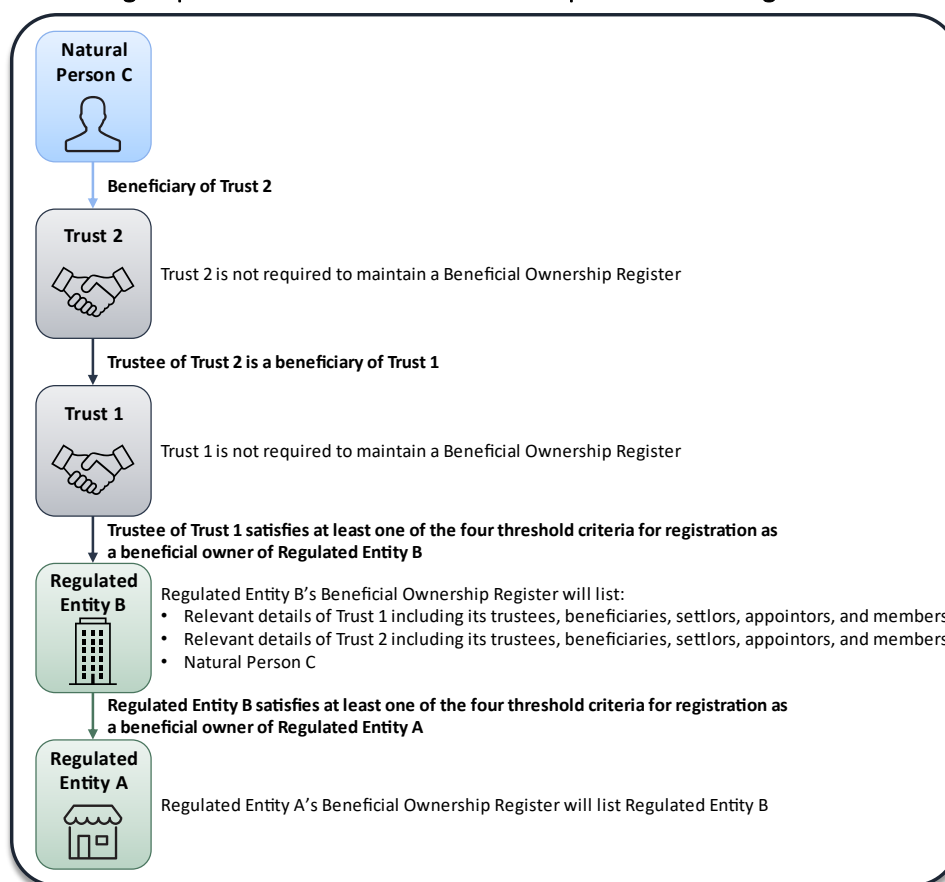
The proposed treatment of trusts in a beneficial ownership chain is illustrated in Figure 4.3 below.

The Government proposes to exempt regulated entities from the requirement to disclose trust beneficiaries if the relevant trust is a registrable superannuation entity (RSE). RSEs are subject to significant oversight and regulation through superannuation and prudential laws. Additional disclosure is likely to impose a large regulatory burden on relevant trustees and the additional transparency is unlikely to give rise to significant benefits.

The proposed exemption would not extend to self-managed superannuation funds (SMSFs) and small APRA funds (SAFs). Regulated entities would still be required to disclose all members of SMSFs and SAFs in their beneficial ownership chains. Beneficial ownership requirements for other property (not including regulated entities) held on trust will require a separate analysis and consultation for consideration at a future stage.



Figure 4.3 Recording requirements in beneficial ownership chains involving trusts



## Questions

10. What, issues, if any, may arise with the proposed recording requirements?
11. Should regulated entities have bespoke disclosure requirements with respect to discretionary trusts listed on their beneficial ownership registers? If so, what information should be disclosed?

## 5. Content and availability of beneficial ownership register

The Government intends regulated entities' beneficial ownership registers to be accessible by the public. Public access could be facilitated by either allowing interested parties to request a copy of the register from the regulated entity or requiring regulated entities to publish their registers online. Each of these options would be subject to exceptions for the protection of individuals' privacy and safety. This would increase market transparency and regulatory oversight of individuals who own or have significant influence or control over regulated entities, while also maintaining important privacy protections and safety.

Treasury will complete a privacy impact assessment (PIA) to inform the design of, and Government decision on, the proposed disclosure requirements. The PIA will identify the impact of the beneficial ownership register on the privacy of individuals and make recommendations for managing, minimising, or eliminating that impact. Feedback from the consultation paper will inform the PIA.

## Proposed approach

### Information collected and made publicly available

It is proposed that a regulated entity's beneficial ownership register would include the information listed in the table below in respect of:

- all natural persons who satisfy at least one of the threshold requirements for registration as a beneficial owner of the regulated entity proposed in section 2
- all companies, registered MISs, CCIVs, or trusts that would satisfy at least one of the threshold requirements if they were a natural person.

Table 5.1 outlines the proposed information fields for inclusion on each regulated entity's beneficial ownership register. It also outlines the subset of information from the register which would be made available to the public. The fields were chosen to:

- enable identification of beneficial owners (including by distinguishing them from other individuals)
- facilitate communication with beneficial owners
- enhance transparency of the nature of beneficial ownership or control over regulated entities.

The chosen fields are informed by a review of registers in overseas jurisdictions, and if implemented, would promote consistency across beneficial ownership regimes.

**Table 5.1: Information collected and made publicly available on beneficial ownership registers**

Information field	Information made publicly available	Reason for collection
<b>Beneficial Owners (Natural Persons)</b>		
Full name	Yes	Identification
Full date of birth	Only month and year of birth <sup>1</sup>	Identification
Addresses for communication and service (can be postal or electronic)	Yes	Identification Communication and service
Residential address	Only country of residence <sup>2</sup>	Identification Communication by regulated entity, regulator, and law enforcement agencies
Nationality / Nationalities	Yes	Identification
Nature of control or influence	Yes	Increased corporate transparency
Date the person became or ceased to be a beneficial owner	Yes	Increased corporate transparency

Information field	Information made publicly available	Reason for collection
<b>Companies, Registered MISs, and CCIVs (including for listed entities)</b>		
Company / MIS / CCIV name	Yes	Identification
Registered office address of Company, Responsible Entity of MIS / Corporate Director of CCIV	Yes	Identification Communication by any member of public
Electronic address	No	Communication by regulated entity, regulator, and law enforcement agencies
Entity type (legal form) e.g. Company, MIS, CCIV	Yes	Corporate transparency
Date of registration	Yes	Corporate transparency
Country of registration	Yes	Identification
Registration number e.g. ACN, ABN, ARFN, or foreign company equivalent	Yes	Identification
Nature of control or influence	Yes	Increased corporate transparency
Date the person obtained or ceased to have control or influence	Yes	Increased corporate transparency
<b>Trusts</b>		
Name of trust / legal arrangement	Yes	Identification
Unique Superannuation Identifier (where available)	Yes	Identification
Date of creation	Yes	Increased corporate transparency
Information (as above for beneficial owners and other entities) on trustees, beneficiaries, appointors, settlors, and any other member of the trust <sup>3</sup>	Yes	Identification Increased corporate transparency

## Notes to table:

1. It is proposed that the day of birth be suppressed from public release to minimise identity theft and data privacy risks. Full dates of birth would be available to the regulated entity, regulators, and law enforcement agencies.
2. It is proposed to suppress the full address from public release for the safety of listed individuals. Full addresses would be available to the regulated entity, regulators, and law enforcement agencies.
3. It is proposed to exempt regulated entities from identifying the beneficiaries, appointors, settlors and other members of a trust if the relevant trust is an RSE (see section 4). Regulated entities would only be expected to provide a RSE's Name, Unique Superannuation Identifier, date of creation, and details of the RSE's trustees.

## Questions

12. How should public access of regulated entities' registers be facilitated? Should registers be accessible on request or published on the regulated entities' websites?
13. What other information should be collected on the beneficial ownership register?
14. Should any of the proposed beneficial ownership information not be collected?
15. What key risks, if any (including privacy risks), are associated with making the proposed information available to the public? How can these risks be mitigated?

## Protection of certain information from public disclosure

To protect the safety of listed individuals, the Government proposes to:

- exempt from public release the disclosure of beneficial owners' residential addresses except to government authorities
- allow any regulated entity or beneficial owner to seek regulatory exemption from public disclosure of other information about the beneficial owner (except to government agencies) on the basis such disclosure would put at risk the personal safety of the beneficial owner or another person.

Applicants seeking to exempt a beneficial owner's information from disclosure may need to specify particulars in support of their application. In some cases, such evidence could be determinative. For example, production of a domestic violence order could be sufficient for an exemption. Some types of applications could also require an application fee.

Beneficial owners who have applied for exemption from the appropriate regulator would also need to notify relevant regulated entities of their application. On receiving such notice, the regulated entities would be prohibited from disclosing the beneficial owner's information except to government agencies.

This proposed approach is informed by elements of the United Kingdom's approach and information disclosure protections in the Bankruptcy Regulations 2021 and the Corporations Act.

The Corporations Act allows company directors to substitute their residential address on a company register with an alternate address if the Australian Electoral Commission has also removed the address from the electoral roll or the registrar of the company register determines that including the address would place the personal safety of the director or members of the director's family at risk. The

approach proposed in this paper expands the existing regime, providing flexibility to tailor public disclosure to the relevant risk and to protect a broader range of individuals. The proposed approach balances the public benefit in transparency of beneficial ownership information with the need to prevent harm to individuals.

## Questions

16. Are there any potential unintended consequences which could result from adopting the proposed approach to protect some beneficial owners' information from public disclosure?
17. In what other circumstances should beneficial ownership information be protected from disclosure? What should be the scope of the protection in those circumstances?
18. Should disclosure exemptions be granted on a graduated basis, so in each case, only the specific details on the register that would put a person's personal safety at risk are exempt from disclosure (e.g. a beneficial owner's name may still be publicly accessible while other identifying information about the owner on the register may be exempt)?

## 6. Accuracy and currency of beneficial ownership registers

The register must be accurate and up to date to ensure it is a credible foundation for corporate transparency and a strong and trusted business environment. Specifically, this means information on the register must be:

- accurate at the time the information is first recorded
- updated promptly when changes occur.

This view aligns with Recommendation 24 of FATF's *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation*, that countries 'ensure that there is adequate, accurate, and up-to-date information on the beneficial ownership and control of legal persons.'

The Government proposes to require regulated entities to verify the identity of their beneficial owners before entering them onto the register. These requirements would underpin the register's ongoing accuracy. However, the Government acknowledges any such requirements must consider the need for accuracy alongside other policy objectives including:

- mitigating privacy and data security risks associated with the collection and storage of sensitive personal data provided for verification purposes
- minimising the burden on regulated entities to verify beneficial owner information.

Many regulated entities already have well developed approaches to identity verification in compliance with 'know-your-customer' obligations in the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (AML/CTF Act) and the new director identification number (director ID) provisions in the *Corporations Act* and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act). Further details on know-your-customer and director ID are set out in Boxes 6.1 and 6.2 below.

In designing the verification requirements proposed in this paper, the Government has drawn on existing regimes and industry practices, including the use of third-party identity verification service providers. Identity verification service providers offer a range of technology-enabled services,

including document verification, biometric facial recognition and likeness checks, and identity information cross-referencing. Relevantly, several providers offer:

- intermediated ‘self-verification services,’ to verify individuals’ identities without reporting entities having to collect and store identity documents, minimising risks to privacy and data security
- international database access, allowing reporting entities to verify identities of individuals residing overseas.

#### **Box 6.1: Know-Your-Customer**

Businesses regulated by the AML/CTF Act (‘reporting entities’) must identify their customers, and check they are who they say they are.

Reporting entities must collect the full names, dates of birth, and residential addresses of natural person customers. They must also use reliable and independent documents or electronic data to confirm, at a minimum, each such customer’s full name and either date of birth or residential address.

Reliable and independent documents include:

- primary photographic identification documents, including a passport, driver’s license, or proof of age card
- primary non-photographic identification documents, including a birth certificate, citizenship certificate, or concession card
- original secondary identification information, including a notice issued by the Australian Taxation Office which records a debt payable to or by the individual, or a notice issued by a local government body or utilities provider which records the provision of services to the individual
- other appropriate verification sources, having regard to the money laundering or terrorism financing risk.

Reporting entities must take a risk-based approach to customer due diligence, by investigating more about a customer’s business dealings and relationships where they perceive the risk of money laundering to be greater.

Reporting entities are also required to keep records of their customer identification procedures, including how they identified and verified beneficial owners. This information must be retained for seven years after ceasing to provide designated services to the customer.

### Box 6.2: Director IDs

Directors and persons acting as directors of companies and certain other entities under the Corporations Act and the CATSI Act are required to obtain a director ID so they can be identified to shareholders, employees, creditors, consumers, external administrators, and regulators. A director ID is a unique identifier issued to a director and kept forever.

The director ID regime is anchored on identity verification and transparent publication of the relationship between directors and the companies in which they hold directorships.

Director IDs are stored by the Australian Business Registry Services and verification is carried out through myGovID, the Australian Government's Digital Identity service, or through other processes which meet an equivalent standard. MyGovID verifies the identities of individuals using identity documents and provides them with a digital identity which enables them to be distinguished when interacting online or accessing online services.

## Proposed approach

The Government proposes to require regulated entities to be reasonably assured of the identities of their beneficial owners.

A principles-based approach could enable the circumstances of each case to be taken into account when determining whether a regulated entity has met the relevant threshold. For example, it could be appropriate for a regulated entity to take few (or no) steps to verify the identity of beneficial owners with whom it is already familiar such as directors or other officers. However, if a beneficial owner is not personally known to the regulated entity, the regulated entity could reasonably be expected to take additional steps to verify the beneficial owner's identity.

Regulated entities could verify the identity of their beneficial owners through appropriate internal processes. The Government also intends to permit regulated entities to use identity verification service providers to verify the identities of beneficial owners. In a future phase, it is possible a centralised register could utilise existing government services to verify the identities of beneficial owners (subject to technical feasibility specifications and informed by future consultation).

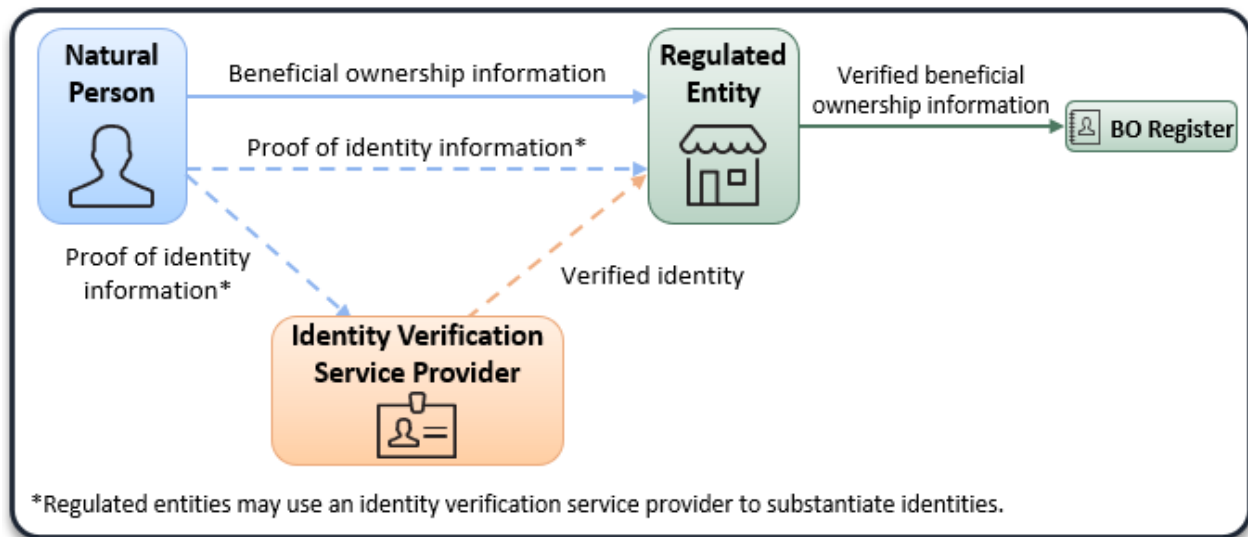
To ensure beneficial ownership information recorded on the register is up to date, the beneficial ownership framework could require:

- regulated entities to issue a notice to persons whom they have identified as a potential beneficial owner, or whom they suspect have had a change in their ownership or control, to provide beneficial ownership information to the regulated entity, within 14 days of identifying the potential beneficial owner or learning of the change in ownership or control
- regulated entities to update their beneficial ownership registers within 14 days of receiving beneficial ownership information
- individuals to notify regulated entities of changes to their beneficial owner status or to the information recorded on the register within 28 days of becoming aware of the change, or of the date by when they should reasonably have become aware of the change (similar to the United Kingdom, where individuals must notify companies of a change in PSC status within two months of the change occurring, or one month of discovering the change).

These requirements would be strengthened by the enforcement powers outlined in section 7 and new regulatory powers to investigate a suspected change in circumstances or suspected false or incomplete information on a regulated entity's register.

Figure 6.1 below illustrates a potential approach to beneficial ownership information verification under the regime.

Figure 6.1 Beneficial ownership information verification process



## Questions

19. Are there any potential unintended consequences which could result from requiring regulated entities to be reasonably assured of the identities of their beneficial owners? How could these be addressed?
20. Are there other methods, procedures, and approaches to verifying the information on beneficial ownership registers?
21. Are there any potential unintended consequences which could result from implementing the proposed requirements for ensuring beneficial ownership registers are kept up to date? How could these be addressed?
22. What are the key privacy risks, if any, arising from a requirement to verify the identities of beneficial owners? How could these be mitigated?

## 7. Enforcement and penalties

The Government proposes to introduce enforcement provisions and penalties to enhance compliance with the beneficial ownership disclosure regime proposed in this paper.

The Corporations Act currently includes penalties for:

- failure by a company or registered MIS to maintain a register of members (section 168) (30 penalty units)
- failure by a person to provide a substantial holding notice (section 671B) (two years' imprisonment for a fault-based offence and 60 penalty units for a strict liability offence)



- failure by a person to provide beneficial ownership information in response to a tracing notice (section 672B) (60 penalty units)
- failure by a listed company or a responsible entity for a listed registered MIS to maintain a register of beneficial ownership information received in response to a tracing notice (section 672DA) (20 to 30 penalty units depending on the specific obligation breached).

## Proposed approach

Under the proposed approach, penalties would apply to regulated entities, their officers, and beneficial owners for non-compliance the new beneficial ownership regime, including for the restrictions notice regime outlined below and the privacy and protection regime in section 5. These would align with other serious civil and criminal penalties in the Corporations Act for failures to disclose legal ownership information.

For regulated entities, the Government proposes to establish an enforcement mechanism for the beneficial ownership register based on elements of the United Kingdom's approach.

Under the proposed model:

- a regulated entity may issue a notice to a person it suspects to be a beneficial owner, requesting the person provide beneficial ownership information to the entity
- a regulated entity may issue a 'warning notice' to the person if the person does not respond to, or adequately address, a valid notice within a prescribed timeframe
- a regulated entity may, if the person does not respond to, or adequately address, a valid warning notice within a prescribed timeframe, prevent the person from dealing in their interest by serving a notice of the restrictions to the person (Restrictions Notice)
- a regulated entity must lift a Restrictions Notice if:
  - the person provides the required beneficial ownership information
  - the regulated entity accepts a reason for non-compliance with the notice from the person
  - the regulated entity discovers the Restrictions Notice unfairly affects the rights of a third party
  - the regulated entity is ordered to do so by a court.
- a court may review and make orders directing a Restrictions Notice be lifted if:
  - the regulated entity applies for permission to sell or transfer the interest
  - the person applies to have the restrictions lifted.

The effect of a Restrictions Notice is to prevent:

- persons issued with the Restrictions Notice from:
  - selling or transferring their interest or any rights in respect of their interest (or agreeing to do so)
  - exercising any rights associated with the interest
- regulated entities from:
  - issuing securities in respect of the interest while the restrictions are in place
  - issuing securities pursuant to an offer made to the holder of the interest

- making any payment in respect of the interest unless the regulated entity is liquidated.

In issuing a Restrictions Notice, a regulated entity must have regard to whether the notice would unfairly impact the rights of a third party (including a joint shareholder or a lender with a security interest on the interest), based on information known to the regulated entity.

In addition to the proposed enforcement regime for regulated entities, the Government proposes to strengthen the existing enforcement regime applying to listed entities in respect of the substantial holding notice and tracing notice regimes. Under the proposal, ASIC would have powers to make orders restraining the disposal, acquisition, and exercise of rights attached to interests in listed companies or listed MISs where satisfied a person has, without reasonable excuse, failed to comply with the substantial holding notice or tracing notice regimes. Such powers could be modelled on sections 72 and 73 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) which enable ASIC to obtain certain information for the purposes of exercising its investigation and information gathering powers under Part 3 of the ASIC Act.

## Questions

23. Is it appropriate to grant ASIC powers in the Corporations Act (equivalent to those it has under sections 72 and 73 of the ASIC Act) for responding to non-compliance with substantial holding notices and tracing notices? Why or why not?
24. Are there any potential unintended consequences which could result from adopting the proposed enforcement regime for regulated entities, if so, how could these be mitigated?
25. What other enforcement, incentive or penalty options could be introduced to encourage greater compliance with the proposed beneficial ownership register requirements?


## 8. Regulatory costs and benefits

The Government expects the beneficial ownership register would give rise to significant community benefits including by facilitating public scrutiny of commercial arrangements and enhancing the effectiveness of regulatory actions relating to tax evasion and other financial crimes. This would strengthen trust, integrity and confidence in Australia's economy and legal and tax systems, promoting greater investment and growth.

The Government also recognises many of the three million regulated entities would incur regulatory and compliance costs under the proposals in this paper, including to:

- undertake an initial collection of beneficial ownership information (to the extent regulated entities do not have this information already) and provide it to regulators (if necessary)
- verify and maintain currency of information on the register
- identify and add to the register details of new beneficial owners.

Many regulated entities may already be compliant with many of the proposed new requirements as a result of existing legal ownership and disclosure of beneficial ownership provisions under the Corporations Act and the AML/CTF Act. For example, the search costs incurred by unlisted companies to identify their beneficial owners is likely to be significantly reduced because approximately 21 per cent of legal shareholders do not hold their shares beneficially, and unlisted companies are required to identify non-beneficially held shares on their member registers.



Many beneficial owners would also incur regulatory and compliance costs to self-identify to each regulated entity in which they are a beneficial owner, and to provide necessary identification and verification information to relevant regulated entities or identity verification service providers.

Regulated entities would incur costs to establish systems to comply with the new beneficial ownership disclosure obligations. These would vary depending on the size and complexity of each regulated entity.

## Questions

26. What regulatory and compliance costs are already incurred by regulated entities to collect, verify, and maintain beneficial ownership information under existing regimes including member register and anti-money laundering and counter terrorism financing obligations?
27. What additional financial costs would regulated entities or listed entities incur to comply with the proposals in this paper? Which entities would be affected and what would be the quantified estimate of regulatory burden incurred?
28. What other impacts would the proposals in this paper have on businesses and the economy more broadly? What information can you provide to assist with quantifying the benefits and costs?
29. What other information is relevant to assessing the costs and benefits and regulatory burden of introducing the proposals outlined in this paper?
30. What transitional arrangements would be necessary to enable regulated entities and listed entities to meet the proposed new requirements?

# Consultation Questions

## Introduction

1. Should substantial holding and tracing notices be amended to capture additional beneficial ownership information to identify and disclose the true beneficial owners of listed entities? If so, what additional information should be captured?
2. Should the tracing notice and substantial holding notice regimes be fully aligned so responses to each notice capture the same information?
3. As is the case for tracing notices, should listed entities be required to maintain a register of information collected by substantial holding notices?
4. How could the accessibility and useability of registers maintained by listed entities of information received from tracing notices be improved for users of beneficial ownership information?

## Definition of beneficial ownership

5. Are there any elements missing from the proposed definition of beneficial ownership?
6. Are there any potential unintended consequences which could result from adopting a 20 per cent threshold for beneficial ownership?

## Entities subject to beneficial ownership disclosure requirements

7. Should the requirement to maintain a beneficial ownership register be applied to any other entities or legal vehicles (noting beneficial ownership requirements for property not including regulated entities held on trust will be subject to a separate consultation process)?
8. Should some entities, such as certain not-for-profit entities, have bespoke or limited beneficial ownership register requirements? If so, what types of entities, and what relief from the general disclosure requirements should be provided?
9. What factors would be relevant to determining whether a regulated entity has taken reasonable steps to identify its beneficial owners?

## Recording requirements

10. What, issues, if any, may arise with the proposed recording requirements?
11. Should regulated entities have bespoke disclosure requirements with respect to discretionary trusts listed on their beneficial ownership registers? If so, what information should be disclosed?

## Content and availability of beneficial ownership register

12. How should public access of regulated entities' registers be facilitated? Should registers be accessible on request or published on the regulated entities' websites?
13. What other information should be collected on the beneficial ownership register?
14. Should any of the proposed beneficial ownership information not be collected?
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#### **Accuracy and currency of beneficial ownership register**


19. Are there any potential unintended consequences which could result from requiring regulated entities to be reasonably assured of the identities of their beneficial owners? How could these be addressed?
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#### **Enforcement and penalties**

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24. Are there any potential unintended consequences which could result from adopting the proposed enforcement regime for regulated entities, if so, how could these be mitigated?
25. What other enforcement, incentive or penalty options could be introduced to encourage greater compliance with the proposed beneficial ownership register requirements?

#### **Regulatory costs and benefits**

26. What regulatory and compliance costs are already incurred by regulated entities to collect, verify, and maintain beneficial ownership information under existing regimes including member register and anti-money laundering and counter terrorism financing obligations?
27. What additional financial costs would regulated entities or listed entities incur to comply with the proposals in this paper? Which entities would be affected and what would be the quantified estimate of regulatory burden incurred?
28. What other impacts would the proposals in this paper have on businesses and the economy more broadly? What information can you provide to assist with quantifying the benefits and costs?
29. What other information is relevant to assessing the costs and benefits and regulatory burden of introducing the proposals outlined in this paper?



30. What transitional arrangements would be necessary to enable regulated entities and listed entities to meet the proposed new requirements?