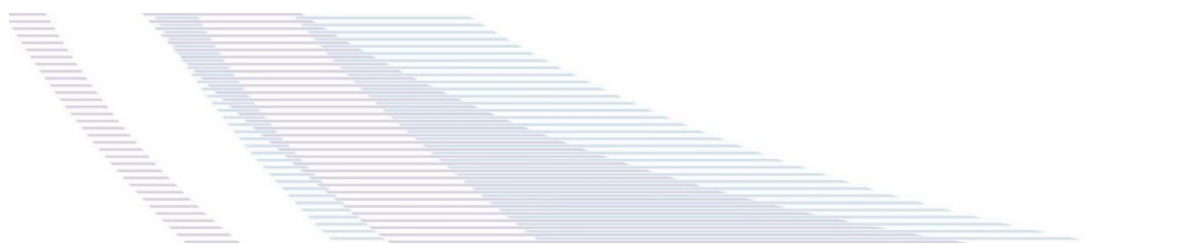




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**Prepared for The Treasury**  
**11 June 2024**



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**Beneficial Ownership Policy**  
**Privacy Impact Assessment**

Matter number 24000778

# Treasury – Beneficial Ownership Policy Privacy Impact Assessment

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## Executive Summary

1. The Department of the Treasury (**Treasury**) has commissioned AGS to complete a Privacy Impact Assessment (**PIA**) to consider the potential privacy impacts of the implementation of the Beneficial Ownership Policy (**BO Policy**).

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## Purpose of this PIA

2. Australian Privacy Principle (**APP**) 1.2 requires agencies such as the Treasury to take reasonable steps to implement practices, procedures and systems that will:
  - 2.1. ensure compliance with the APPs and the *Australian Government Agencies Privacy Code* (**Privacy Code**)
  - 2.2. enable the Commonwealth to deal with enquiries and complaints about compliance with the APPs and the Privacy Code.
3. The BO Policy is a 'high risk' project<sup>1</sup> due to the potential collection, use and disclosure of a significant amount of personal information about owners of various kinds of entities. This PIA is a key part of the activities undertaken by the Treasury to identify possible privacy impacts of the BO Policy and its associated activities, and implement solutions to minimise or eradicate any privacy risks.

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## Summary of findings

4. The BO Policy contemplates the creation of a Beneficial Ownership Register for unlisted regulated entities via a staged approach, with the goal being the implementation of a Public Commonwealth Beneficial Ownership Register (**PCBOR**) maintained by a Responsible Commonwealth Agency (the **RCA**).
5. On balance, we think that the privacy impacts of the BO Policy are proportional to the public benefit of the scheme. Nonetheless, it involves substantial, and mandatory, collection, use and disclosure of personal information. Although existing measures provide for some strong privacy protections, this PIA identifies additional protections which the BO Policy could include to appropriately protect the privacy of beneficial owners.

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## Purposes of the Beneficial Ownership Policy

6. Australia does not have a systematic framework for collecting, verifying, and recording beneficial ownership information for unlisted corporations. This gives rise to a lack of corporate transparency, potential gaps in regulatory coverage, and creates opportunities for exploitation.

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<sup>1</sup> Section 12(1) of the Privacy Code requires an agency to undertake a PIA for all 'high risk projects'. A project may be a high risk project if it involves any new or changed ways of handling personal information that are likely to have a significant impact on the privacy of an individual: s 12(2) of the Privacy Code.

7. Promoting corporate transparency provides the following benefits:
  - 7.1. For markets, transparency reduces information asymmetry, reduces barriers to entry for new businesses, and promotes competition and innovation.
  - 7.2. For regulators and law enforcement, transparency facilitates investigations into illicit activity such as tax evasion, money laundering, and terrorism financing.
  - 7.3. For businesses, transparency addresses market failures arising from information asymmetries, facilitates the undertaking of comprehensive due diligence processes, and addresses that companies may currently have no mechanism to determine their own beneficial ownership.
  - 7.4. For individuals, transparency facilitates individuals to undertake a comprehensive assessment of financial and non-financial risks, and reduces the likelihood that individuals are exposed to fraud, losses, or inadvertent dealings with individuals or organisations participating in illicit activity.
8. A lack of transparency around beneficial ownership gives rise to opportunities to:
  - 8.1. Conceal ownership of assets.
  - 8.2. Evade tax liabilities, debts and sanctions enforcement.
  - 8.3. Launder money and conceal the acquisition of assets through illegal means.
  - 8.4. Conceal related-party transactions and other dealings which are not at arm's length.
9. The weaknesses in Australia's beneficial owner identification regime also threatens Australia's standing in the international community, because our regulation of the financial system does not reflect best practice.

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### **Operation of the Beneficial Ownership Policy**

10. The BO Policy will define a 'beneficial owner' as someone who:
  - 10.1. holds, directly or indirectly, 25 per cent of the shares of an in-scope company (**limb 1**)
  - 10.2. holds, directly or indirectly, 25 per cent of the voting rights in an in-scope company (**limb 2**)
  - 10.3. holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of an in-scope company (**limb 3**)
  - 10.4. has the right to exercise, or actually exercises, significant influence or control over an in-scope company (**limb 4**).
11. The BO Policy will come into effect in a two-staged rollout. In **Stage 1**, individual in-scope companies will collect beneficial ownership information (**BOI**) and maintain individual BORs. Members of the public and regulators/law enforcement agencies will contact in-scope companies directly to seek access to a BOR, and in-scope companies will be responsible for granting or refusing these requests.
12. In **Stage 2** of the BO Policy, the RCA will collect and hold BOI about beneficial owners in the PCBOR. It will collect BOI directly from both beneficial owners and in-

scope companies. It is proposed that when the PCBOR goes live, in-scope companies will be required to input the information kept in their BORs into the PCBOR directly.

13. Different rules regarding the collection and disclosure of BOI will apply depending on whether the beneficial owner is a natural person, or what type of legal entity they are. As an example, in Stage 1, the BO Policy will require an in-scope company that is an unlisted proprietary company to collect the following information about each of its natural person beneficial owners:

BOI			
Full name	Addresses for communication and service	Nationality	Nature of control or influence
Date of birth	Residential address	Date the person became or ceased to be a beneficial owner	

### Summary of protections

14. The design of the BO Policy has involved extensive review of similar projects established in other jurisdictions and engagement with stakeholders. The BO Policy incorporates significant privacy protections informed by this consultation and result.
15. As a starting point, while to-be-determined regulators and law enforcement agencies will be able to access the full register maintained by an in-scope company or by the RCA, members of the general public will only be able to request access to a smaller subset of BOI. Members of the public will not be able to access a person's full date of birth, residential address, or address for communication.
16. Additionally, members of the public will need to pass a 'test' before an in-scope company or the RCA will grant them access to BOI. The test is that, before granting a person access to BOI, the in-scope company or RCA must be satisfied that the person does not seek access to the BOI for an 'improper purpose'. The improper purposes for access will be aligned with the improper purposes for seeking a copy of a company's register outlined in reg 2C.1.03 of the *Corporations Regulation 2001* (Cth). These improper purposes including soliciting a donation from a member of a company, and gathering information about the personal wealth of a member of a company.
17. Importantly, certain categories of beneficial owners will be able to apply for suppression of information about them within a BOR or the PCBOR. Information will be suppressed in the following circumstances.

No.	Factual circumstance requiring suppression of BOI
1.	Beneficial owners who are in the process of applying for suppression with ASIC
2.	A beneficial owner who is under 18 years of age
3.	A beneficial owner is a silent voter on the electoral role
4.	ASIC has approved the suppression application on the basis of a risk of harm or a risk to safety

18. In scope companies must notify beneficial owners of the right to have their information suppressed from the register so that they are aware of the right and

have the opportunity to prevent public disclosure. Only ASIC will be able to approve an application for suppression on the basis of a risk to personal safety. The BOI of a beneficial owner making such an application will be suppressed until the determination of the application and any subsequent review processes. If an application for suppression is approved, the beneficial owner's BOI will be suppressed permanently.

19. We consider that these protections address the most immediate privacy risks associated with the BO Policy. Nonetheless, there are further opportunities for the BO Policy to minimise or mitigate privacy impacts.

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## Summary of privacy impacts and issues

20. At a fundamental level, the BO Policy involves a significant interference with the privacy of beneficial owners. Each individual must identify and disclose personal information about themselves. This information may become publicly available, which the individual may never have intended to become publicly known. There is a clear loss of choice and control over the handling of their personal information for beneficial owners.
21. There are also risks inherent in requiring in-scope companies to create and maintain their own BORs. Although ASIC will have an audit function, in Stage 1, the Commonwealth will have limited day-to-day oversight of the personal information about beneficial owners that in-scope companies are handling to comply with the BO Policy. Although guidance will be provided, the risk of overcollection, data quality and/or security issues will exist.
22. Additionally, in Stage 2, the accumulation of individual BORs within a central registry presents an additional risk. The PCBOR will present an attractive honey pot for malicious individuals seeking to access high value personal information.
23. More generally, access to BOI may expose personal information to data scrapers, data brokers, identity thieves or other criminals, either for use alone or in combination with other information.
24. In summary, the BO Policy may expose beneficial owners to disproportionate harm including financial, reputational, physical or emotional harm.

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## Privacy risks and recommendations

25. Australia is a signatory to the *International Covenant on Civil and Political Rights* (the **ICCPR**) which protects against 'arbitrary or unlawful interference with privacy': Article 17.<sup>2</sup>
26. Importantly, not every interference with privacy will be inconsistent with the right to privacy. The concept of 'arbitrariness' is 'intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the ICCPR and should be, in any event, reasonable in the particular circumstances.'<sup>3</sup>

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<sup>2</sup> [International Covenant on Civil and Political Rights | OHCHR](#)

<sup>3</sup> UN Human Rights Committee, [General Comment No. 16](#), [4]

27. As the BO Policy will introduce new legislation which will impact on the privacy of individuals, the PIA examined whether the policy settings are reasonable, necessary and proportionate.
28. We also examined whether the BO Policy will enable the handling of personal information in accordance with the *Privacy Act 1958* (Cth) (the **Privacy Act**), which codifies the right to information privacy in the ICCPR into Australian law.
29. Following is a high-level summary of the findings of the PIA and our recommendations.

#### **‘Improper purpose’ test less effective than a ‘legitimate interest’ test**

30. The PIA found that public access must be conditioned to effectively protect privacy.
31. In order to strike the right balance, AGS recommends that the BO Policy limit access to individuals that:
  - 31.1. positively demonstrate a ‘legitimate interest’ in accessing BOI
  - 31.2. pay a small fee, not exceeding the administrative cost of making the information available (except for persons who will be exempt from paying the fee, such as journalists and academics) (**Recommendation 1**).
32. AGS prefers a ‘legitimate interest’ standard over an ‘improper purpose’ test for a number of reasons, including that it is more in-line with the international standards, may be more difficult for malicious actors to successfully deceive, and better protects the privacy of beneficial owners.

#### **Conditions on access to BOI**

33. The purposes behind making BOI available to members of the public who do not have an improper purpose are sound. However, at present, there are no restrictions on what a person can do with BOI once received. There is a risk that people who access BOI for one purpose may use or disclose the information for secondary improper purposes.
34. We recommend that, when seeking access to BOI, the BO Policy require applicants to declare (1) the purpose for which they are making their request, and (2) that they will only use or disclose the BOI for the declared purpose (**Recommendation 2**)
35. Additionally, the BO Policy should give the RCA power to impose conditions on how people who access data contained in the PCBOR may use or disclose this data (**Recommendation 2**). Conditions could include permitting the use of the BOI for certain activities only (e.g. marketing) where the access application specifies a broad purpose.

#### **Minimising ‘function creep’**

36. We expect that the public may be concerned about the significant amount of personal information which in-scope entities, ASIC and the RCA will handle under the BO Policy. To give comfort to the public, and to ensure any changes or additional impacts of the BO Policy are subject to Parliamentary scrutiny, we recommend setting out specifics of the BO Policy in primary legislation to the greatest extent possible (**Recommendation 3**).

37. Details that could be set out in primary legislation include the types of BOI for inclusion in the BOR / PCBOR, the law enforcement agencies and regulators who will have unlimited access to BOI, and the 'improper purposes' for which access to BOI can be refused.

#### Application of the Privacy Act to in-scope companies

38. The BO Policy will impose a range of new obligations on in-scope companies. In-scope companies that are APP entities as defined in the Privacy Act will be required to comply with the Privacy Act when handling personal information.
39. At present, the Privacy Act does not apply to small business operators (**SBOs**), which is generally an individual, body corporate, partnership, unincorporated association or trust with a turnover of less than \$3 million per year (**SBO exception**): s 6D(1) of the Privacy Act.<sup>4</sup> Treasury instructs that many in-scope companies are SBOs.
40. If an amendment recommended by a recent review of the Privacy Act passes into law, the SBO exception will be removed, and most in-scope companies will become APP entities. If this change does not occur, we recommend that the BO Policy should exclude in-scope companies from the SBO exception (or at least in-scope companies which are not director-owner companies). This policy setting would align with the existing setting under s 6E(1A) of the Privacy Act which provides that the SBO exception does not apply to an entity for the purposes of, or in connection with, activities relating to the *Anti Money Laundering and Counter Terrorism Funding Act 2006 (AML/CTF Act)*.

#### Helping in-scope companies comply with their privacy obligations

41. To promote a 'privacy by design' approach, the Commonwealth should develop guidance for in-scope companies on appropriate content for entity privacy policies, and necessary practices, procedures and systems that entities should implement to comply with the APPs in relation to BORs (**Recommendation 4**). Guidance should encourage in-scope entities which are not APP entities to comply with the guidance.
42. To minimise risks of overcollection or receipt of unsolicited personal information by in-scope companies, we recommend that ASIC develop approved formats for providing information. These formats or 'data standards' should include guidance to beneficial owners on the kinds of information they must supply, as well as guidance on other kinds of information that are not needed or should not be supplied (**Recommendation 5**).

#### Notifying individuals of the collection of their personal information

43. Although the BO Policy will require in-scope companies, the RCA and ASIC to collect personal information from beneficial owners, the Privacy Act will require these entities to notify beneficial owners of the collection of their personal information. This is a protective measure that ensures an individual is aware of the handling of their personal information, which facilitates choice and control.

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<sup>4</sup> See also s 6D(4) of the Privacy Act which lists other entities that are not SBOs.

44. Under Australian Privacy Principle (**APP**) 5.2, notification must include matters such as:
- 44.1. the identity and contact details of the notifying entity,
  - 44.2. the fact that collection is required or authorised under law,
  - 44.3. the purposes for which the notifying entity collects the information, and
  - 44.4. the consequences if the beneficial owner does not provide the requested information.
45. Accordingly, we recommend that in-scope companies subject to the Privacy Act, the RCA and ASIC provide collection notices addressing the matters outlined at APP 5.2, before, or as soon as practicable after, they collect personal information (**Recommendation 6**).

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### **Protecting beneficial owners who are eligible for, or seeking access to, the suppression regime**

46. The BO Policy will put significant responsibilities on in-scope companies in relation to the protection of BOI for beneficial owners who are eligible for, or seeking access to, the suppression regime. Beneficial owners must suppress personal information, potentially for long periods of time, and avoid inadvertently disclosing suppressed personal information while otherwise facilitating requests to access a BOR.
47. We anticipate that many, if not most, in-scope companies will be unsophisticated in suppressing personal information. To assist in-scope companies to comply with their obligations, thereby protecting beneficial owners who are entitled to the suppression of their BOI, we recommend that:
- 47.1. in-scope companies keep BOI suppressed for 28 days after receiving notice of the beneficial owner's intent to apply for suppression, and
  - 47.2. ASIC notify in-scope companies of the receipt and outcome of a suppression application (**Recommendation 7**).
48. To help beneficial owners make decisions about whether to apply for suppression, to help ASIC assess suppression applications, and to reduce instances of collecting unsolicited personal information, we recommend that the Commonwealth develop:
- 48.1. guidance for beneficial owners on the kinds of circumstances and evidence which might support a suppression application
  - 48.2. an approved format to supply information in support of a suppression application (**Recommendation 8**).

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### **Quality of personal information**

49. The BO Policy will require in-scope companies to be reasonably satisfied of the identity of their beneficial owners. This is a privacy enhancing measures that will promote the accuracy, currency and completeness of BOI included in a register.
50. However, in-scope companies are likely to vary widely in terms of their level of sophistication in verifying identity. We recommend BO Policy guidance encourage in-scope companies to engage the services of professional identity verification service providers (**Recommendation 9**). In addition to promoting the quality of data,



this will minimise the collection and storage of identity documents by in-scope companies, reducing the risk of identity theft or other criminal activity in the event of a data breach.

51. We also consider that, left to their own devices, in-scope companies may create and maintain their BORs in idiosyncratic and inconsistent formats. This may lead to the collection of incomplete data, and make it difficult to transition to Stage 2 of the PCBOR. To avoid these issues, we recommend the Commonwealth develop and promote a template or format for creating and maintaining a BOR (**Recommendation 10**).

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### Storage, correction and destruction of personal information

52. Under the BO Policy, in-scope entities must retain relevant records for 7 years. Under the Privacy Act, APP 11.2 requires an APP entity to destroy any personal information the entity no longer requires for a business purpose.
53. Where an in-scope entity updates incorrect information in its BOR, the obligation to retain records for 7 years may conflict with the obligation under APP 11.2.
54. Where an in-scope entity alters a record to correct an error, the incorrect records should be destroyed or de-identified. However, where this occurs, the in-scope entity should retain records of these changes (**Recommendation 11**). We anticipate information about the correction of records would serve to benefit law enforcement agencies or regulators.

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### Table of recommendations

55. The 11 recommendations made within the PIA are summarised in the table below.

#	Issue	Recommendation
1	<p>The intrusion into personal privacy caused by permitting public access to BOI will be proportionate to the benefits if appropriate measures are implemented to protect BOI.</p> <p>Limiting access to BOI to individuals who do not seek access for an improper purpose may be a difficult test to administer. It also does not align with international standards.</p> <p>We consider that a small fee, and a requirement that a person has a 'legitimate interest' in being granted access, are the reasonable and appropriate conditions / protections.</p>	<p>Treasury amend the BO Policy to limit access to the BORs in Stage 1 and the PCBOR in Stage 2 to persons and groups who:</p> <ul style="list-style-type: none"> <li>• pay a fee not exceeding the administrative cost of making the information available (except for persons who will be exempt from paying the fee, such as journalists and academics), <u>and</u></li> <li>• demonstrate a legitimate interest in accessing the information.</li> </ul>

#	Issue	Recommendation
2	Interference with privacy may occur if individuals or groups that access BOI for a legitimate purpose use or disclose the data for a different purpose.	<p>The BO Policy:</p> <ul style="list-style-type: none"> <li>• require access applicants in Stages 1 and/or 2 to declare the purposes for which they seek access, and require, as a condition of access, that they undertake to only use or disclose received BOI for the declared purposes</li> <li>• authorise the RCA to impose conditions on how persons who access data in the PCBOR may use or disclose the data.</li> </ul>
3	Prescribing the detail of the BO Policy in delegated legislation risks later 'function creep', i.e. expansion of the policy to collect additional personal information, or permit the use/disclosure of BOI for unanticipated purposes.	<p>Treasury prescribe the core elements of the BO Policy in primary legislation, including:</p> <ul style="list-style-type: none"> <li>• the types of BOI,</li> <li>• the law enforcement agencies and regulators who will have unlimited access to BOI,</li> <li>• the purposes for which law enforcement agencies and regulators can seek unlimited access to BOI</li> <li>• the scope of ASIC's enforcement powers,</li> <li>• the reasons for which a person seeking to access BOR may have an 'improper purpose'.</li> </ul>
4	The introduction of the BO Policy will require in-scope companies to prepare or update policies (including privacy policies where they have chosen or are required to have a privacy policy) and implement new practices to collect, store, use and disclose BOI that is personal information.	<p>To promote a 'privacy by design' approach, the Commonwealth develop guidance for in-scope companies on appropriate content for entity privacy policies, and necessary practices, procedures and systems that entities should implement to comply with the APPs in <a href="#">Annexure A</a>.</p> <p>To promote a 'privacy by design' approach, in-scope companies who are not subject to the APPs should be encouraged to voluntarily comply with the APPs in their handling of BOI that is personal information.</p>

#	Issue	Recommendation
5	Beneficial owners may over-provide personal information when supplying BOI, such as additional documents demonstrating their status as a beneficial owner, or a submission in support of an application to suppress their BOI (which they should provide to ASIC only, not in-scope companies).	The approved format should include guidance to beneficial owners explaining: <ul style="list-style-type: none"> <li>the categories of information they must supply,</li> <li>other kinds of information that are not needed, and should not be supplied.</li> </ul>
6	APP entities must, before or as soon as practicable after collecting personal information, notify the individual of prescribed matters, or otherwise ensure that they are aware of such matters.	In-scope companies, ASIC and the RCA provide collection notices addressing the matters outlined at <a href="#">Annexure A</a> , before, or as soon as practicable after, they collect personal information.
7	Unless ASIC notifies an in-scope company about the receipt and outcome of a suppression application, the in-scope company may not know whether a suppression entitlement exists, or when the entitlement ends (e.g. if ASIC refuses the application or a review is unsuccessful).	<ul style="list-style-type: none"> <li>ASIC notify in-scope companies of the receipt and outcome of a suppression application.</li> <li>In-scope companies suppress BOI from the register for 28 days after receiving notice of a beneficial owner's intent to apply for suppression, or after they receive notice of an application until they receive a negative final outcome notice.</li> </ul>
8	Any uncertainty over the operation of the suppression regime may impact the privacy of beneficial owners, for example, if they believe they are ineligible for suppression and fail to apply, or over-provide information supporting their suppression application.	The Commonwealth develop: <ul style="list-style-type: none"> <li>guidance for beneficial owners on the kinds of circumstances where it will grant a suppression application, as well as the types of information an individual could supply to substantiate a suppression application</li> <li>an approved format to supply information in support of a suppression application.</li> </ul>
9	Many in-scope companies will have limited experience in identity verification. This may cause harm to beneficial owners, e.g. if in-scope companies over collect and/or fail to delete identity documents after verifying identity (e.g. in the event of a data breach).	The Commonwealth encourage in-scope companies to engage professional identity verification service providers.

#	Issue	Recommendation
10	Allowing in-scope companies to create and maintain BORs in idiosyncratic formats risks recording BOI in inconsistent formats. This may cause data quality issues in Stage 2 and/or risk unauthorised disclosure in Stage 1.	The Commonwealth prescribe or promote a template or format for in-scope companies to use to create and maintain their BORs. For example, a document or workbook with locked, defined formatting rules presents the most significant benefits.
11	Where incorrect information in a BOR is updated, the obligation to retain records for 7 years may conflict with the need, under APP 11.2, to destroy personal information an entity no longer requires for a purpose under the APPs.	<p>The BO Policy require in-scope companies who correct incorrect personal information in a BOR to:</p> <ul style="list-style-type: none"> <li>• delete/destroy or de-identify any BOR altered to correct typographical errors</li> <li>• keep a record of corrections to the BOR for 7 years as per recording keeping obligations</li> <li>• keep a central log of corrections to personal information within a BOR.</li> </ul>

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## Part 1 – Background

56. On 29 January 2024, Treasury requested that AGS undertake a Privacy Impact Assessment (**PIA**) to evaluate the potential privacy impacts of the implementation of the BO Policy. The scope of this PIA is generally limited to analysing these impacts. A full list of exclusions is set out in [Appendix 1](#) to this report.

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### Treasury's functions

57. Treasury is a Commonwealth government department tasked with developing, delivering and implementing economic policy.<sup>5</sup>
58. Treasury's role in developing policy on taxation, the financial sector and foreign investment is relevant to this PIA. Treasury is currently developing the design of the beneficial ownership register (**BOR**) and considering proposed amendments to the *Corporations Act 2001* (Cth) (**Corporations Act**) to implement the BO Policy.

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### Beneficial Ownership Register

59. The BO Policy contemplates the creation of a BOR for unlisted regulated entities via a staged approach, with the goal being the implementation of the PCBOR maintained by the Commonwealth.

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### Purposes of the BO Policy

60. Australia does not have a systematic framework for collecting, verifying, and recording beneficial ownership information for unlisted corporations. This gives rise to a lack of corporate transparency, potential gaps in regulatory coverage, and creates opportunities for exploitation.
61. Existing compliance around disclosure of the ownership of unlisted entities is confined to private unlisted companies and extends only as far as the top 20 legal shareholders. For unlisted public companies, no disclosure is required. Both private and unlisted public companies are required to maintain legal shareholder registers as a record of legal shareholder ownership; however, they only provide this information upon request.
62. Promoting corporate transparency provides the following benefits:
- 62.1. For markets, transparency reduces information asymmetry, reduces barriers to entry for new businesses, and promotes competition and innovation.
  - 62.2. For regulators and law enforcement, transparency facilitates investigations into illicit activity such as tax evasion, money laundering, and terrorism financing.
  - 62.3. For businesses, transparency addresses market failures arising from information asymmetries, facilitates the undertaking of comprehensive due

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<sup>5</sup> See Administrative Arrangements Orders (as at 13 October 2022).

diligence processes, and addresses that companies may currently have no mechanism to determine their own beneficial ownership.

- 62.4. For individuals, transparency facilitates individuals to undertake a comprehensive assessment of financial and non-financial risks, and reduces the likelihood that individuals are exposed to fraud, losses, or inadvertent dealings with individuals or organisations participating in illicit activity.
63. A lack of transparency around beneficial ownership gives rise to opportunities to:
- 63.1. Conceal ownership of assets.
- 63.2. Evade tax liabilities, debts and sanctions enforcement.
- 63.3. Launder money and conceal the acquisition of assets through illegal means.
- 63.4. Conceal related-party transactions and other dealings which are not at arm's length.
64. The weaknesses in Australia's beneficial owner identification regime also threaten Australia's standing in the international community, because our regulation of the financial system does not reflect best practice.

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### Two-stage process

65. The BO Policy is currently in the legislative design phase. Treasury is planning to implement the BO Policy across two stages:

Stage	Description
<b>Stage 1</b>	<p>The initial stage focusses on requiring in-scope entities to collect, record and verify beneficial ownership information.</p> <p>Key aspects of this stage include:</p> <ul style="list-style-type: none"> <li>legislating a definition of beneficial ownership</li> <li>imposing requirements on in-scope companies to maintain individual registers containing BOI</li> </ul> <p>Information from individual registers would be available on request to specified regulators and law enforcement agencies.</p> <p>Public access to a sub-set of this information (with some identifying details redacted) must be granted on request.</p> <p>Some exceptions apply where beneficial owners are eligible to have their identity suppressed.</p>
<b>Stage 2</b>	<p>The second stage involves the upload by in-scope companies of BOI to a <b>PCBOR</b>, maintained by the RCA.</p> <p>A sub-set of BOI stored on the PCBOR must be accessible to the public on request, with some identifying details excluded. Some exceptions will continue to apply for beneficial owners who are eligible to have their identity suppressed.</p>

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### Entities and beneficial owners impacted by the BO Policy

66. The scope of entities proposed to be subject to the new obligations to maintain a BOR is set out below:

<b>Entity type</b>	<b>Is entity required to collect and report beneficial ownership information under Stage 1?</b>	<b>Is in-scope company required to trace through entity to beneficial owner?</b>
Proprietary company (except as defined by any category below)	Yes	No
Unlisted public companies, including: <ul style="list-style-type: none"> <li>• Unlimited liability companies</li> <li>• No liability companies</li> <li>• Hybrid companies limited by shares and guarantees</li> <li>• Company limited by guarantee which can distribute dividends</li> </ul>	Yes	No
Publicly listed companies	No	No
A registered foreign company in Australia	Yes	No
A foreign company not registered in Australia	No	Yes (unless foreign jurisdiction has equivalent beneficial ownership regime)
Corporate trustee of Managed Investment Scheme	Yes	No
Managed Investment Scheme	No	No
Corporate Responsible Entity of Corporate Collective Investment Vehicle	Yes	No
Corporate Collective Investment Vehicle	No	No
Registrable Superannuation Entity licensee	Yes	No
Registrable Superannuation Entity	No	No
Self-Managed Superannuation Funds and Small APRA Funds	No	Yes
Indigenous corporations registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006	No	No
Charities registered with ACNC	No	No
Not-for-profit entity registered as a company with ASIC and operates outside Australia	Yes	No
Not-for-profit entity registered as a company with ASIC and does not operate outside Australia	No	No
Not-for-profit entity not registered as a company	No	Yes
Director-owner companies	Yes – certification	No



Entity type	Is entity required to collect and report beneficial ownership information under Stage 1?	Is in-scope company required to trace through entity to beneficial owner?
Company Limited By Guarantee which cannot distribute dividends	Yes – certification	No
Wholly owned subsidiaries of listed entities	Yes	No
Wholly owned subsidiaries of in-scope companies	Yes – but can provide consolidated register for the corporate group	No
Partnerships	No	Yes
Incorporated associations	No	Yes
Unincorporated associations	No	Yes
Registered co-operatives	No	Yes

67. In-scope companies may also be required to ‘trace through’ non-in-scope entities to identify a beneficial owner in the following circumstances:

- 67.1. Tracing through a foreign company not registered in Australia
- 67.2. Tracing through Self-Managed Superannuation Funds and Small APRA Funds
- 67.3. Tracing through other non-company entity types including partnerships and associations.

68. A beneficial owner will be defined as any natural person or legal person who:

- 68.1. holds, directly or indirectly, 25 per cent of the shares of an in-scope company (**limb 1**)
- 68.2. holds, directly or indirectly, 25 per cent of the voting rights in an in-scope company (**limb 2**)
- 68.3. holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of an in-scope company (**limb 3**)
- 68.4. has the right to exercise, or actually exercises, significant influence or control over an in-scope company (**limb 4**).

69. In-scope companies will be required to comply with additional obligations to protect the BOI of vulnerable beneficial owners whose safety is threatened by being on the register. These obligations include de-identifying BOI of vulnerable beneficial owners before releasing it to the public. However, certain regulators will be able to access the complete record of BOI.

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### Information constituting BOI

70. The legislative framework will require in-scope companies to collect, record and verify BOI from persons (including legal persons) who satisfy the definition of a beneficial owner and need to be recorded on a company’s register. BOI is proposed to include the following information about beneficial owners, depending on the nature of the beneficial owner:

Natural persons	Companies, Registered MISs and CCIVs	Trusts
<ul style="list-style-type: none"> <li>• Full name</li> <li>• Addresses for communication and service</li> <li>• Nationality</li> <li>• Nature of control or influence</li> <li>• Date the person became or ceased to be a beneficial owner</li> <li>• Date of birth (full date of birth collected but only month and year publicly available)</li> <li>• Residential address (only country of residence publicly available)</li> </ul>	<ul style="list-style-type: none"> <li>• Company / Managed Investment Scheme (MIS) / Corporate Collective Investment Vehicle (CCIV) name</li> <li>• Registered office address of Company, Responsible Entity of MIS or Company Director of CCIV</li> <li>• Electronic address</li> <li>• Entity type</li> <li>• Date of registration</li> <li>• Country of registration</li> <li>• Registration number</li> <li>• Nature of control or influence</li> <li>• Date the entity obtained or ceased to have control or influence</li> </ul>	<ul style="list-style-type: none"> <li>• Name of trust / legal arrangement</li> <li>• Unique Superannuation Identifier (if applicable)</li> <li>• Date of creation</li> <li>• Information on trustees, beneficiaries, appointors, settlors, and any other member of the trust</li> </ul>
Partner(s) in a partnership	Incorporated and unincorporated association	Registered co-operative
<ul style="list-style-type: none"> <li>• Full name of the partnership (including any former legal names)</li> <li>• Full business name under State / Territory law (incl former names)</li> <li>• Date and country of establishment</li> <li>• Registered business address</li> <li>• ABN</li> <li>• BOI of all partners</li> </ul>	<ul style="list-style-type: none"> <li>• Full name of the association (including former legal names)</li> <li>• Address of principal place of administration or registered office</li> <li>• Any unique identifier under State/Territory/overseas law</li> <li>• BOI about (A) Chair, secretary, treasurer (at least one), (B) Person entitled to exercise 25% of voting right or (C) receive 25% of property on dissolution.</li> </ul>	<ul style="list-style-type: none"> <li>• Full name of the co-operative (including former legal names)</li> <li>• Address of principal place of operation or registered office</li> <li>• Any unique identifier under State/Territory/overseas law</li> <li>• BOI about (A) Chair, secretary, treasurer (at least one), (B) Person entitled to exercise 25% of voting right or (C) receive 25% of property on dissolution.</li> </ul>

## Why is privacy relevant?

71. Australia is a signatory to the ICCPR which protects against 'arbitrary or unlawful interference with privacy'. Not every interference with privacy will be inconsistent with the right to privacy. The concept of 'arbitrariness' is 'intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.'
72. While the Parliament has codified the information privacy aspects of the ICCPR into Australia law via the Privacy Act, care must be taken to ensure that new legislation,

such as amendments to the Corporations Act proposed to introduce the BOR, align with the aims and object of the covenant, and are reasonable in the circumstances.

73. The UN Human Rights Committee has interpreted the concept of reasonableness to indicate that ‘any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case’.<sup>6</sup> Relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted.<sup>7</sup> Effective measures must be taken by signatories to ensure that:
- 73.1. information concerning a person’s private life does not reach the hands of persons who are not authorised by law to receive, process and use it, and is never used for purposes incompatible with the ICCPR
- 73.2. individuals have the right to access and correct personal data.<sup>8</sup>

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## The role of the Privacy Act

74. The Privacy Act seeks to provide nationally consistent regulation of privacy and handling of personal information. To achieve this objective, APP entities are required to comply with the APPs in Sch 1 to the Privacy Act: see s 15.
75. There are two types of APP entities: (1) Organisations, and (2) Agencies, which includes Commonwealth government departments such as Treasury.
76. While an Agency will handle the PCBOR as part of Stage 2, for the most part, in-scope entities will handle personal information as part of Stage 1. We understand all in-scope entities, except for SBOs, will be an ‘organisations’ for the purposes of the Privacy Act, which is defined in s 6C to mean:
- (a) an individual; or
  - (b) a body corporate; or
  - (c) a partnership; or
  - (d) any other unincorporated association; or
  - (e) a trust.
- that is not a SBO, a registered political party, an agency, a State or Territory authority or a prescribed instrumentality of a State or Territory.
77. Generally, under the SBO exception, an SBO is an individual, body corporate, partnership, unincorporated association or trust with a turnover of less than \$3 million per year: s 6D(1) of the Privacy Act.<sup>9</sup> Treasury instructs that many in-scope companies are SBOs.
78. Importantly, the recent Review of the Privacy Act recommended amending the Privacy Act to remove the SBO exception.<sup>10</sup> Presently, most in-scope companies

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<sup>6</sup> Communication No. 488/1992, *Toonan v. Australia*, para. 8.3; see also communications Nos. 903/1999, para 7.3, and 1482/2006, paras. 10.1 and 10.2.

<sup>7</sup> UN Human Rights Committee, [General Comment No. 16](#), [8]

<sup>8</sup> UN Human Rights Committee, [General Comment No. 16](#), [10]

<sup>9</sup> See also s 6D(4) of the Privacy Act which lists other entities that are not SBOs.

<sup>10</sup> Attorney-General’s Department, [Privacy Act Review Report 2022](#) published 16 February 2023 at proposal [6]; see also the [Government response to the Privacy Act Review Report](#) published 16 February 2024, in which the Commonwealth noted its agreement in-principles to proposal [6].

are not APP entities, and so are not required to comply with the APPs. However, If these amendments to the Privacy Act pass into law, all in-scope entities will be APP entities which must comply with the APPs. This PIA proceeds on the basis that the SBO exception will be removed, and that most in-scope companies will become APP entities. Our assessment of privacy impacts in [Part 3](#) proceeds on this basis.

79. If this change does not occur, reforms introducing the BO Policy should exclude in-scope companies from the SBO exception, or at least exclude in-scope companies which are not director-owner companies (see [118] below). As discussed in detail below, in-scope companies will handle detailed and potentially sensitive personal information about beneficial owners. While individuals may not choose to be subject to the BO Policy, the protections with the Privacy Act will limit collection, use and disclosure; promote notice about the handling of their personal information and require steps to secure personal information.
80. Additionally, this policy setting would align with the existing setting under s 6E(1A) of the Privacy Act which provides that the SBO exception does not apply to an entity for the purposes of, or in connection with, activities relating to the AML/CTF Act.

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### **Most BOI will comprise personal information**

81. The term personal information is defined in the *Privacy Act 1988* (the **Privacy Act**) (see **Glossary**) and only applies to information about an ‘individual’ which is defined to mean a ‘natural’ (i.e. living) person. As a result, information about deceased individuals is not personal information for the purposes of the Privacy Act.
82. The APPs detail how personal information must be handled over the life cycle of the information. This includes how personal information should be collected, stored, used, disclosed, accessed, corrected and destroyed. The APPs also impose higher protections for personal information which comes within the definition of sensitive information (see **Glossary**).
83. The BOI collected by in-scope companies to fulfil their obligations under the BO Policy framework will include personal information, e.g.
- 83.1. all BOI regarding natural persons (as this will say something about an individual)
  - 83.2. some BOI regarding companies, registered MISs and CCIVs (e.g. where the registered or electronic address of a company is a person’s address)
  - 83.3. some BOI about trusts, partners in a partnership, incorporated and unincorporated associations and registered co-operatives (e.g. information on trustees, beneficiaries, appointors, settlors, partners, office holders etc).
84. BOI which comprises personal information must be handled in accordance with the APPs by an APP entity. This PIA proceeds on the basis that most BOI would be personal information, but that BOI is unlikely to comprise sensitive information as defined in s 6 of the Privacy Act.
85. Although BOI is unlikely to comprise sensitive information as defined in the Privacy Act, it reveals detailed information about a beneficial owner’s financial holdings, and will therefore be sensitive in the general sense of the word. Accordingly, it is

necessary to ensure strong privacy protections are in place to mitigate the privacy impact to people affected by the regime to the greatest extent possible.

## Why prepare a PIA?

86. A PIA is an important tool for assessing the privacy risk of any project. Privacy risk is more than just potential non-compliance with the privacy laws. It extends to any risk that the project will not meet community expectations, or have unmitigated or unnecessary privacy impacts on individuals.
87. When a PIA is conducted at the start of a project, privacy safeguards can be in-built, and any potential privacy impacts addressed in the project's design or legal framework. This strategy can be characterised as 'privacy by design'. Privacy by design is critical to ensure that a project will be established and maintained in line with community expectations and attitudes toward privacy.
88. The 2023 [Australian Community Attitudes to Privacy Survey](#) shows that Australians are increasingly concerned about privacy risks, against the backdrop of the ongoing development of new technologies like AI and facial recognition, and recent high-profile data breaches. About 62% of those surveyed see the protection of their own personal information as a major concern.
89. Australians continue to see federal government agencies as more trustworthy than businesses when it comes to how they protect and use personal information. This year, there was a reversal in the declining trust in government in this area since 2007 (67% compared to 50% in 2020). Most Australians (89%) would like government to do more to protect the privacy of their data.
90. A PIA is a written assessment which examines the lifecycle of personal information handled by a system or project to identify any potential or actual privacy issues. The PIA report will identify any potential privacy impacts an activity will have on the privacy of individuals and make recommendations on how to manage, minimise or eliminate that impact.<sup>11</sup>
91. Where an agency subsequently implements the recommended practices, this will enable compliance with APP 1.2, which requires an agency to take reasonable steps to implement practices, procedures and systems that ensure compliance with the APPs and enable the agency to deal with enquiries and complaints about APP compliance.

## Scope of this PIA

92. This PIA examines the privacy impacts arising from the implementation of the BO Policy. It assesses the privacy risks associated with the following activities.

Stage	Description
Stage 1	<ul style="list-style-type: none"> <li>• the collection and storage of BOI by in-scope companies on individual registers</li> <li>• the ability of regulators and law enforcement agencies to access BOI within individual BORs</li> <li>• the ability of the public to access a subset of BOI within individual BORs</li> </ul>

<sup>11</sup> See definition of PIA in s 33D of the Privacy Act.

Stage	Description
<b>Stage 2</b>	<ul style="list-style-type: none"> <li>• the upload and publication of BOI on the PCBOR</li> <li>• the ability for regulators, law enforcement agencies and the public to access published BOI through the PCBOR</li> </ul>
<b>Both Stages</b>	<ul style="list-style-type: none"> <li>• expanded enforcement and compulsion powers of ASIC in relation to the maintenance of BORs.</li> </ul>

93. In respect of any privacy risks, this PIA will identify measures to manage or lower the risk of unnecessary privacy impacts.
94. A list of matters outside the scope of this PIA is set out at [Appendix 1](#).
95. A glossary of terms and acronyms used in this PIA is set out at [Appendix 3](#).

## Part 2 – Information Flows

96. This part of the PIA examines how personal information will be collected, used, disclosed, and otherwise handled as part of the BO Policy.
97. As set out above, the kinds of BOI contained within a BOR will depend on the nature of the beneficial owner (e.g. if a natural person, company etc). BOI about natural persons and some BOI about companies, registered MISs, CCIVs, trusts, partnerships, associations and registered co-operatives will comprise personal information: see [81]-[83].
98. The BO Policy will involve nine activities that will handle personal information.

Activity	Description
<b>Activity 1</b>	In-scope company issues request to suspected beneficial owners
<b>Activity 2A</b>	Collection by in-scope companies of beneficial ownership information from beneficial owners
<b>Activity 2B</b>	Collection by in-scope companies of beneficial ownership information when the beneficial owner is a trustee of a trust
<b>Activity 2C</b>	Collection by in-scope companies of beneficial ownership information when the entity has different requirements
<b>Activity 3</b>	In-scope company verifies identify of natural person beneficial owner
<b>Activity 4</b>	Applications to suppress personal information
<b>Activity 5</b>	Creation and maintenance of the BOR
<b>Activity 6</b>	Update beneficial ownership information
<b>Activity 7</b>	Consideration and fulfilment of BOI access requests
<b>Activity 8</b>	Enforcement activities by ASIC
<b>Activity 9</b>	Transition to Public Commonwealth Beneficial Ownership Register

99. **Activities 1-8** address the flow of information under **Stage 1** of the BO Policy, in which each in-scope company maintains its own BOR. All activities except for **Activities 5 and 7** will continue in Stage 2, however record keeping obligations persist for **Activity 5**.
100. Additionally, **Activity 9** addresses the flow of information under **Stage 2** of the BO Policy, during which BOI will be collected and stored in the PCBOR.

### Activity 1 – In-scope company issues request to suspected beneficial owners

101. The legislative framework will require in-scope companies to take reasonable steps to identify their beneficial owners. Reasonable steps might include identifying individuals suspected to be beneficial owners using the in-scope company's existing registers and constitution.
102. To facilitate compliance with this requirement, in-scope companies will be required to obtain information from persons (whether natural or legal) whom they identify as a

potential beneficial owner, or whom they suspect have had a change in their ownership or control. Issuing a request will involve the use and disclosure of personal information already held by the in-scope company (e.g. the beneficial owner's name, email or mailing address). It will also involve a further collection of the personal information by the in-scope company.

103. The request would require the individual or entity to provide to the in-scope company their BOI, as well as the name, address and any other contact information of other individuals or entities that they have reasonable grounds to suspect are also beneficial owners of the same shareholding. This obligation will not extend to disclosing details about beneficial owners of other shareholdings. For example, a person who has legal ownership of 25% of the shares, but who receives instructions about those shares from a second person, needs to disclose the second person's name, address and other contact information. They do not need to disclose any information about people who might be issuing instructions to their fellow shareholders in relation to the remaining 75%.
104. The request must be issued by the in-scope company within 14 days of identifying the potential beneficial owner. Once an in-scope company receives new BOI from a beneficial owner, it must update its beneficial ownership register within 28 days to include this information.
105. The Australian Securities & Investments Commission (**ASIC**) will be given statutory power to approve a range of formats and methods for collecting information, including a notice that in-scope companies may issue to suspected beneficial owners. The proposed notice would notify suspected beneficial owners of their obligation to provide the in-scope company their BOI, and be a fillable form to be returned to the in-scope company upon completion.
106. Where an in-scope company wrongly identifies an individual or entity as a beneficial owner and errantly sends an information request to that individual or entity, it is anticipated that the recipient will either respond, advising the in-scope company that they are not a beneficial owner, or ignore the request.
107. As discussed under **Activity 8**, non-response by a suspected beneficial owner may lead to the in-scope company referring the person to ASIC. However, pending the outcome of the enforcement activities outlined in **Activity 8**, if a request is ignored, or a person confirms that they are not a beneficial owner, the in-scope company will not populate its register with BOI related to that person.

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## **Activity 2A – Collection by in-scope companies of BOI from beneficial owners**

108. Because there will be an obligation both on an in-scope company to collect BOI, and on a beneficial owner to provide BOI, the exchange of information may happen in two ways. Specifically:
  - 108.1. as described above, a beneficial owner may provide BOI in response to a request from an in-scope company to do so, or
  - 108.2. a beneficial owner may voluntarily identify as a beneficial owner and provide their BOI to the in-scope company on their own motion.



109. In either case, in-scope companies may receive BOI using a format approved by ASIC or through another means of communication.
110. Where a beneficial owner is, or holds their beneficial ownership interest on behalf of a business structure such as a partnership, incorporated association, unincorporated association, or registered co-operative, that beneficial owner will have to provide information about the business structure.
111. An in-scope company is required to collect the BOI set out in the table at [70].

### **Activity 2B – Collection by in-scope companies of BOI when the beneficial owner is a trustee of a trust**

112. Where an individual or entity triggers the definition of a beneficial owner, but does so in their capacity as a trustee, special disclosure obligations will apply. These obligations are fundamental in capturing and recording the BOI of the full beneficial owners, and will protect against people using complex corporate ownership structures to obfuscate their status as beneficial owners of in-scope companies.
113. Trustees of fixed trusts, unit trusts, discretionary trusts, and hybrid trusts will have specific obligations. The types of BOI that must be provided to the in-scope company by the trustee will vary depending on the type of trust.
114. All trustees must provide the following information about the relevant trust:
- 114.1. The name of the trust/legal arrangement (where applicable),
- 114.2. The BOI of each trustee and other members of the trust,
- 114.3. The date that the trust was created, and
- 114.4. The trust’s Unique Superannuation Identifier and ABN (where applicable/available).
115. Trustees must provide other information depending on the nature of the trust.

Type	Description	Trust specific information
<b>Fixed trust</b>	A trust in which persons have fixed entitlements to all of the income and capital of the trust at all times during the income year. The trustee is bound to make a distribution to the beneficiaries in a fixed or predetermined manner, as set out in the trust deed.	<ul style="list-style-type: none"> <li>• All beneficiaries named in the trust deed.</li> <li>• All persons who, pursuant to the trust instrument, have the power (either alone or together with other persons) to remove or appoint a trustee (appointors).</li> </ul>
<b>Unit trust</b>	A trust where entitlement to capital and income of the trust is according to the units held by the beneficiary. Distributions are made on a pro-rata basis according to the proportion of units held.	<ul style="list-style-type: none"> <li>• All beneficiaries named in the trust deed.</li> <li>• All appointors.</li> <li>• All beneficiaries who either:               <ul style="list-style-type: none"> <li>○ hold, directly or indirectly, 25 per cent of the units in the trust, or</li> <li>○ hold, directly or indirectly, 25 per cent of the voting rights in the trust.</li> </ul> </li> </ul>

Type	Description	Trust specific information
<b>Discretionary trust</b>	a trust where the trustee has ultimate discretion. Beneficiaries can be described individually, or as people within a defined class (for example, as members of a certain family).	<ul style="list-style-type: none"> <li>All beneficiaries named in the trust deed.</li> <li>All appointors.</li> <li>Any natural person or entity that the trustee reasonably believes would receive a distribution from the trust.</li> </ul>
<b>Hybrid trust</b>	Hybrid Trusts have elements of different kinds of trust arrangements. For example, a hybrid trust may provide discretion to the trustee to distribute income as they see fit, but any remainder of trust income or capital is to be distributed among beneficiaries on a unitised basis.	<ul style="list-style-type: none"> <li>The trustee must provide BOI to the in-scope company according to the above rules for each portion of the trust. Using the current example, this would mean following the disclosure rules for discretionary trusts for the discretionary element, and then following the rules for unit trusts for the unitised elements</li> </ul>

## Activity 2C – Collection by in-scope companies of BOI when the entity has different requirements

116. Some entity types that would otherwise be defined as in-scope companies will have different requirements to reduce the regulatory burden for these entities in accordance with the level of risk these entities pose.

### Wholly owned subsidiaries

117. Wholly owned subsidiaries in corporate groups will be authorised to use a consolidated register for the corporate group. The wholly owned subsidiary will not need to maintain a separate register to that of its parent company beneficial owner.

### Director-owner companies

118. Proprietary limited companies where the only members of the company are the directors of the company, and those members are also the sole beneficial owners, will be able to satisfy their requirements under this regime by certifying using an approved format that:
- 118.1. the information about directors displayed on ASIC's Companies Register (**Companies Register**) represents an accurate and complete record of the entity's beneficial owners
  - 118.2. no other individual or entity than those directors displayed on the Companies Register satisfies limbs one and two of the criteria for registration as a beneficial owner as set out at paragraph [68]
  - 118.3. no individual or entity satisfies limbs three and four of the criteria for registration as a beneficial owner as set out at paragraph [68].
119. Although yet to be finalised, the BO Policy may require directors of companies which make use of the certification process to provide their director identification number (**director ID**) and such companies to make this certification annually, and whenever

any information about the directors on the Companies Register changes. The exemption would cease if at any time the entity ceases to meet any of the above requirements.

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### **Companies limited by guarantee**

120. Companies limited by guarantee (**CLBG**) which were registered after 28 June 2010, or can prove they are not authorised to pay dividends under their constitution, will be authorised to satisfy their requirements under this regime by providing the director ID of all directors, and certifying using an approved format that:
- 120.1. the information about directors displayed on the Companies Register represents an accurate and complete record of the entity's beneficial owners
  - 120.2. no other individual or entity than those directors displayed on the Companies Register satisfies limbs one and two of the criteria for registration as a beneficial owner
  - 120.3. no individual or entity satisfies limbs three and four of the criteria for registration as a beneficial owner.
121. CLBGs may be required to submit this certification annually and whenever any information about the directors on the Companies Register changes. This exemption would cease if at any time a CLBG ceases to meet any of the above requirements.

### **Not-for-profit entities**

122. Not-for-profit (**NFP**) entities would be subject to beneficial ownership disclosure requirements if they are registered as a company with ASIC and operate outside Australia.
123. NFPs that would be subject to beneficial ownership disclosure requirements and are incorporated as CLBGs would be authorised to meet their requirements following the method set out above for CLBGs.

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### **Exempt entities**

124. Certain types of entities will be exempt, or otherwise not subject to, the requirements to collect and maintain information on their beneficial owners (for example, NFPs).
125. For in-scope companies with multiple structures in the corporate chain, a level of 'trace through' may be required to identify natural person beneficial owners. However, tracing through is not necessary in all circumstances. The legislative framework will impose trace through requirements based on risk, including having regard to whether every structure in the chain has equivalent transparency requirements in Australia or is a registrable superannuation fund.
126. The table at paragraph [66] of this PIA identifies which entities:
- 126.1. are in-scope for Stage 1, and/or
  - 126.2. must comply with trace through requirements.
127. Although the administrative burden on exempt entities will be lesser when compared with in-scope companies, we consider that the privacy impact on most natural person beneficial owners will be identical. This is because the BOI of the natural

person beneficial owners will still need to be recorded in the BOR of an entity somewhere in the exempt entity's corporate structure.

128. There will be no additional privacy impacts on the beneficial owners of charities registered with the ACNC, NFP Entities which do not operate outside Australia, and Indigenous corporations registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, each of which will remain subject to the requirements set by their individual regulators.

### Activity 3 – In-scope company verifies identity of natural person beneficial owner

129. The legislative framework will require in-scope companies to be reasonably assured of the identity of their beneficial owners. This requirement will implement a principle-based, 'reasonableness' requirement, with any required steps determined by the nature of the relationship between the beneficial owner and the in-scope company. There will be two options for verifying information in Stage 1 (Image 1).

## Stage I | Options for verification

There are two options for collecting and verifying individuals' information register in Stage I

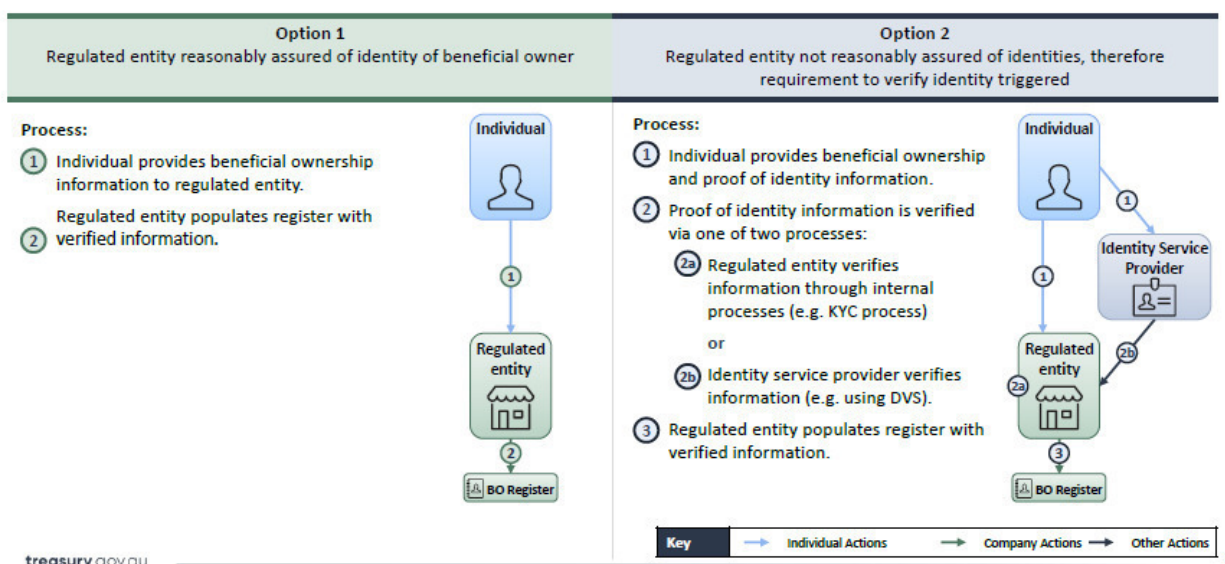


Image 1: Verification options

130. Under option 1, where an in-scope company is familiar with one of its beneficial owners, the in-scope company would need to take few or no steps to verify the identity of beneficial owners. This may include circumstances such as where the beneficial owner is a director of the in-scope company, who holds a director ID. Alternatively, the beneficial owner may be the spouse of a director. It is expected that this will be the case for most in-scope companies, because directors of companies are the only beneficial owner of most in-scope companies (1.8 million out of approximately 3 million in-scope companies total).
131. Under option 2, if for example, a beneficial owner is not personally known to the in-scope company, the in-scope company would need to take additional steps to verify the beneficial owner's identity (beyond using what information they already have).

This might include utilising the services of an identity verification service provider or using an internal Know Your Customer (KYC) verification. Such an approach would minimise the collection of personal information by in-scope companies, thereby minimising privacy risks. Where a beneficial owner is a natural person, verification will involve the collection, use and/or disclosure of personal information. It may also involve the collection of personal information about the staff of in-scope companies.

132. If the beneficial owner resides in a high-risk country,<sup>12</sup> it is likely that the requirement to be reasonably assured of their identity would involve taking additional steps compared to if the beneficial owner resided in Australia.
133. The legislative framework will require in-scope companies to indicate, on their beneficial ownership register, whether they verified a beneficial owner's identity via option 1 or option 2. An in-scope company must also include information about suspected beneficial owners on their register even if it has been unable to verify the person's identity. The in-scope company would mark the entry in the register as 'unverified' but retain an ongoing obligation to verify the individual's identity.
134. Additionally, the legislative framework will require in-scope companies to retain (hold) records of their identity verification procedures in line with broader record keeping requirements in the Corporations Act and under the BO Policy (contained in either primary legislation or subordinate legislation). Regulatory guidance, like what is currently published by AUSTRAC, will support and facilitate compliance with these requirements.

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#### **Activity 4 – Applications to suppress personal information**

135. The legislative framework will contain a suppression regime for individuals who believe making their BOI available to the public exposes themselves or their family to a risk to safety or of harm. If an individual is included in the suppression regime, an in-scope company must redact identifying information fields from their BOI before providing it to members of the public. Access to the information contained on an in-scope company's BOR, including the information of individuals assessed as eligible for suppression, will be available to specified regulators and law enforcement agencies.
136. The legislative framework will require in-scope companies to inform beneficial owners of the opportunity to apply for suppression when:
  - 136.1. they request information from a suspected beneficial owner
  - 136.2. when a beneficial owner provides BOI, if they self-identify as a beneficial owner.
137. An in-scope company must retain written records documenting the way in which they informed the beneficial owner of the opportunity to apply for suppression. For example, by retaining a copy of the email the in-scope company sent to the beneficial owner asking for BOI and indicating the suppression options.

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<sup>12</sup> As defined and regularly updated by the Financial Action Task Force, see <https://www.fatf-gafi.org/en/topics/high-risk-and-other-monitored-jurisdictions.html>.

138. The ASIC approved format completed by a beneficial owner providing their BOI will ask the individual to indicate if they seek suppression of their BOI and the basis upon which they are eligible for suppression. Additionally, an individual who provides a response in a different way can seek suppression of their BOI.
139. The in-scope company must redact personal BOI if the individual is under 18 years of age or they receive the following:
  - 139.1. a letter from the Australian Electoral Commission (**AEC**) evidencing that the individual does not have an address shown on the electoral roll (**silent electors**)<sup>13</sup>
  - 139.2. evidence that the individual has successfully applied to ASIC to suppress their address from the company register
  - 139.3. evidence that ASIC accepts the individual as having a valid basis for suppressing their personal BOI due to a 'risk to safety' or 'risk of harm'.<sup>14</sup>
140. If an individual seeks suppression of their BOI, in-scope companies must suppress BOI from the register for 28 days after receiving notice of a beneficial owner's intent to apply for suppression, or after they receive notice of an application until they receive a negative final outcome notice.
141. Evidence to substantiate a suppression claim, will involve a collection of personal information by the in-scope entity.

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#### **Application for suppression based on a risk to safety or harm**

142. If the individual wants to suppress publication of their BOI on grounds of risk to safety or harm and do not supply the in-scope company with supporting evidence of the kinds in [139.1] or [139.2], the individual must apply for suppression. They must apply for an independent assessment by ASIC using a format prescribed by ASIC. This will involve a collection of personal information by ASIC.
143. ASIC will then proceed to make an independent decision on the request, a process that may involve liaising directly with the individual. Based on this approach, the regulated entity will have no information as to the nature of the risk to the beneficial owner's safety, and no discretion to determine the validity of the request; only ASIC will receive evidence to substantiate the request.
144. If ASIC decides that the individual's BOI should not be suppressed, they must notify the individual of the outcome of their request. The individual will have a 28-day period to apply for review of ASIC's decision by the Administrative Appeals Tribunal (**AAT**) (noting this body will soon become the Administrative Review Tribunal). In-scope companies must continue to suppress BOI until after the AAT decision and they receive a final written outcome of the suppression application from ASIC (even if the outcome of the AAT decision is known).
145. If the individual does not appeal ASIC's decision, the in-scope company must cease suppressing their BOI after being notified by ASIC. If the individual does seek

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<sup>13</sup> See s 104 of the *Commonwealth Electoral Act 1918*.

<sup>14</sup> This includes where individuals have applied to ASIC to suppress their BOI and ASIC is yet to provide a final determination.

review, the in-scope company must continue to redact their BOI until informed by ASIC about the outcome of the application process or AAT review. The processing of the suppression application will involve the collection, use and disclosure of personal information by ASIC.

146. It is proposed that, where an individual is either (1) under the age of 18 or (2) has successfully applied for suppression due to a risk to safety or risk of harm, the BOR will disclose that there is a suppressed beneficial owner, the nature of their control or influence over the company, and the date the individual became/ceased to be a beneficial owner only.
147. ASIC has received funding to develop guidance to support compliance with the beneficial ownership regime, including information sheets and regulatory guidance to support beneficial owners' and companies' understanding of and compliance with obligations and responsibilities.

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### **Activity 5 – Creation and maintenance of the BOR**

148. An in-scope company must create and store a BOR. This will involve the collection, use and storage of personal information.
149. If an in-scope company receives new or updated BOI, it must update its BOR to reflect the new information within 14 days. This will involve the collection and use of personal information.
150. If a beneficial owner ceases to be a beneficial owner, the in-scope company must maintain a record of their identity and the date they ceased to be a beneficial owner for 7 years. This is in line with record keeping requirements in Chapter 2C.1 of the Corporations Act. This will involve the collection, use and storage of personal information.
151. If information included in a BOR is found to be factually incorrect (eg: misspelling of name, day and month of year in wrong order), an in-scope company will need to correct the information on its own initiative, or provide beneficial owners with the opportunity to correct the error. Where a correction occurs, in-scope companies will need to delete the incorrect information. This process will involve the collection, use and disclosure of personal information.
152. If an in-scope company cannot identify any beneficial owners after taking reasonable steps, and no beneficial owners have come forward, its BOR must display a statement to the effect that the in-scope company has not identified any beneficial owners, and refer to the ASIC companies register for details of the directors of the company.
153. Security arrangements for storage of information contained in BORs remain undecided.
154. Once the PCBOR is established, the regime will not require in-scope companies to maintain an individual BOR. However, they will need to retain records to substantiate the information provided to the PCBOR.

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## Activity 6 – Update beneficial ownership information

155. The BOR maintained by each in-scope company will be a living document. Beneficial owners will need to notify in-scope companies of both:
- 155.1. changes to their *status* as beneficial owner of the in-scope company
  - 155.2. any change to their BOI as recorded on the in-scope company's BOR.
156. Beneficial owners must make such notifications within 28 days of becoming aware of the change, or within 28 days of the date they should reasonably have become aware of the change. This will involve the collection of personal information by in-scope companies.
157. If an in-scope company becomes aware of a change to a beneficial owner's status or BOI prior to being notified of such by the beneficial owner, it must issue a request for BOI to the beneficial owner within 14 days of learning of the change. This will involve the disclosure and subsequent collection of personal information.

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## Activity 7 – Consideration and fulfilment of BOI access requests

158. As a starting principle, both the public and relevant law enforcement agencies and regulators may request access to an in-scope company's BOR. However, limitations on both the (1) extent of information the public can inspect, and (2) the reasons for requesting access will apply.
159. The legislative framework will enable in-scope companies to request members of the public to pay an amount up to a prescribed fee before inspecting an in-scope company's BOR. This is consistent with existing payment models under Chapter 2C of the Corporations Act. Some entities will be exempt from paying the fee, such as journalists and academics. Beneficial owners will not be required to pay a fee for access to the BOR of in-scope companies for which they appear on the register.
160. When requesting access to a BOR, a person will need to declare the purpose for which they seek access. An in-scope company must refuse to grant a member of the public access to their BOR if the request is made for an improper purpose.
161. It is anticipated that the range of improper purposes will mirror the improper purposes for seeking to obtain a copy of a Company Register, as set out in reg 2C.1.03 of the *Corporations Regulations 2001* (Cth). These are:
- (a) soliciting a donation from a member of a company;
  - (b) soliciting a member of a company by a person who is authorised to assume or use the word stockbroker or sharebroker in accordance with section 923B of the *Corporations Act 2001*;
  - (c) gathering information about the personal wealth of a member of a company;
  - (d) making an offer that satisfies paragraphs 1019D(1)(a) to (d) of the *Corporations Act 2001*;<sup>15</sup>

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<sup>15</sup> Section 1019D of the Corporations Act concerns unsolicited offers to purchase financial products off-market.



- (e) making an invitation that, were it an offer to purchase a financial product, would be an offer that satisfies paragraphs 1019D(1)(a) to (d) of the *Corporations Act 2001*.<sup>16</sup>

162. Further, members of the public will not receive access to the full suite of BOI contained on the BOR about a beneficial owner. They will not receive a beneficial owner's:
- 162.1. full date of birth (only the month and year of birth)
  - 162.2. residential address (only their country of residence)
  - 162.3. electronic address.
163. In Stage 1, regulators and law enforcement agencies will not need to identify the purpose of their request. Further, in-scope companies must provide the regulator or law enforcement agency with all BOI held on the BOR about the beneficial owner the subject of the request. This will include the full, unredacted BOI for the beneficial owner.
164. During consultation, regulators and law enforcement agencies advised that a beneficial owner's full date of birth is valuable to ensure they have access to enough information to match identities when investigating individuals.
165. We consider that the requirement for in-scope companies to collect a beneficial owner's full date of birth, residential address and electronic address, but only disclose it to regulators and law enforcement agencies appropriately mitigates the risk to beneficial owners of identity theft or fraud perpetrated by malicious actors.
166. The law enforcement agencies and regulators that will have access to unrestricted BOI are set out below:

Regulator	Purpose for access
ASIC	Regulation of the: <ul style="list-style-type: none"> <li>• Corporations Act</li> <li>• <i>ASIC Act 2001</i></li> <li>• Associated subordinate legislation</li> </ul>
ATO	Regulation of the: <ul style="list-style-type: none"> <li>• <i>Income Tax Assessment Act 1936</i></li> <li>• <i>Income Tax Assessment Act 1997</i></li> <li>• <i>Tax Administration Act 1953</i></li> <li>• Other relevant Acts related to the administration of taxation</li> <li>• Associated subordinate legislation</li> </ul>
AUSTRAC	Regulation of the AML/CTF Act
AFP	Regulation of the <i>Crimes Act 1914</i>
DFAT	Regulation of the <i>Autonomous Sanctions Act 2011</i>
Treasury	Regulation of the <i>Foreign Acquisitions and Takeovers Act 1975</i> and associated subordinate legislation.

<sup>16</sup> As above.

Regulator	Purpose for access
CDPP	TBD
National Security agencies	TBD

167. Activity 7 will involve the collection and use of personal information about access applicants, and the disclosure of personal information about beneficial owners.

### Activity 8 – Enforcement activities by ASIC

168. The new legislation will implement a penalty regime that applies to both in-scope companies and beneficial owners who fail to comply with their obligations. This regime encompasses criminal and civil penalties and ASIC may also make administrative orders.
169. As the regulator charged with auditing compliance with the beneficial ownership disclosure requirements, ASIC will have access to a range of investigative and enforcement powers, including civil penalties, infringement notices, and requests for information. Although not yet finally determined, it is expected that the range of penalties available will align with penalties for failures to respond to notices under ss 671B and 672B of the Corporations Act.
170. ASIC will also have new powers to issue ‘freezing’ or ‘restrictions’ notices either following an investigation arising from a report to ASIC from an in-scope company under the notification regime, or of its own volition. These powers would be modelled on similar powers currently granted to ASIC under ss 72 and 73 ASIC Act.
171. ASIC’s freezing and restriction powers are intended to be an interim procedure to incentivise compliance from beneficial owners. Final determinations regarding the rights of individuals and shareholders will be made by a court.
172. It is envisioned that compliance action resulting in the application of a restrictions notice by ASIC will involve four stages, some of which will be conducted by an in-scope company prior to notify ASIC, as set out in the table below:

Stage	Compliance action	Description of compliance action
1.	<b>Initial request</b>	An in-scope company may issue a request for information to a person it suspects to be a beneficial owner. The request will request that the person provides beneficial ownership information.
2.	<b>Warning notice</b>	The in-scope company must issue a ‘warning notice’ if, within 28 days: <ul style="list-style-type: none"> <li>the person has not provided a response</li> <li>the person has provided an empty or incomplete response</li> <li>the person includes information which the in-scope company believes, on reasonable grounds, is false</li> <li>the in-scope company is unable to verify the identity of the person.</li> </ul>
3.	<b>Report to regulator</b>	The in-scope company must report non-compliance by the person to ASIC if the person has not responded to, or adequately addressed, a valid warning notice within 28 days

Stage	Compliance action	Description of compliance action
4.	<b>Decision by ASIC</b>	ASIC may issue a notice to the person, requesting that the person provide BOI to the in-scope company. If disclosure obligations are not met, ASIC may impose restrictions on the person. ASIC will be required to consider impacts on third party rights when making a decision about imposing restrictions.

173. In addition to taking action when suspected beneficial owners are not complying with their obligations, ASIC will regularly audit compliance by in-scope companies with their obligations under this regime. Activity 8 will involve:

173.1. the disclosure of personal information by in-scope entities to ASIC

173.2. the collection, use and disclosure of personal information by ASIC.

### Activity 9 – Transition to Public Commonwealth Beneficial Ownership Register

174. Under Stage 2, a Commonwealth agency (the **Responsible Commonwealth Agency, or RCA**) will maintain a central PCBOR. While in-scope companies will continue to collect and verify details of beneficial owners, including requests for suppression of their BOI (Activities 1-4), an obligation to maintain a BOR will no longer apply.

175. Instead, in-scope companies will need to:

175.1. transfer the information contained in their existing individual BORs into the PCBOR

175.2. update and maintain information about beneficial owners in the PCBOR, instead of in their individual BOR (**Activity 6**).

## Stage II | Information flows and verification

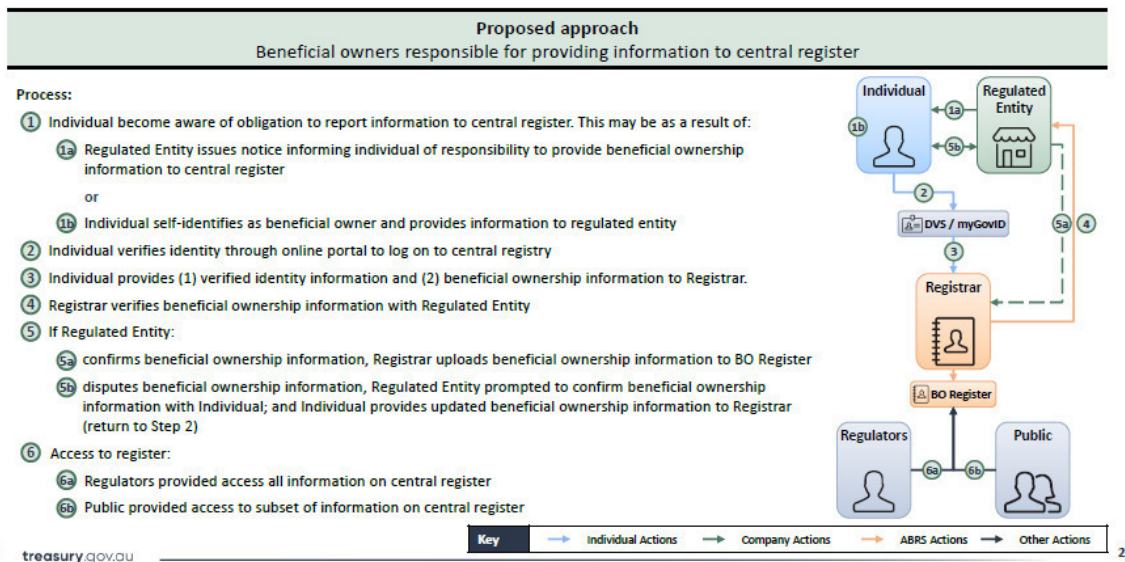


Image 2: Information flows and verification

176. The process by which this will occur is not yet established (**Image 2**). However, records or registers maintained by in-scope companies could be integrated into the

new register incrementally, to check consistency, reliability, and functionality of the new register.

177. Members of the public will no longer make BOI access requests to an in-scope company (**Activity 7**). Instead, any member of the public may apply to the RCA for access to the PCBOR. Unless suppression applies, members of the public may access all BOI except for a beneficial owner's full date of birth, residential address and electronic address. Prescribed regulators and law enforcement agencies (summarised in the table at [166] above) may separately apply for access to the full BOI.
178. BOI will continue to be restricted as necessary for individuals who are included in the suppression regime. It is still being considered whether beneficial owners who have successfully applied for suppression under Stage 1 will be required to re-apply for suppression in Stage 2.

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## Part 3 – Privacy analysis

179. This part of the PIA examines privacy issues raised by the BO Policy. It examines:
- 179.1. the potential privacy impacts and any harm that might be caused
  - 179.2. recommendations to eradicate, mitigate or minimise these impacts.

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### Obligations under the International Covenant on Civil and Political Rights

180. As set out above, Australia is a signatory to the ICCPR which protects against ‘arbitrary or unlawful interference with privacy’: Article 17. The protection against ‘arbitrariness’ is ‘intended to guarantee that even interference provided for by law should be reasonable in the particular circumstances.’<sup>17</sup> Interference will be reasonable when it is ‘proportional to the end sought and be necessary in the circumstances of any given case’.<sup>18</sup>
181. We have had regard to these matters in our review of the BO Policy. We have also examined whether the BO Policy will enable the handling of personal information in accordance with the Privacy Act, which codifies the right to information privacy in the ICCPR into Australian law.

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### Privacy – a balancing exercise

182. Intrinsic to the Privacy Act is the balance that is sought to be achieved between the interests of the individuals and those of the entities the legislation regulates. This is reflected in the objects of the Privacy Act which recognise that the protection of the privacy of individuals is to be balanced with the interests of entities to be able to carry out their functions or activities: see s 2A(b).

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### Purpose of the BO Policy

183. Under the BO Policy, 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.
184. The mechanisms by which the Government proposes to achieve the BO Policy include:
- 184.1. introduce requirements for unlisted public and proprietary limited companies registered in Australia to collect and maintain information on their beneficial owners, being those who ultimately own, control, and/or receive benefits from these entities operating in Australia,
  - 184.2. introduce requirements for beneficial owners of in-scope companies to identify themselves to the company, and

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<sup>17</sup> UN Human Rights Committee, [General Comment No. 16](#), [4]

<sup>18</sup> Communication No. 488/1992, *Toonan v. Australia*, para. 8.3; see also communications Nos. 903/1999, para 7.3, and 1482/2006, paras. 10.1 and 10.2.

- 184.3. provide a pathway for the implementation of a Commonwealth BOR in the future that provides central access to this information.
185. This will be achieved by:
- 185.1. establishing a beneficial ownership regime that imposes new requirements on in-scope companies and their beneficial owners,
  - 185.2. providing appropriate penalties and enforcement powers to ASIC to enforce this new regime, and
  - 185.3. establishing a pathway towards the creation of a public Commonwealth BOR.
186. The BO Policy will address a gap in Australia's existing framework for the systematic collection of BOI by unlisted corporate entities and the storage of that information on a BOR. While companies are key drivers of investment and growth in the economy, they may also be used to hide the beneficial owners who ultimately own, control and receive benefits from those entities. The BO Policy will address the risks occasioned by a lack of transparency in this area, including that a lack of transparency gives rise to opportunities to:
- 186.1. launder money, and disguise the true ownership of assets acquired with illegally obtained wealth
  - 186.2. conceal ownership of assets through overseas companies or trusts to evade tax liabilities or debts
  - 186.3. conceal related party transactions and other dealings which are not at arm's length.
187. The BO Policy will achieve its purposes by building on existing provisions in Commonwealth legislation concerning the disclosure of listed entity beneficial ownership information. It would establish a standardised, cohesive framework across Australia for the collection and disclosure of beneficial ownership information for unlisted companies.
188. The BO Policy also serves the purpose of responding to the recommendations of the Financial Action Task Force (**FATF**), a global money laundering and terrorist financing watchdog, which Australia is a member of. In particular, the BO Policy is an effort by Australia to action Recommendation 24 of the FATF's [International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation](#) (**International Standards**). Recommendation 24 provides, in part, as follows:
- Countries should assess the risks of misuse of legal persons for money laundering or terrorist financing, and take measures to prevent their misuse. Countries should ensure that 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.
189. The Government expects the BO Policy will 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.

190. A key benefit of the BO Policy is that it will reduce the administrative burden on entities subject to the Know Your Customer (**KYC**) requirements set out in the [Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 \(No. 1\)](#) (the **AML/CTF Rules**). The KYC requirements apply to entities who conduct certain business activities in the financial services, bullion, gambling and digital currency exchange sectors (**AML/CTF reporting entities**).<sup>19</sup>
191. KYC reporting entities are required to apply customer identification procedures to all their customers, proportionate to the level of money laundering and/or terror financing risk of the specific customer.<sup>20</sup> For customers who are not natural persons, and subject to some exemptions, AML/CTF reporting entities must collect and take reasonable measures to verify the full name, date of birth, and full residential address of all natural person beneficial owners of their customers.<sup>21</sup>
192. Although AML/CTF reporting entities will need to obtain beneficial ownership information from their customers at first instance (including non-publicly available information such as each natural person owner's date of birth and residential address), the BOR policy will assist AML/CTF reporting entities to verify the beneficial owners of in-scope companies that they are proposing to provide designated services to.
193. Treasury is pursuing amendments that would enable AML/CTF reporting entities to use information obtained from the BORs of in-scope companies to help fulfil their requirements under Part 4.12 of the AML/CTF Rules. This use will be constrained to circumstances in which an in-scope company is receiving or requesting a designated service from an AML/CTF reporting entity. It is intended that the amendments would authorise the in-scope company to provide the AML/CTF reporting entity their full register.
194. There is some overlap between these regimes, in that AML/CTF reporting entities are required to collect largely the same information about individuals, with the addition of 'nationality' under the BO Policy. While the overlap of information minimises privacy intrusion for beneficial owners who are also customers of AML/CTF reporting entities, the regulated populations are not identical. Ultimately, both requirements are necessary to prevent money laundering and / or terrorism funding. To the extent any privacy impact arises from the regimes requiring both AML/CTF reporting entities and in-scope companies to verify the identity of beneficial owners, these impacts are reasonable, necessary and proportionate to the purpose of both regimes.

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### Privacy impacts

195. The BO Policy involves a significant impact on the privacy of beneficial owners. Because of these impacts, it is foreseeable that a meaningful portion of beneficial owners will not welcome the introduction of the BO Policy. Due to the wide-scale

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<sup>19</sup> <https://www.austrac.gov.au/business/new-to-austrac>

<sup>20</sup> <https://www.austrac.gov.au/business/core-guidance/customer-identification-and-verification/customer-identification-know-your-customer-kyc>

<sup>21</sup> AML/CTF Rules, r 4.12.1.

nature of the privacy impacts, it is necessary to identify and weigh the privacy impacts of each stage against the benefits presented by the BO Policy. An overview of potential privacy impacts at each stage is as set out below.

#### Potential privacy impacts – both Stage 1 and Stage 2

Impact	Description
<b>Loss of choice and control</b>	Beneficial owners must disclose detailed BOI comprising personal information to in-scope companies for which they are a beneficial owner. Consent is not required.  By default, an individual cannot control who can see or use BOI: <ul style="list-style-type: none"> <li>Specified regulators and law enforcement agencies can access BOI.</li> <li>Individuals can apply to access a subset of BOI, as long as this is not for an improper purpose.</li> </ul>
<b>Overcollection</b>	Unnecessary collection of personal information may unreasonably interfere with the privacy of an individual. E.g. if in-scope companies collect unnecessary data to verify identity.
<b>Data quality issues</b>	If an in-scope company fails to maintain accurate, up-to-date and complete information, regulators, law enforcement agencies and individuals that access a BOR may rely on inaccurate, out-of-date or incomplete personal information. This may cause harm, e.g. if someone is mistakenly sued as a beneficial owner after their ownership has ceased, or subject to ASIC enforcement action.
<b>Risk of data breach</b>	Unauthorised access or disclosure of BOI could cause emotional, financial, reputational or physical harm to the individual (described in more detail below)

#### Potential privacy impacts – Stage 2 only

Impact	Description
<b>Data accumulation</b>	The Commonwealth will collate individual BORs in a central register ( <b>PCBOR</b> ). This will present an attractive honey pot for malicious individuals seeking to access high value personal information, as compared with individual BORs maintained by individual in-scope companies.
<b>Unreasonable or disproportionate disclosure</b>	The RCA will grant access to details about the personal and financial affairs of beneficial owners within the PCBOR. Although access will be conditioned on a requirement to have no improper purpose for seeking access, it is possible that malicious actors will still get access to BOI kept on the PCBOR through fraudulent means. This may expose personal information to data scrapers, data brokers, and identity thieves, either for use alone or in combination with other information. In turn, this may expose beneficial owners to risks including: <ul style="list-style-type: none"> <li>financial and reputational harm, e.g. where name, address and ownership details are exploited to perpetrate identity and/or financial fraud</li> <li>physical or emotional harm, if publication of BOI generally jeopardises the safety and security of beneficial owners (e.g. if they become the target of assault, kidnapping, extortion or theft).</li> </ul>



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## Protections in the BO Policy

196. The BO Policy includes several measures to mitigate the privacy impact on beneficial owners. Three of the key measures are set out in the table below.

Protection	Description
<b>Limiting BOI available to the public</b>	The BO Policy will not require in-scope companies or the RCA to provide access to the public to the full date of birth (only month and year of birth), address for communication, or residential address (only country of residence) to members of the public who are granted access to a BOR.
<b>Limiting access to people who do not have an improper purpose</b>	In-scope companies, and the RCA, will be prohibited from providing access to BOI to members of the public who seek access for an improper purpose. The improper purposes for access will be aligned with the improper purposes for seeking a copy of a company's register outlined in reg 2C.1.03 of the <i>Corporations Regulation 2001</i> (Cth).
<b>Suppression regime</b>	<p>The BO Policy will contain mechanisms to protect the public information of vulnerable individuals. Certain BOI of individuals who meet one of the following criteria will not be disclosed to members of the public:</p> <ul style="list-style-type: none"><li>• under the age of 18 or</li><li>• have the status of a silent voter as endorsed by the AEC</li><li>• have evidence from ASIC they are considered a 'suppressed beneficial owner' or</li><li>• are in the process of applying for suppression with ASIC</li></ul> <p>ASIC will only approve applications for suppression if the individual or their family will be exposed to a risk to safety or of harm by the provision of their BOI to the public.</p>

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## International experience

197. Australia will not be the first FATF member country to implement Recommendation 24 of the International Standards by introducing new laws to ensure that 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,
198. Countries including the United Kingdom (UK), Singapore, France, and Luxembourg have introduced frameworks for this purpose. As at 22 February 2022, of the 200 jurisdictions that have committed to the FATF recommendations, 60 countries were rated as 'largely compliant' or 'compliant' against FATF Recommendation 24, and 48 countries had beneficial ownership registers.

### United Kingdom

199. In 2015, the UK introduced requirements for companies to identify and collect information about 'Persons with Significant Control' (**PSC**). The criteria for a PSC and for a beneficial owner are almost identical, although a PSC also expressly includes someone with 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 other criteria. The information on the register is publicly accessible, free of charge.

200. In March 2019, the UK Department for Business, Energy & Industrial Strategy released the [‘Review of the implementation of the PSC Register’](#) (the **PSC review**). Key findings from the PSC review are set out in the table below.

No.	Finding
1.	Two thirds of businesses kept records of their beneficial owners before the PSC Register was introduced.
2.	92% of businesses surveyed had PSCs; 43% had one PSC, 37% had two and only 13% of businesses had three or more.
3.	67% of business reported having the same number of PSCs as listed on the PSC register. 25% reported having more PSCs than were listed on the PSC register, and 8% reported having fewer PSCs than were listed on the PSC register
4.	The median overall cost of compliance with the PSC register was £125. <sup>22</sup>
5.	The main source of cost was the initial submission of PSC information.
6.	95% of business reported they felt the PSC register had no impact at all on the way their business operated.
7.	All law enforcement organisations spoken to reported using the PSC register to inform criminal investigations, with most reporting using it at least weekly.
8.	Stakeholder organisations generally considered the PSC register to be useful, typically because it made the process of obtaining information about beneficial owners more efficient.
9.	Some stakeholders felt they could not rely on the PSC register as a source of information due to concerns about data quality.
10.	To improve the PSC register, stakeholders suggested introducing information validation and identity verification processes, as well as giving a unique ID for individuals listed on the register.
11.	The relevant regulator considered that the equivalent suppressions regime was fulfilling its purpose, but could be improved by covering a wider range of risks and by digitalising the process of applying for protection.

201. In 2022, the UK 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. 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 UK.

202. In 2023, the [Economic Crime and Corporate Transparency Act 2023 \(UK\)](#) (the **UK ECCTA**) was passed into law. The UK ECCTA introduced measures including those set out in the table below.

No.	Measure
1.	An option for a company to provide a statement to the PSC register that it had verified the identity of a PSC,

<sup>22</sup> Per the Bank of England’s [inflation calculator](#), £125 in 2019 is equivalent to £153.33 in February 2024. Per Xe’s [currency converter](#), £153.33 is equivalent to \$296.52 AUD in March 2024.

No.	Measure
2.	A power for the Registrar to direct PSCs to provide a statement confirming identity verification within 14 days, or within an extended period. It also abolished the requirement for companies to keep individual PSC registers,
3.	A duty on companies to take reasonable steps to identify PSCs, including a duty to give notice to individuals they know or have cause to believe are PSCs,
4.	A duty on companies to notify the registrar of individuals they know or have cause to believe are PSCs, but where they have not yet received confirmation of this,
5.	A duty to notify the registrar when a PSC ceases to have significant control,
6.	An offence for companies who fail to comply with PSC requirements.

### Luxembourg

203. Luxembourg implemented its publicly accessible register in accordance with [Directive 2015/849 of the European Parliament of 20 May 2015](#) (the **Directive**), under which all Member States were required to take steps to prevent use of the financial system for the purposes of money laundering or terrorist financing.
204. Paragraph 14 to the foreword of that Directive requires Member States to make the information on beneficial ownership registers available to, among others, any member of the public. Such information was said to include adequate, accurate and current information on their beneficial ownership, in addition to basic information such as the company name and address and proof of incorporation and legal ownership.
205. In addition to relevant Financial Intelligence Units and competent law enforcement authorities, paragraph 14 of the Directive provided that access to a beneficial ownership register should be given to members of the public who were able to demonstrate 'legitimate interest with respect to money laundering, terrorist financing, and the associated predicate offences, such as corruption, tax crimes and fraud.
206. As a member of the European Union (the **EU**), Luxembourg operates in a different legislative framework than Australia. In particular, a legislated comprehensive personal data protection regime, the General Data Protection Regulation (**GDPR**), applies to EU states. The GDPR goes further than the Australian Privacy Act in how it extends and enforces the rights of EU citizens to protect their personal data.
207. In 2022, in the simultaneously heard cases of [Sovim SA v. Luxembourg Business Registers, C-601/20](#) and [WM v. Luxembourg Business Registers, C-37/20](#) (the **Luxembourg Cases**), the European Court of Justice (the **ECJ**) considered whether the Luxembourgish regime infringed Articles 7 and 8 of the *Charter of Fundamental Rights of the European Union* (the **Charter**).<sup>23</sup> Relevantly, Article 8 seeks to protect personal data, by requiring data to be 'processed fairly and for specified purposes and on the basis of consent or some other lawful basis'.
208. The ECJ accepted that the objective of preventing money laundering and terrorist financing by creating an environment of increased transparency can justify even

<sup>23</sup> [Charter of Fundamental Rights of the European Union.](#)

serious interferences with the fundamental rights enshrined in Articles 7 and 8 of the Charter.<sup>24</sup> The ECJ described this objective as an **objective of general interest**.

209. The ECJ found that a publicly accessible BOI register made it possible to draw up profiles of beneficial owners concerning their wealth and the economic sectors, countries, and specific undertakings in which they had invested.<sup>25</sup> It found that an inherent consequence of making BOI publicly accessible was that it would be accessed by people seeking to find out about the material and financial situation of a beneficial owner, for reasons unrelated to the purposes for which the register was created.<sup>26</sup> The ECJ considered that, given publicly available information can be freely retained and disseminated, it would become increasingly difficult or even 'illusory' for beneficial owners to defend themselves effectively against abuse.<sup>27</sup>
210. Additionally, the ECJ referred to the Directive's recital which states that the general public's access to beneficial ownership information allows greater scrutiny by civil society, in particular by individuals that transact with relevant companies, as well as the press, civil society organisations, financial institutions or authorities involved in preventing or combatting money laundering and terrorist funding.<sup>28</sup> The ECJ found that providing access to each of these groups was necessary to give effect to the purpose of the Directive, but that granting public access was not strictly necessary to prevent money laundering and terrorist funding, and therefore that the Directive interfered with the privacy rights guaranteed in Articles 8.<sup>29</sup>
211. The ECJ found that the increased interference with privacy in having a public BOI register was incapable of being offset by any benefits in terms of combating money laundering and terrorist financing when compared against a framework that required a legitimate interest before access to BOI was granted.<sup>30</sup> The ECJ also found that even if access by the general public to a subset of BOI was mitigated by the precondition of online registration, and beneficial owners were able to apply for exemptions to restrict publication, the proper balance between the benefits proffered by a public register and the interferences with Articles 7 and 8 was not necessarily struck.<sup>31</sup>
212. Although not required to expressly find on the issue, the ECJ indicated that it would be more appropriate to restrict general access to those with a 'legitimate interest' in preventing money laundering and terrorism financing, such as regulators or enforcement agencies, and individuals capable of demonstrating such an interest.<sup>32</sup>
213. Ultimately, the ECJ found that the Directive was invalid insofar as it provided that EU Member States must ensure that information on the beneficial ownership of

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<sup>24</sup> Luxembourg Cases at [56]-[59].

<sup>25</sup> Ibid at [41].

<sup>26</sup> Ibid at [42].

<sup>27</sup> Ibid at [43].

<sup>28</sup> Ibid at [74].

<sup>29</sup> Ibid at [76].

<sup>30</sup> Ibid at [85].

<sup>31</sup> Ibid at [86].

<sup>32</sup> Ibid at [85].

companies and of other legal entities incorporated within their territory is accessible in all cases to any member of the public.<sup>33</sup>

214. Following the ECJ's decision (the **ECJ decision**), several EU Member States, including Luxembourg, the Netherlands, Ireland and Austria removed the requirement to grant public access from their beneficial ownership regimes. Also following the judgment, Germany determined that members of the public must justify their request by demonstrating a legitimate interest in inspecting the German Transparency Register.

#### France

215. 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.
216. Failure to comply with registration requirements can result in significant penalties, including fines and administrative sanctions. French authorities have the power to conduct audits and enforce compliance, emphasizing the requirements of accurate and timely maintenance of the register.
217. The French Trade Registry [actively encourages](#) periodic review of ownership and control structures, maintaining documentary evidence supporting the identification of beneficial owners, and seeking professional advice to ensure effective compliance with legal requirements.
218. As of March 2023, BOI declared by companies and legal entities was freely accessible via a website managed by the French Trademark and Patent Office, commonly known by the acronym 'INPI'.
219. Following the ECJ judgment, the French central register regarding beneficial ownership was suspended on January 1, 2023. Whether publication of BOI will occur in the future remains undecided.

#### Singapore

220. 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 (**ACRA**). Failing to lodge RORC information can lead to prosecution for an offence, and the offender may face a fine of up to \$5,000.<sup>34</sup> Singapore's central RORC is not accessible by the public.
221. In addition to the criteria contemplated by the BO Policy, the RORC regime covered individuals who have a right to share in more than 25% of the profits of the company.

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<sup>33</sup> Ibid at [88].

<sup>34</sup> <https://www.acra.gov.sg/compliance/register-of-registrable-controllers/frequently-asked-questions>

## United States

222. The United States (**US**) passed the *Corporate Transparency Act 2001* (US) (the **CTA**).<sup>35</sup> The CTA requires certain types of corporations, limited liability companies, and other similar entities incorporated in the US or incorporated in another country but registered to do business in the US to file a beneficial ownership information report with the Financial Crimes Enforcement Network (**FinCEN**).
223. The new rule is effective from 1 January 2024, however reporting companies created or registered before 1 January 2024, will have one year (until 1 January 2025) to file their initial reports, while reporting companies created or registered after 1 January 2024, will have 30 days after creation or registration to file their initial reports.
224. If a reporting company has no persons who directly own or control more than 25% of the company, that company would not be required to report its beneficial owners, but it would nevertheless be required to report people who exercise substantial control over the company, being people who:
- 224.1. provide services as a senior officer of a reporting company,
  - 224.2. have authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body) of the reporting company,
  - 224.3. direct, determine or have substantial influence over important matters of the reporting company, such as, for example, the reorganization, dissolution or merger of the reporting company, the selection or termination of business lines or ventures of the reporting company and the amendment of any governance documents of the reporting company.
  - 224.4. have any other form of substantial control over the reporting company.
225. FinCEN will not make available a public register of beneficial ownership information.

## Canada

226. Since June 2019, Canada has required businesses to maintain registers of individuals with significant control (**ISC**) of them.<sup>36</sup> As of 22 January 2024, all business corporations under the Canada Business Corporations Act (**CBCA**) are required to file beneficial ownership information with Corporations Canada.
227. The database of ISCs is expected to take more than a year to be populated. The information about ISCs set out in the table below will be available to the public.

No.	Type of information
1.	Full legal name,
2.	Date the individual became an ISC and ceased to be an ISC, as applicable,
3.	Description of the ISC's significant control,
4.	Residential address (will be made public if no address for service is provided),

<sup>35</sup> Regulation Around the World: Beneficial Ownership Registers, p 10.

<sup>36</sup> <https://ised-isde.canada.ca/site/corporations-canada/en/how-find-information-about-individuals-significant-control>

No.	Type of information
5.	Address for service (if one is provided).

228. Canada’s requirement to make an address for service public, and willingness to make an ISC’s residential address public if they do not provide an address for service, is notably more intrusive than what is proposed under the BO policy.

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### Community expectations

229. A key aspect to the balancing exercise involves consideration of community attitudes and expectations. Consistent with the objects of the Privacy Act, the Australian community expects that the benefits of any new measure will outweigh any intrusion, and that the risks of harm from the measure will be limited. Additionally, in the [2023 Australian Community Attitudes to Privacy Survey](#), participants overwhelmingly stated that they would like both businesses and government to do more to protect their data (p 42).
230. In November 2022, Treasury released a consultation paper entitled ‘Multinational tax integrity: Public Beneficial Ownership Register’. The consultation period ran from 7 November 2022 to 16 December 2022. Public submissions were received from 31 agencies, organisations, and individuals.
231. Several concerns held by the public were identified through the consultation process. Relevantly, the community identified the privacy related concerns set out in the table below.

No.	Privacy concern
1.	Several stakeholders opposed the two-stage approach to implementing the BO Policy, on the basis that the benefits of the BO would only meaningfully crystallise in Stage 2
2.	BOI obtained through tracing notices should be held in a centralised register maintained by ASIC or the ATO, with access subject to privacy and materiality thresholds
3.	The loss of personal privacy for beneficial owners, including a resultant risk of BOI being used to enable fraud, identity theft, cybercrime, and extortion
4.	The practical challenges of the requirement to identify and verify the identity of some trust beneficiaries
5.	The broad definition of needing to take ‘reasonable steps’ to be ‘reasonably assured’ of a beneficial owner’s identity could be used as a loophole
6.	High risk of non-compliance due to the unsophisticated nature of the regulated population, and the desire to avoid public scrutiny by those who engage in illicit activity
7.	The significant cost and complexity of the proposed regime for regulated entities, particularly for small companies and businesses, family-owned or operated entities, NFPs, and CLBGs.

232. This list is not exhaustive, and several other concerns were raised by stakeholders during the consultation process. Treasury has listened to stakeholders, and made several changes to the BO Policy because of feedback received in the consultation process, which include those set out in the table below.

No.	Changes made to BO Policy in response to stakeholder feedback
1.	The proposed threshold of 20% of share ownership or voting rights to qualify as a beneficial owner was increased to 25%, to align with the definition of beneficial owner under the KYC requirements in the AML/CTF Act.
2.	No longer requiring Indigenous Corporations or charities to disclose BOI, on the basis that Indigenous Corporations are already subject to significant oversight by the Officer of the Registrar of Indigenous Corporations
3.	A beneficial owner's address for communication and service will be available to regulators and enforcement agencies only
4.	An in-scope company, and the RCA in stage 2, must reject an application to access BOI if it suspects it will be used for an improper purpose
5	Permitting 'director-owner' to certify the membership of an in-scope company instead of maintaining a BOR.

### Opinion

233. On balance, we think that the privacy impacts of the BO Policy are proportional to the public benefit of the scheme.
234. In particular, we consider that the amendment to Stage 2 of the BO Policy, such that members of the public will not have automatic and unlimited access to the PCBOR, but must apply to the RCA, represents a strong protection.
235. For the reasons that follow, although we think that conditioning public access to the PCBOR on whether or not the person has an improper purpose for seeking access protects privacy to an acceptable level, we think that a test requiring a person to positively display a 'legitimate interest' would be a stronger protection.

### Public access to BOI must be conditioned to effectively protect privacy

236. The BO Policy originally envisioned, in Stage 2, granting the public free, unlimited access to the BOI kept on the PCBOR. We do not consider that it would be proportionate to offer the public free, unlimited access to the personal information of beneficial owners via the PCBOR.
237. In reaching this view, the ECJ decision looms large. We agree that the risks identified by the ECJ to beneficial owners of having their BOI publicly available (discussed at para [209] above) are significant and may expose the beneficial owner to disproportionate risk of harm including:
- 237.1. financial or reputation harm, e.g. because of financial or identity fraud,
  - 237.2. emotional or physical harm such as kidnapping, blackmail, extortion, harassment, violence or intimidation.
238. Paragraph 11 of the interpretative note to Recommendation 24 in the International Standards suggests that BOI *could* be made publicly available. This approach is confirmed in the FATF *Guidance on Beneficial Ownership for Legal Persons* publication, published after the ECJ decision, which expressly contemplates



limitations being placed on the public’s access to a central register.<sup>37</sup> At paragraph [87], it states that:

Recommendation 24 allows countries to consider facilitating public access to beneficial ownership information. Countries should seek to strike a balance between the public interest in disclosing the data to prevent money laundering and terrorist financing, and the beneficial owners’ fundamental rights (such as personal data protection concerns and relevant legal requirements). To that end, countries may consider a tiered approach to disclosure of the information.

239. Additionally, the Guidance suggests at [109] that public access to this information can enable civil society, other organisations and individuals to cross check the information, which may in turn help to:
- 239.1. ensure that information is accurate, adequate, and up-to-date, and
  - 239.2. to identify potential misuse of legal persons (e.g., in tax evasion, fraud, or corruption schemes).
240. Similarly, there may be genuine benefit in the convenience afforded to businesses seeking to transact with an in-scope entity in being able to quickly look up the BOI of another business in a freely available PCBOR. However, we do not think providing access to members of the public for either of these purposes is necessary to prevent and combat money laundering and terrorism financing.
241. FATF suggests at [109] of the Guidance that in determining the extent and arrangement of public access, countries should consider ‘applying a tiered approach to information disclosure (basic to detailed information), e.g., based on legitimate interest’.
242. It goes on to recommend at [110], that any fee structure associated with access should:
- 242.1. not create unnecessary delays for competent authorities,
  - 242.2. absent a compelling case, ensure that competent authorities can access BOI free of charge,
  - 242.3. not exceed the administrative costs of making the information available, including costs of maintenance and future developments of the register or alternative mechanism.
243. Treasury proposes that any fee structure within the BO Policy take a similar approach to reg 1.1.01 of table items 1 and 3 in Sch 4 to the *Corporations Regulations* 2001, which prescribes amounts for tracing notice register fees as per the table below.

	<b>Fee for copy (where applicable)</b>	<b>Fee for inspection (where applicable)</b>
Register kept on a computer	A reasonable amount that does not exceed the marginal cost to the entity of providing a copy.	A reasonable amount that does not exceed the marginal cost to the entity of providing an inspection

<sup>37</sup> FATF (2023), *Guidance on Beneficial Ownership for Legal Persons*, FATF, Paris, <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html>

	Fee for copy (where applicable)	Fee for inspection (where applicable)
Register not kept on a computer	\$0.50 for each page, or part of a page, not exceeding international sheet size A4 of the copy supplied or, at the option of the supplier, for each 100 words or part of 100 words.	\$5 per inspection

### Limiting access to BOI to persons or groups with a legitimate interest

244. The BO Policy already proposes a range of privacy enhancing measures to minimise potential harms, including:
- 244.1. limiting public access to a subset of BOI,
  - 244.2. limiting public access to persons who do not seek access for an improper purpose,
  - 244.3. a suppression regime where an individual substantiates a risk to security or risk of harm if publication occurs
  - 244.4. requiring in-scope entities to notify beneficial owners of their right to have their information suppressed from the register, so that individuals are aware of the right and have the opportunity to prevent public disclosure.
245. However, to strike the appropriate balance, we recommend that access to BOI, in both Stage 1 and Stage 2, should be conditioned on:
- 245.1. payment of a fee not exceeding the administrative cost of making the information available (except for persons who will be exempt from paying the fee, such as journalists and academics), and
  - 245.2. requiring the person requesting access to demonstrate a legitimate interest in accessing the information.
246. We consider that requiring a person to positively demonstrate that they have a legitimate interest in accessing BOI is preferable to the test within Ch 2C of the Corporations Act which denies access if the person seeks access for one of 5 'improper' purposes in reg 2C.1.03 of the *Corporations Regulations 2001*. By limiting the ability to deny access to these 5 purposes, there is a risk that the legislative framework will permit access for other improper purposes which are not prescribed (e.g. scraping data for inclusion in an online service, see, for example '*AHM*' and '*JFA*' Pty Ltd t/a *Court Data Australia* (Privacy) [2024] AICmr 29).
247. While this could be remedied by prescribing additional improper purposes, we are conscious that technology and malicious behaviour may evolve faster than a regulator's ability to identify and prescribe additional purposes in subordinate legislation. Alternatively, the legislative framework could permit refusal where one of the prescribed improper purposes exist, or the in-scope company is reasonably satisfied that access is sought for an improper purpose.
248. Ultimately, for the reasons below, we think that legitimate interest is the preferable standard for access in both Stage 1 and 2. The following matters set out in the table below support this position.

No.	Matter favouring adoption of 'legitimate interest' standard
1.	The example contemplated by the FATF of a condition that could be placed on access to BOI is a test of legitimate interest <sup>38</sup>
2.	Legitimate interest is the standard contemplated by Article 49 of the GDPR for transfers of personal data to a third country or international organisation
3.	It may be more difficult for malicious actors to fabricate a legitimate interest than to declare that they are not seeking access based on an improper purpose
4.	Further information to substantiate a legitimate interest could be readily identified by in-scope companies and the RCA, whereas it is more difficult to identify information that would prove a negative, being that there is no improper purpose
5.	People with legitimate interests, such as AUSTRAC reporting entities, journalists, academics, civil society organisations, and people seeking to transact with in-scope companies should be able to readily demonstrate a legitimate interest
6.	Granting access to BOI has significant impacts on beneficial owners
7.	Legitimate interest is a higher standard, and protects beneficial owners from unnecessary disclosure of their BOI more effectively

249. Weighing against this are the simplicity benefits in aligning requirements for access with those under the Corporations Regulations. However, those requirements were introduced in their own specific context. We consider that protecting the privacy of beneficial owners to the greatest extent possible should take precedence over these benefits.

#### Recommendation 1 – Limit public access to BORs in Stage 1 and PCBOR in Stage 2

**Issue:** The intrusion into personal privacy caused by permitting public access to BOI will be proportionate to the benefits if appropriate measures are implemented to protect BOI.

Limiting access to BOI to individuals who do not seek access for an improper purpose may be a difficult test to administer. It also does not align with international standards.

**AGS Recommendation:** Treasury amend the BO Policy to limit access to the BORs in Stage 1 and the PCBOR in Stage 2 to persons and groups who:

- pay a fee not exceeding the administrative cost of making the information available (except for persons who will be exempt from paying the fee, such as journalists and academics), and
- demonstrate a legitimate interest in accessing the information.

**Response:**

250. Additionally, we suggest for Stage 1, Treasury consider a requirement that persons seeking access must:

250.1. declare on their access application the purpose or purposes for which they require access to information within a BOR

<sup>38</sup> FATF (2023), *Guidance on Beneficial Ownership for Legal Persons*, FATF, Paris, <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html> at [109].

- 250.2. undertake to use or disclose the information provided to them for the purpose or purposes stated in their access application only (**declared purposes**).
251. Further, in Stage 2, Treasury should consider the same requirement and/or consider providing the RCA with powers to impose conditions on how persons who access data contained in the PCBOR may use this data. Conditions could include:
- 251.1. permitting the use of the BOI only for the application purpose or purposes, or
- 251.2. where an application specifies a broad purpose, prohibiting use of the data for certain activities (e.g. marketing).
252. Section 176B of the *Personal Property Securities Act 2009* (Cth) provides an example of such a provision. This section enables the imposition of registered data conditions in relation to some interactions with the Personal Property Securities Register.
253. Similarly, s 177 of the Corporations Act prohibits certain use or disclose of information obtained by a person from a public register.
254. Where an entity accessing BOI is not subject to other restrictions on their handling of any personal information (e.g. the APPs if an APP entity), imposing conditions would be a proportionate measure to protect the privacy of beneficial owners.

### Recommendation 2 – Impose conditions on access to BOI

**Issue:** Interference with privacy may occur if individuals or groups that access BOI for a legitimate purpose use or disclose the data for a different purpose.

**AGS Recommendation:** The BO Policy:

- require access applicants in Stages 1 and/or 2 to declare the purposes for which they seek access, and require, as a condition of access, that they undertake to only use or disclose received BOI for the declared purposes
- authorise the RCA to impose conditions on how persons who access data in the PCBOR may use or disclose the data.

**Response:**

### Minimising ‘function creep’

255. Further, because of the significant volume of new personal information the BO Policy will cause in-scope entities and government to collect, we think it is important to take precautions at an early stage to reduce the risk of expansion of the policy to collect additional personal information, or permit the use or disclosure of BOI for unanticipated future purposes.
256. To the greatest extent possible, we consider that Treasury should set out several aspects of the BO Policy in primary legislation, rather than delegated legislation. This is because delegated legislation is more easily updated, subject to less oversight by the Parliament, and changes to delegated legislation may be subject to less scrutiny by the public.
257. Aspects of the BO Policy that Treasury should set out in primary legislation are set out in Recommendation 3 below.

### Recommendation 3 – Prescribe details of the BO Policy in primary legislation

**Issue:** Prescribing the detail of the BO Policy in delegated legislation risks later ‘function creep’, i.e. expansion of the policy to collect additional personal information, or permit the use/disclosure of BOI for unanticipated purposes.

**AGS recommendation:** Treasury prescribe the core elements of the BO Policy in primary legislation, including:

- the types of BOI,
- the law enforcement agencies and regulators who will have unlimited access to BOI,
- the purposes for which law enforcement agencies and regulators can seek unlimited access to BOI
- the scope of ASIC’s enforcement powers,
- the reasons for which a person seeking to access BOR may have an ‘improper purpose’.

**Response:**

### APP 1 – Open and transparent handling of personal information

258. The declared object of APP 1.1 is ‘to ensure that APP entities manage personal information in an open and transparent way’. As the APP Guidelines recognise, management of personal information in this way not only increases accountability but can build community trust and confidence in those practices.<sup>39</sup>

#### APP 1.2 – Privacy Code

259. APP 1.2 relevantly requires the implementation of practices, procedures and systems to ensure compliance with the APPs and any registered APP Code. Relevant to Treasury, it must satisfy the requirements of Part 2 to 4 of the Privacy Code in order to meet APP 1.2: see s 8 of the Privacy Code.
260. Part 3 of the Privacy Code includes the requirement in s 12(1) to conduct a PIA for all ‘high risk’ projects. This term is defined in s 12(2) to encompass any changed or new way of handling personal information that are likely to have a significant impact on the privacy of individuals.
261. Implementation of the BO Policy is a ‘high risk’ project. In-scope companies will be required to collect and record a significant amount of BOI, most of which is personal information. This new collection of personal information is likely to have a significant impact on individuals’ privacy as beneficial owners’ BOI will be accessible to regulators, enforcement agencies, and at a minimum, sections of the public.
262. Conducting a PIA ensures that the BO Policy is implemented using a privacy by design approach. This process includes a thorough review of the BO Policy and development of recommendations to safeguard personal privacy.

<sup>39</sup> APP Guidelines, [1.1].

263. In conformity with s 15 of the Privacy Code, this PIA must be listed in the register of PIAs kept by Treasury.
264. Optionally, Treasury may wish to publish this PIA, or a summary version or edited copy, on its website or otherwise make it available on request: see s 13 of the Privacy Code.

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### APP 1.3 – Privacy Policy

265. In-scope companies, as APP entities, must have a clearly expressed and up-to-date privacy policy. Privacy policies must contain the information detailed in APP 1.4:

Para	Requirement
<b>APP 1.4(a)</b>	Kinds of personal information the entity collects and holds
<b>APP 1.4(b)</b>	How the entity collects and holds personal information
<b>APP 1.4(c)</b>	The purposes for which the entity collects, holds, uses and discloses personal information
<b>APP 1.4(d)</b> <b>APP 1.4(e)</b>	The APP entity’s privacy policy contains information about how to request access, correction or make a complaint.
<b>APP 1.4(f)</b> <b>APP 1.4(g)</b>	Whether the APP entity is likely to disclose personal information to overseas recipients and the countries of such recipients.

266. APP entities must take reasonable steps to ensure their APP privacy policy is available free of charge and in such form as is appropriate: APP 1.5. APP entities must also take reasonable steps to provide their APP privacy policy to a person or body in a particular form if requested to do so: APP 1.6.

#### Privacy policies, practices, procedures and systems for in-scope companies

267. In-scope companies who are APP entities must comply with APP 1 when handling BOI. This may require amending the in-scope company’s privacy policy to reflect the collection, storage, use and disclosure of BOI to conform with APPs 1.3 and 1.4.
268. Additionally, in-scope companies that are currently SBOs may need to develop privacy policies depending on the modification of the SBO exception in the Privacy Act – either as part of the general Privacy Act reforms or to introduce an equivalent to s 6E for the BO Policy.
269. Further, in-scope companies subject to the Privacy Act in relation to the BO Policy will need to develop practices, procedures and systems to ensure effective compliance with the APPs and to facilitate responding to any privacy complaint, or request to access or amend personal information: APP 1.2.
270. For example, the BO Policy will require in-scope companies to collect personal information, applying principles of data minimisation.
271. Additionally, in-scope companies must verify information collected from natural person beneficial owners such that they are reasonably satisfied of the identity of a beneficial owner. The extent of verification necessary to reach this state of satisfaction will vary across in-scope companies based on the nature of their base of beneficial owners.

272. Further, in Stage 1, in-scope companies will process requests to access information contained on their registers.
273. This PIA does not consider the changes that in-scope companies may need to make to their privacy policies or their privacy practices, procedures and systems upon commencement of the BO Policy. However, to facilitate a privacy by design approach to implementing the BO Policy, we recommend the development and publication of guidance for in-scope entities about how to comply with their obligations under the APPs in maintaining a BOR.
274. If at the time the BO Policy commences, the SBO exception still applies, we consider in-scope companies should nonetheless be encouraged within the guidance to voluntarily comply with the APPs.
275. The matters for which we consider guidance should be provided to in-scope companies are set out in the table at [Annexure A](#).

#### **Recommendation 4 – Develop guidance to support in-scope companies to comply with privacy obligations**

**Issue:** The introduction of the BO Policy will require in-scope companies to prepare or update policies (including privacy policies where they have chosen or are required to have a privacy policy) and implement new practices to collect, store, use and disclose BOI that is personal information.

**AGS Recommendation:** To promote a ‘privacy by design’ approach, the Commonwealth develop guidance for in-scope companies on appropriate content for entity privacy policies, and necessary practices, procedures and systems that entities should implement to comply with the APPs in [Annexure A](#).

To promote a ‘privacy by design’ approach, in-scope companies who are not subject to the APPs should be encouraged to voluntarily comply with the APPs in their handling of BOI that is personal information.

**Response:**

#### **Privacy policy for RCA**

276. In Stage 2, the RCA will collect, hold, use and disclose BOI to fulfil its responsibility to administer the PCBOR. As it is currently unclear as to whether this agency will be ASIC, the Australian Business Registrar or another agency, we cannot advise on the suitability of the agency’s privacy policy for the handling of BOI.
277. However, the RCA will need to ensure that its privacy policy reflects how the agency handles BOI in accordance with the APPs. This may require updates to the agency’s privacy policy closer to the implementation of the PCBOR.

#### **APP 2 – Anonymity and pseudonymity**

278. APP 2 is intended to minimise arbitrary interference with personal privacy that can result from unnecessary requirements for individuals to identify themselves when interacting with APP entities.

279. APP 2.1 details that ‘individuals must have the option of not identifying themselves, or of using a pseudonym, when dealing with an APP entity in relation to a particular matter’. APP 2.1 does not apply if either exception in APP 2.2 applies:

(a) the APP entity is required or authorised by or under an Australian law, or a court/tribunal order, to deal with individuals who have identified themselves; or

(b) it is impracticable for the APP entity to deal with individuals who have not identified themselves or who have used a pseudonym.

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### Collection of BOI by in-scope companies

280. The BO Policy is aimed at minimising practices such as tax evasion and money laundering, and requires beneficial owners to identify themselves to practically achieve this purpose. Identifying beneficial owners is therefore reasonable, necessary and proportionate to achieving the BO Policy’s goals.

281. As the BO Policy will oblige in-scope companies to sufficiently verify the identity of beneficial owners, the exception in APP 2.2(b) will apply to in-scope companies when collecting BOI from beneficial owners. It would be impossible for in-scope companies to fulfil their obligations to verify the identity of information collected from natural person beneficial owners if beneficial owners could remain anonymous or use a pseudonym.

282. The verification requirements are necessary to prevent fraud and to ensure that BOI is accurate, complete and up-to-date. Interacting with identifiable beneficial owners also enables in-scope companies to ensure that beneficial owners are aware of the potential publication of their information and informed of their options to prevent publication of their information.

283. Where the legislation enacting the BO Policy requires identification of a beneficial owner, this will modify the operation of APP 2. For the reasons explained above, the modification will be reasonable, necessary and proportionate to achieve the purposes of the BO Policy.

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### Public access to BORs and the PCBOR

284. Treasury currently intends to design the access framework for beneficial ownership registers similarly to the access arrangements in Chapter 2C.1 of the *Corporations Act 2001* (Cth) (**CA**). This framework restricts the ability for members of the public to remain anonymous or use a pseudonym when requesting access to registers under section 173 of the CA.

285. The *Corporations Regulations 2001* (Cth) (**CR**) prescribe ‘improper purposes’ for the purposes of s 173(3A)(b) of the CA and the ‘form requirements’ for s 173(3A)(c). Regulation 2C.1.04 requires an application to contain the name and address of the applicant applying for access to a register.

286. These requirements were introduced in the *Corporations Amendment Regulations 2010 (No 10)* (Cth) to protect the privacy of shareholders, including against unsolicited below-value off-market offers.<sup>40</sup>

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<sup>40</sup> Second Reading Speech for Corporations Amendment (No 1) Bill 2010 (Cth).



287. The 2010 amendment to the *Corporations Act* demonstrates the real risk of information on public registers being misused for illegitimate purposes. However, consistent with [Recommendation 1](#), Treasury should consider whether implementing an ‘improper purpose’ approach sufficiently protects the privacy of beneficial owners. A threshold of requiring individuals requesting access to BORs to have a ‘legitimate interest’ in accessing the BOI contained on the BOI may be more effective in protecting the privacy of beneficial owners from unreasonable interference.
288. If the requirement to provide a name and address to access a BOR is replicated in the BO Policy, the APP 2.2(a) exception would apply as in-scope companies would be required under Australian law to only deal with members of the public who have identified themselves when requesting access to beneficial ownership registers.
289. Similarly, the APP 2.2(a) exception would apply to any action to verify the identity of individuals seeking access to their own information or seeking a waiver of any prescribed fee.
290. Assuming that applications for access to the PCBOR will also require an individual to provide a name and address, the exception in APP 2.2(a) will also apply in Stage 2.
291. To the extent that the BO Policy will require identification of an access application, this measure will be reasonable, necessary and proportionate to achieve the purposes of the BO Policy.

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### **APP 3 – Collection of personal information**

292. APP 3 applies where an APP entity seeks to collect personal information.
293. A collection will occur when an APP entity ‘collects’ the information for inclusion in a record or generally available publication: s 6 of the Privacy Act.

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#### **Kinds of personal information for collection**

##### **Collection of personal information by in-scope companies regarding suspected beneficial owners**

294. In-scope companies will need to collect personal information about suspected beneficial owners before reaching a decision to issue a request for BOI. The range of circumstances and information that an in-scope company will rely on in reaching this view may vary widely depending on the structure and size of the in-scope company. Common steps may include consulting the company’s existing registers, constitution, and organisational structure, or making enquiries of the directors of the in-scope company.
295. In-scope companies may collect personal information about suspected beneficial owner who are not in fact beneficial owners. In-scope companies will need to implement practices to minimise collection of this information, and/or destroy or delete this information upon deciding the individual is not a beneficial owner. Guidance produced by the Commonwealth as part of [Recommendation 4](#) should outline protective measures. We suggest matters to be addressed in the table at [Annexure A](#).

296. Each request for BOI issued to a suspected beneficial owner, whether or not they are actually a beneficial owner, will comprise a collection of personal information about, and disclosure of personal information to, the suspected beneficial owner. New collections and disclosures will occur when an in-scope company sends compliance notices.

#### Collection of personal information by in-scope companies from beneficial owners

297. The following categories of BOI will always be the personal information of an individual beneficial owner:

Category of personal information	
Full name	Nature of control or influence
Addresses for communication and service	Date of birth
Nationality	Residential address
Date the person became or ceased to be a beneficial owner	Status as a person who has applied for, or is eligible for inclusion in, suppression regime

#### Collection of personal information by in-scope companies from access applicants

298. Additionally, in-scope companies will collect and disclose the personal information of individuals when the individuals request access to the in-scope company's BOR. We anticipate that this would include the personal information set out in the table below.

No.	Type of personal information collected in requests to access BOR
1.	Full name
2.	Address for communication (e.g. email address)
3.	Phone number (may be optional)
4.	The purpose for which access to the BOR is sought

#### Collection of personal information by the RCA

299. Once Stage 2 is implemented and in-scope companies are required to provide information on their beneficial owners to the RCA for inclusion in the PCBOR, the RCA will collect the personal information outlined at paragraphs [297]-[206]. Depending on how the RCA implements the PCBOR, in-scope entities may not collect the BOI of beneficial owners, but may instead facilitate the RCA's collection of this information in the PCBOR.

#### Collection of personal information by ASIC

300. ASIC will collect personal information when in-scope companies report non-compliance by a suspected beneficial owner who has not responded to, or adequately addressed, a valid warning notice within 28 days.
301. Additionally, where suppression is sought by providing evidence of a risk to personal safety, ASIC will collect personal information from individual's who apply for suppression of their BOI. This will necessarily include the name and contact information of the beneficial owner, as well as the basis of their suppression application.

### APP 3.1 – Reasonably necessary or directly related to functions or activities of an agency

302. We have not identified any APP 3.1 issues.
303. APP 3.1 provides that an agency must not collect personal information unless the information is reasonably necessary for, or directly related to, one or more of the agency's functions or activities.
304. A collection will be 'directly related' where there is a clear and direct connection between the information for collection and the functions of the agency.
305. Whether a collection is 'reasonably necessary' for the organisation's functions and activities is an objective test, assessed from the perspective of a reasonable person who is properly informed.
306. Generally, the term 'reasonably necessary' suggests a connection that is less than essential or indispensable, but more than just helpful, or of some assistance or expedient.<sup>41</sup> In *Mulholland v Australian Electoral Commissioner* [2004] HCA 41 at [39], the term 'reasonably necessary' has also been equated to being 'reasonably appropriate and adapted'.
307. In *Jurecek v Director, Transport Safety Victoria* [2016] VSC 285, Bell J noted in the context of the *Information Privacy Act 2000* (Vic) that an evaluation of whether a collection of personal information is 'reasonably necessary' should include 'balancing, in a reasonably proportionate way, the nature and importance of any legitimate purpose and the extent of the interference.' The *Jurecek* decision has since been cited with approval by the Australian Information Commissioner in interpreting APP 3.
308. We understand that legislation enacting the BO Policy will require the RCA to develop and maintain the PCBOR. As such, any BOI collected by the RCA in accordance with legislation will be reasonably necessary for, or directly related to, the RCA's functions or activities.
309. Similarly, we understand that legislation requiring ASIC to enforce compliance with the BO Policy and assess eligibility for inclusion in the suppression regime will confer these functions on ASIC.
310. We have considered whether any of the categories of BOI for inclusion in the PCBOR go beyond what is reasonable and necessary to achieve the BO Policy's purposes of combating money laundering and terrorism financing. The rationale for collecting each BOI field is set out below.

Information field	Reason for collection	Available to the public?	Reason for public access
<b>Beneficial Owners (Natural Person)</b>			
Full name	Identification	Yes	Identification
Full date of birth	Identification	Only month and year of birth	Identification

<sup>41</sup> APP Guidelines at [B.113].

Information field	Reason for collection	Available to the public?	Reason for public access
Addresses for communication and service (can be postal or electronic)	Identification Communication and service	No	N/A
Residential address	Identification Communication by regulated entity, regulator, and law enforcement agencies	Only country of residence	Identification
Nationality / Nationalities	Identification	Yes	Identification
Nature of control or influence	Aid enforcement activity by describing link between individual and company Increased corporate transparency	Yes	Increased corporate transparency
Date the person became or ceased to be a beneficial owner	Aid enforcement activity by describing link between individual and company Increased corporate transparency	Yes	Increased corporate transparency
<b>Companies, Registered MISs, and CCIVs (including for listed entities)</b>			
Company / MIS / CCIV name	Identification	Yes	Identification
Registered office address of Company, Responsible Entity of MIS / Corporate Director of CCIV	Identification	Yes	Identification Communication by any member of public
Electronic address	Communication by regulated entity, regulator, and law enforcement agencies	No	N/A
Entity type (legal form) e.g. Company, MIS, CCIV	Increase corporate transparency	Yes	Increase corporate transparency
Date of registration	Increase corporate transparency	Yes	Increase corporate transparency
Country of registration	Identification	Yes	Identification
Registration number e.g. ACN, ABN, ARFN, or foreign company equivalent	Identification	Yes	Identification

Information field	Reason for collection	Available to the public?	Reason for public access
Nature of control or influence	Aid enforcement activity by describing link between individual and company Increase corporate transparency	Yes	Increase corporate transparency
Date the person obtained or ceased to have control or influence	Aid enforcement activity by describing link between individual and company Increase corporate transparency	Yes	Increase corporate transparency
<b>Trusts</b>			
Name of trust / legal arrangement	Identification	Yes	Identification
Unique Superannuation Identifier (where available)	Identification	Yes	Identification
Date of creation	Increase corporate transparency	Yes	Increase corporate transparency
Information (as above for beneficial owners and other entities) on trustees, beneficiaries, appointors, settlors, and any other member of the trust	Identification Aid enforcement activity by describing link between individual and company Increase corporate transparency	Yes	Identification Increase Corporate transparency

311. We consider that all categories of personal information are reasonable and necessary for the RCA to collect in the circumstances.
312. Both ASIC and the RCA will need to implement strategies to prevent overcollection of personal information. For example, ASIC may not require all BOI supplied by a beneficial owner to commence processing a suppression application. Utilising approved formats with detailed guidance is a strong measure to minimise the risk of collecting personal information in breach of APP 3.1. This is discussed further under APP 4.
313. If ASIC and the RCA implement appropriate data minimisation measures, we think the BO Policy is likely to comply with APP 3.1.

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### **APP 3.2 – Reasonably necessary or directly related to functions of an organisation**

314. APP 3.2 provides that an organisation that is an APP entity must not collect personal information unless the information is reasonably necessary for one or more of the organisations functions or activities.

315. The BO Policy will require in-scope companies to collect the BOI of their beneficial owners. Taking necessary action to comply with relevant laws is plainly a function or activity of any organisation.
316. We have explained above why we consider collection of BOI is reasonable and necessary to achieve the BO Policy's purposes of combating money laundering and terrorism financing. For similar reasons, we consider the collection of other personal information to give effect to the BO Policy (e.g. correspondence with beneficial owners, evidence of eligibility to suppress BOI, access requests) is reasonable and necessary to achieve compliance with the BO Policy.
317. As with ASIC and the RCA, in-scope entities will require strategies to prevent overcollection. We suggest the Commonwealth provide guidance for in-scope entities on the kinds of information required to comply with the BO Policy, as well as data minimisation strategies (e.g. use of authorised forms) (see [Appendix A](#)).
318. We have not identified any APP 3.2 issues.

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### **APP 3.3 and APP 3.4 – collection of sensitive information**

319. APP 3.3 states that an APP entity must not collect sensitive information unless:
- 319.1. the sensitive information is reasonably necessary for or directly related to the agency's functions or activities (as required by APP 3.1) and the individual consents to the collection; or
- 319.2. an exception in APP 3.4 applies in relation to that information.
320. Sensitive information is defined in s 6(1) of the Privacy Act (see the Glossary to this PIA).
321. Treasury has carefully designed the BO Policy to mitigate against the collection of sensitive personal information by in-scope entities. While in Stage 1, an individual will notify the in-scope company of their intent to make a suppression application, where the individual is required to provide evidence to substantiate a risk to their personal safety, the individual will make the application and share details of the basis of the application with ASIC only. This may include sensitive personal information, e.g. about the individual's mental or physical health, sexual orientation, political opinions or membership of a racial or ethnic group.
322. Where legislation enacting the BO Policy requires an individual to supply details of the basis of the suppression application to ASIC to facilitate assessment of the individual's claim, the BO Policy will authorise ASIC to collect this information under law, engaging the exception in APP 3.4(a).
323. Although the new legislation will modify the operation of APP 3.3, the collection of limited information is reasonable, necessary and proportionate with the purpose of the BO Policy.
324. Where ASIC has accepted a suppression application, it may no longer require details of the basis of the application for a business purpose.<sup>42</sup> ASIC could consider

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<sup>42</sup> The BO Policy proposes a right for a beneficial owner to apply to the Administrative Appeals Tribunal for review of a refusal decision only.

destroying or deleting this information in accordance with normal administrative practice.

325. We have not identified any APP 3.3 issues.

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### **APP 3.5 – Fair and lawful means**

326. APP 3.5 provides that APP entities must collect personal information only by lawful and fair means.
327. Lawful means is any method that is not criminal, illegal, prohibited or proscribed by legislation: APP Guidelines at [3.60]-[3.61]. In-scope companies, the RCA, and ASIC, will each collect personal information as part of the BO Policy in accordance with the requirements of the forthcoming legislation.
328. Fair means involve methods that do not involve intimidation or deception, and are not unreasonably intrusive: APP Guidelines at [3.62]. Collection will be fair in circumstances where beneficial owners are aware of the requirements of the BO Policy, and how in-scope companies, ASIC, and the RCA will collect, use and disclose their information. If [Recommendation 6](#) is implemented, in-scope companies will provide this information to beneficial owners in a notice of collection as part of [Activity 1](#). This is discussed in more detail in association with APP 5.
329. We have not identified any APP 3.5 issues.

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### **APP 3.6 – Collection from another individual**

330. APP 3.6 requires an APP entity to collect personal information directly from an individual unless one of the following exceptions applies:

<b>Exception</b>	<b>Requirement</b>
<b>APP 3.6(a)(i)</b>	The individual's consent to the collection from the third party
<b>APP 3.6(a)(ii)</b>	The collection from a third party is authorised by or under an Australian law or Court or Tribunal order
<b>APP 3.6(b)</b>	It is unreasonable or impracticable to collect the information directly from the individual.

331. Generally, in-scope companies and, when they are dealing with individuals directly, ASIC, will collect personal information directly from beneficial owners or a service provider retained by the beneficial owner (i.e who acts on their behalf). No APP 3.6 issues arise in relation to these activities.
332. Where legal arrangements such as trusts, partnerships, associations and registered co-operations, supply information about other beneficial owners (e.g. with at least a 25% voting right), the exception in APP 3.6(a)(ii) will apply. While the BO Policy will authorise this activity, it will limit any indirect collection to name and contact details, so as to permit other beneficial owners to supply their own beneficial ownership information. This is a privacy enhancing measure which will reduce data quality risks and promote an individual's control over their own personal information.
333. Additionally, in circumstances where in-scope companies provide the contents of their BOR to the RCA, this will occur in accordance with the legislation which enacts the BO Policy, engaging the exception in APP 3.6(a)(ii).

334. While the new legislation will modify the operation of APP 3.6, at least in some instances, in-scope companies will indirectly collect and pass on this information with the knowledge of the beneficial owner. Moreover, even where, after the commencement of Stage 2 beneficial owners provide BOI directly to the RCA for inclusion in the PCBOR, the RCA will need to undertake an initial collection to populate the register. We think these collections are proportionate to the purpose of the BO Policy.
335. Lastly, to the extent that the new legislation will permit relevant law enforcement agencies and members of the public to collect BOI from an in-scope company or the RCA, rather than the individual directly, we think such modification of APP 3.6 is proportionate.

#### **APP 4 – Unsolicited personal information**

336. APP 4.1 requires that if an APP entity receives personal information, and the entity did not solicit the information, the entity must, within a reasonable period after receiving the information, determine whether the entity could have collected the information under APP 3 if the entity had solicited the information.
337. In Stage 1, in-scope companies may use a format authorised by ASIC to request and receive BOI from beneficial owners, i.e. a data standard specifying the kinds of information required. This is a protective factor against beneficial owners over-providing personal information if they mistakenly believe additional information is needed to comply with their obligations. We anticipate the RCA will use similar measures if it receives BOI directly from beneficial owners as part of Stage 2.
338. In-scope companies and the RCA will not require documents or other information demonstrating an individual’s status as a beneficial owner.
339. To prevent receipt of unsolicited personal information, we recommend that each approved format require the provision of a clear explanation to beneficial owners that they need not, and should not, attach any additional documents or include other information when providing their BOI (e.g. a submission in support of an application to suppress their BOI).

#### **Recommendation 5 – Approved formats provide guidance on form completion**

**Issue:** Beneficial owners may over-provide personal information when supplying BOI, such as additional documents demonstrating their status as a beneficial owner, or a submission in support of an application to suppress their BOI (which they should provide to ASIC only, not in-scope companies).

**AGS Recommendation:** The approved format should include guidance to beneficial owners explaining:

- the categories of information they must supply,
- other kinds of information that are not needed, and should not be supplied.

**Response:**



340. If beneficial owners do over-provide personal information, in-scope companies and/or the RCA will need to assess whether such information could have been collected under APP 3. To assist in-scope companies to make such assessments, we suggest guidance be provided to assist in-scope companies as outlined at [Annexure A](#).
341. Clear procedures for such assessments can reduce the likelihood of retaining unsolicited information the in-scope entity cannot collect. Where an organisation determines it cannot collect the information, it must destroy the information or ensure it is de-identified as soon as practicable: APP 4.2. Deleting unnecessary personal information will minimise any potential harm to an individual in the event of a data breach.
342. Lastly, there is risk that ASIC will collect unsolicited personal information when engaging with beneficial owners about their eligibility for inclusion in suppression regime. As a Commonwealth agency with mature privacy practices, we expect that ASIC would already have clear procedures in place for handle unsolicited personal information, and do not consider it necessary for this PIA to advise in this regard.

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## APP 5 – Notice of collection

343. APP 5.1 requires that at or before the time or, if that is not practicable, as soon as practicable after an APP entity collects personal information about an individual, the entity must take such steps (if any) as are reasonable in the circumstances:
- 343.1. to notify the individual of such matters referred to in subclause 5.2 as are reasonable in the circumstances; or
- 343.2. to otherwise ensure that the individual is aware of any such matters.
344. Notices of collection must be provided in the following circumstances:
- 344.1. By in-scope companies to beneficial owners, prior to receiving their BOI, after receiving their name and contact information from another beneficial owner, or after receiving their BOI from another beneficial owner (**initial collection notice**),
- 344.2. By ASIC to beneficial owners who apply to suppress their BOI from a register (**suppression collection notice**),
- 344.3. By the RCA to beneficial owners who provide their BOI directly to the RCA for inclusion in the PCBOR (**RCA collection notice**)
345. [Annexure A](#) to this PIA sets out in a table of the matters that will need to be included in each collection notice.

**Recommendation 6 – In-scope companies, ASIC, and the RCA provide beneficial owners notices of collection**

**Issue:** APP entities must, before or as soon as practicable after collecting personal information, notify the individual of prescribed matters, or otherwise ensure that they are aware of such matters.

**AGS Recommendation:** In-scope companies, ASIC and the RCA provide collection notices addressing the matters outlined at [Annexure A](#), before, or as soon as practicable after, they collect personal information.

**Response:**

**APP 6 – Use or disclosure of personal information**

346. APP 6 provides that an APP entity can only use or disclose personal information for the purpose for which it was collected (the ‘primary purpose’), or for a secondary purpose if the individual has consented to the use or disclosure, or an exception applies. Most relevantly, these exceptions include:

Exception	Description
<b>APP 6.2(a)</b>	The individual would expect the APP entity to use or disclose their personal information for the secondary purpose, and that purpose is related to the primary purpose of collection, or, in the case of sensitive information, directly related to the primary purpose.
<b>APP 6.2(b)</b>	The use or disclosure of the information is required or authorised by or under an Australian law or a court/tribunal order

347. Below, we review the relevant considerations for each use or disclosure by in-scope companies, ASIC, and the RCA in turn.

**Use and disclosure of personal information by in-scope companies**

348. The table below sets out the ways in which in-scope companies will use and disclose personal information.

#	Activity	Actions taken as part of the Activity
1	<b>Request to suspected beneficial owners</b>	<ul style="list-style-type: none"> <li>Use of existing and new information to identifying suspected beneficial owners</li> <li>Use and disclosure to send requests for BOI to suspected beneficial owners</li> <li>Use and disclosure to send warning notices to suspected beneficial owners who do not respond to initial requests</li> </ul>
2	<b>Collection of BOI</b>	<ul style="list-style-type: none"> <li>Use BOI to create, update and maintain BOR</li> </ul>
5	<b>Create / maintain BOR</b>	
6	<b>Receive updated BOI</b>	
3	<b>Identity verification</b>	<ul style="list-style-type: none"> <li>Verify the identity of the beneficial owner</li> </ul>

#	Activity	Actions taken as part of the Activity
4	Suppression applications	<ul style="list-style-type: none"> <li>Disclose suppression application to ASIC</li> <li>Use information supplied by the beneficial owner to apply suppression rules when responding to access requests</li> </ul>
7	Requests to access the BOR	<ul style="list-style-type: none"> <li>Use information in access request application as well as existing or new information to assess 'legitimate purpose'</li> <li>Use information about suppression applications to apply suppression rules</li> <li>Where there is no improper purpose, and subject to suppression rules, disclose restricted BOI to access applicant.</li> </ul>
8	Enforcement	<ul style="list-style-type: none"> <li>Disclose suspected beneficial owners' details to ASIC if they fail to respond to a warning notice</li> </ul>
9	Transition to PCBOR	<ul style="list-style-type: none"> <li>Disclose the contents of their BORs into the PCBOR.</li> </ul>

349. Generally, administration of the BO Policy will involve the use and disclosure of personal information by in-scope companies for the primary purpose for which the personal information was collected (i.e. to create and maintain a BOR). Accordingly, these uses and disclosures will conform with APP 6.1.

350. To the extent that the uses and disclosures in **orange** above may involve the use or disclosure of personal information collected for a different purpose, the new legislation will impliedly authorise these activities to avoid frustrating the objects of the BO Policy.<sup>43</sup> For example, it would defeat the intent of a 'legitimate purpose' condition if an in-scope entity could not use existing information about the actions of the access application (or collect new information, if appropriate) to assess the application. To the extent the new legislation will modify the operation of APP 6 to authorise the use and disclosure of this information (and engage the exception in APP 6.2(b)), we consider this is reasonable, necessary and proportionate in the circumstances.

351. Additionally, to the extent the use and disclosure in **green** above (responding to an access application) involves a secondary purpose (because the BOI was collected for inclusion in the BOR), the new legislation will modify APP 6 to permit this disclosure. We consider such disclosures would be reasonable, necessary, and proportionate, and would not involve an arbitrary interference with the personal information of beneficial owners.

#### Considering applications for inclusion in the suppression regime

352. In-scope companies will have a limited role in determining whether to apply the suppression rules to BOI in response to an access application. The BO Policy will limit in-scope companies to determining whether the four factual circumstances set out in the table below exist.

<sup>43</sup> *AIT18 v Australian Information Commissioner* [2018] FCAFC 192 at [126].

No.	Factual circumstance requiring suppression of BOI
1.	A suppression application remains with ASIC
2.	A beneficial owner is under 18 years of age
3.	The beneficial owner is a silent voter on the electoral role
4.	ASIC has approved the suppression application

353. In-scope companies should receive guidance making clear that it is not their role to assess eligibility for suppression, and that they are obliged to apply suppression rules where a beneficial owner meets any of the above factual circumstances.
354. Additionally, guidance should explain to in-scope companies that, if a beneficial owner seeks to have their personal information suppressed based on ‘other’ evidence, their role is limited to informing the individual about how to make the application to ASIC, and they are not to make enquiries with the beneficial owner as to the reasons underlying the request.
355. The Commonwealth should address these matters in the guidance produced under [Recommendation 5](#). Suggestions for matters to address in guidance for in-scope companies is set out at [Annexure A](#).

#### **Notice to in-scope companies when suppression application determined**

356. The BO Policy will require in-scope companies to apply the suppression regime to the BOI of beneficial owners who have applied to ASIC. This requirement will apply until the application is finally determined, and associated appeal timeframes have expired.
357. While an individual will indicate their intent to make a suppression application to ASIC, an in-scope company may not know if an application is ultimately made. Further, it is possible that review processes could reasonably be on foot for years, and, without further notice from ASIC, the entity may not be aware that the suppression entitlement remains, or when the entitlement to suppression ends (e.g. if ASIC refuses the application or a review is unsuccessful).
358. After receiving an initial draft of this PIA, Treasury determined to update the BO Policy to require ASIC to notify an in-scope company of the outcome of a suppression application, and require the in-scope company to suppress the beneficial owner’s information until that time. This is a privacy enhancing measure to ensure suppression remains in place until all appeal rights are exhausted.
359. However, we are conscious that at the start of the process, there may be confusion about when to apply suppression – e.g. if a person does not tell the in-scope company of their intention to apply for suppression, or the company is unsure if the person has made a suppression application
360. To ensure clarity, we recommend the BO Policy:
- 360.1. require ASIC to notify the in-scope company of any suppression application
  - 360.2. require an in-scope company to apply suppression to a beneficial owner’s information in the register (a) for 28 days after receiving notice of the individual’s intention to apply to ASIC for suppression, or (b) after receiving

notice of the suppression application from ASIC until it receives a notice from ASIC advising of a negative final outcome of the application.

361. To the extent these requirements would modify the application of APP 6, we think these steps are reasonable, necessary and proportionate to balance protections to the privacy of beneficial owners against measures to prevent money laundering and terrorism funding.

#### **Recommendation 7 – ASIC notify in-scope companies about receipt and outcome of suppression applications**

**Issue:** Unless ASIC notifies an in-scope company about the receipt and outcome of a suppression application, the in-scope company may not know whether a suppression entitlement exists, or when the entitlement ends (e.g. if ASIC refuses the application or a review is unsuccessful).

#### **AGS Recommendation:**

- ASIC notify in-scope companies of the receipt and outcome of a suppression application.
- In-scope companies suppress BOI from the register for 28 days after receiving notice of a beneficial owner's intent to apply for suppression, or after they receive notice of an application until they receive a negative final outcome notice.

#### **Response:**

#### **Granting access to the BOR**

362. In-scope companies will assess whether a member of the public seeks access to their BOR for an improper purpose, or if [Recommendation 1](#) is implemented, by assessing whether the access applicant has a legitimate interest support their request.
363. In-scope companies will require guidance in making this assessment. We make recommendations on the content of this guidance in [Annexure A](#).

#### **Use and disclosure of personal information by ASIC**

364. ASIC's involvement in the BO Policy is limited to:
- 364.1. considering applications for inclusion in the suppression regime,
  - 364.2. enforcement activities, as set out at Activity 8 above, and
  - 364.3. developing guidance and data formats / standards to support compliance with the beneficial ownership regime, including information sheets and regulatory guidance to support beneficial owners' and companies' understanding of and compliance with obligations and responsibilities.
365. The specific uses and disclosures of personal information that will take place in these processes is set out in the table below.

#	Activity	Actions taken as part of the Activity
4	Considering applications to suppress BOI	<ul style="list-style-type: none"> <li>• Use and disclosure in corresponding with beneficial owners to obtain information supporting an application for suppression</li> <li>• Use in deciding whether a beneficial owner is eligible to have their BOI suppressed</li> <li>• Disclosure of decision to beneficial owners and in-scope companies of the outcome of the suppression application</li> <li>• Disclosure of updates to in-scope companies on review processes following the decision on suppression</li> </ul>
8	Enforcement	<ul style="list-style-type: none"> <li>• Use and disclosure to issue notices to beneficial owners requesting that they provide BOI</li> <li>• Use and disclosure to impose restrictions on beneficial owners if obligations are not met</li> </ul>

366. ASIC will need to consider closely the types of information that it will require beneficial owners to disclose when substantiating their request for access to the suppression regime. We consider that it would be appropriate for the Commonwealth to publish guidance on this issue, noting that applications for suppression will be invariably fact dependent. In turn, internal decision makers could use this guidance as part of their decision-making process.
367. Additionally, ASIC may wish to consider approving a format for beneficial owners to supply information.

#### Recommendation 8 – Commonwealth prepare internal and external guidance on suppression regime

**Issue:** Any uncertainty over the operation of the suppression regime may impact the privacy of beneficial owners, for example, if they believe they are ineligible for suppression and fail to apply, or over-provide information supporting their suppression application.

**AGS Recommendation:** The Commonwealth develop:

- guidance for beneficial owners on the kinds of circumstances where it will grant a suppression application, as well as the types of information an individual could supply to substantiate a suppression application
- an approved format to supply information in support of a suppression application.

**Response:**

368. We think that all the uses and disclosures of personal information by ASIC outlined in the table above are for the primary collection purpose, relevantly determining requests for inclusion in the suppression regime (**Activity 4**) and to enforce compliance with the BO Policy (**Activity 8**). Accordingly, these uses and disclosures will conform with APP 6.1.
369. In any event, if any of the uses or disclosures outlined above occurred for a secondary purpose, we think the new legislation enacting the BO Policy would authorise these activities in accordance with APP 6.2(b).

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## Use and disclosure of personal information by the Responsible Commonwealth Agency

370. The RCA will use and disclose personal information for limited purposes:

#	Activity	Actions taken as part of the Activity
9	Transition to PCBOR	<ul style="list-style-type: none"><li>• Use and disclosure to maintain and update the PCBOR</li><li>• Use and disclosure to process requests for access to BOI</li></ul>

371. To the extent the RCA will use and disclose personal information to maintain and update the PCBOR, this will occur for the primary collection purpose in conformity with APP 6.1.

372. To the extent the use and disclosure involves responding to an access application, the new legislation will modify APP 6 to permit this disclosure. We consider such disclosures would be reasonable, necessary, and proportionate, and would not involve an arbitrary interference with the personal information of beneficial owners.

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### APP 7 – Direct marketing

373. This APP is not relevant to the BO Policy, as it is not envisioned that in-scope companies, ASIC, or the RCA will use personal information collected under the BO Policy for the purpose of direct marketing.

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### APP 8 – Cross-border disclosure of personal information

374. APP 8.1 provides that before an APP entity discloses personal information about an individual to an overseas recipient, the entity must take reasonable steps to ensure that the recipient does not breach the APPs in relation to that information. Under s 16C of the Privacy Act, where an entity discloses personal information to an overseas recipient, it is accountable for an act or practice of the overseas recipient that would breach the APPs.

375. APP 8.2(c) provides a relevant exception to the requirements in APP 8.1, being that APP 8.1 does not apply in circumstances where the disclosure of information is required or authorised by an Australian law.

376. We understand that it will be open to people located anywhere in the world to request access to an in-scope company's BOR in Stage 1, and to the PCBOR in Stage 2.

377. Because the purposes of the BO Policy include to combat money laundering and terrorism financing, and these purposes have an intrinsically international element, we think that it is reasonable and proportionate to allow overseas recipients to apply for access to BOI.

378. To assist in-scope companies and the RCA to have certainty that the exception in APP 8.2(c), we recommend including a note or a clause in the proposed legislation that expressly authorises the disclosure of BOI to overseas recipients in circumstances where all other access criteria are satisfied.

## APP 9 – Adoption, use or disclosure of government related identifiers

379. APP 9 provides that an organisation must not adopt, use or disclose a government related identifier unless an exception applies. The objective of APP 9 is to restrict general use of government related identifiers by organisations so that they do not become universal identifiers. That could jeopardise privacy by enabling personal information from different sources to be matched and linked in ways that an individual may not agree with or expect.

380. A 'government related identifier' of an individual is defined in s 6(1) of the Privacy Act as an identifier that has been assigned by entities set out in the table below.

No	Categories of entity capable of assigning government related identifiers
1.	An agency
2.	A State or Territory authority
3.	An agent of an agency, or a State or Territory authority, acting in its capacity as agent
4.	A contracted service provider for a Commonwealth contract, or a State contract, acting in its capacity as contracted service provider for that contract.

381. Government related identifiers include those set out in the table below.

No	Example of government related identifiers
1.	Medicare and Centrelink Reference numbers
2.	Driver licence numbers issued by State and Territory authorities
3.	Australian passport numbers
4.	Director ID.

382. The only circumstance in which we foresee in-scope companies using or disclosing government related identifiers is in the process of verifying the identity of a beneficial owner as required by the proposed legislation. This is expressly permitted by APP 9.2(a), which allows organisations to use or disclose government related identifiers to verify the identity of an individual for the purposes of the organisations activities or functions.

383. Such use, in compliance with the proposed legislation, would also be allowed under APP 9.2(c), which allows organisations to use or disclose government related identifiers as required or authorised by or under an Australian law.

384. We make no specific recommendations in relation to APP 9.



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## APP 10 - Quality of personal information

385. APP 10 has two limbs directed at ensuring the integrity of the BOI handled by in-scope companies and Treasury.

APP 10	Description
APP 10.1 – Collection	Such steps as are reasonable in the circumstances to ensure that the personal information it collects is accurate, up-to-date and complete.
APP 10.2 – Use / Disclosure	Such steps as are reasonable in the circumstances to ensure that the personal information it uses or discloses is, having regard to the purpose of the use or disclosure, accurate, up-to-date, complete and relevant.

386. According to the APP Guidelines at 10.12-10.19, personal information is:
- 386.1. **inaccurate** if it contains an error or defect, or if it is misleading
  - 386.2. **out-of-date** if it contains facts or opinions that are no longer current
  - 386.3. **incomplete** if it presents a partial or misleading picture
  - 386.4. **irrelevant** if it does not have a bearing or connection to the purpose of the use or disclosure.

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### APP 10.1 – Collection of personal information

387. As detailed in [Part 2](#), ASIC will have statutory powers to approve a range of forms, including a format for in-scope companies to collect BOI. However, the BO Policy will not require in-scope companies to use this format, and in-scope companies may collect BOI through other methods (e.g. email, over the phone).
388. In-scope companies must collect the information detailed in the table at [10], depending on the nature of the beneficial owner. The BO Policy will require in-scope companies to ensure this information is accurate, up-to-date and complete.

#### Accuracy of collected information

389. The BO Policy will promote data accuracy by collecting BOI directly from beneficial owners, where possible.
390. In-scope companies must be reasonably satisfied of the identity of beneficial owners (**Activity 3**). The steps that an in-scope company must take to reach this state of satisfaction will depend on the nature of the relationship between the in-scope company and the beneficial owner:
- 390.1. Where an in-scope company is already familiar with a beneficial owner, an in-scope company may need to take few or no verification steps to be reasonably satisfied of the beneficial owner's identity.
  - 390.2. Where an in-scope company is unfamiliar with a beneficial owner, the in-scope company may need to take the verification steps as detailed in **Activity 3** to reach the required state of satisfaction.
391. Under the BO Policy, in-scope companies must retain records of any identity verification procedures. These verification procedures will help ensure that BOI

collected in BORs accurately reflects the beneficial ownership of in-scope companies.

#### Identity verification

392. In-scope companies are likely to vary widely in terms of their level of sophistication, and so it will be necessary to provide in-scope companies with clear guidance to assist them to conduct identity verification processes appropriately.
393. We recommend that, where in doubt about a beneficial owner's identity, in-scope companies should engage the services of professional identity verification service providers. This reduces the risk that in-scope companies will require beneficial owners to provide more identity documents than necessary, beneficial owners providing unsolicited personal information to in-scope companies and/or in-scope companies failing to destroy identity documents after verifying a beneficial owner's identity.
394. In turn, this reduces the risk of in-scope companies failing to comply with APPs 10 and 11 regarding the quality and security of personal information they store.

#### Recommendation 9 – Encourage use of professional identity verification services

**Issue:** Many in-scope companies will have limited experience in identity verification. This may cause harm to beneficial owners, e.g. if in-scope companies over collect and/or fail to delete identity documents after verifying identity (e.g. in the event of a data breach).

**AGS Recommendation:** The Commonwealth encourage in-scope companies to engage professional identity verification service providers.

**Response:**

395. As the BO Policy will not require in-scope companies to engage professional identity verification service providers, guidance should also be provided to assist in-scope companies who elect to verify the identity of beneficial owners themselves. Such guidance should include information targeted to assist compliance with APPs 10 and 11.
396. We make recommendations about the content of this guidance in the table at [Annexure A](#).

#### Currency of collected information

397. The BO Policy will require a beneficial owner who holds an interest on behalf of a partnership, association, or registered co-operative to provide information about the business structure. Although this may involve the collection of some personal information, it will promote the completeness of BOR.
398. In **Activity 6**, we discuss the process of updating a BOR. This is a reasonable step to ensure BOI in BORs (Stage 1) and the PCBOR (Stage 2) remains current and up-to-date.
399. Treasury intends to impose obligations on beneficial owners to notify in-scope companies of any changes to their beneficial ownership status or BOI. Similar to the

notification requirements for member registers in the Corporations Act,<sup>44</sup> Treasury proposes a time limit of 28 days for beneficial owners to notify in-scope companies of these changes.

- 400. In-scope companies must request information from beneficial owners if beneficial owners fail to notify the in-scope company of the change. In-scope companies will need to make this request within 14 days of becoming aware of the change.
- 401. These obligations are appropriate and adapted to ensuring that BOI collected and stored on BORs remains current and up-to-date, in turn minimising potential harm that may follow from reliance on inaccurate information by law enforcement agencies and members of the public who may receive access to BOI.

#### **Completeness of collected information**

- 402. The BO Policy will require in-scope companies to collect each piece of BOI as well as the method of identification verification (or if the identity is unverified). Requiring in-scope companies to record the method of identity verification will:
  - 402.1. promote data integrity by providing additional information about the accuracy and completeness of BOR
  - 402.2. promote consistency between the BO Policy and KYC requirements
  - 402.3. facilitate consideration of future requirements to require independent verification (e.g. as part of Stage 2).
- 403. Additionally, requiring companies to issue warning notices to a suspected beneficial owner who fails to adequately respond to a BOI request will prompt in-scope companies to ensure they receive complete and accurate responses, and take action to prompt the receipt of correct information to include within a BOR.
- 404. Failure to record each piece of BOI will expose an in-scope company to the risk of a civil penalty.
- 405. Where a company uses an approved format to collect BOI, this will promote the collection of 'complete' data containing each BOI element.

#### **Creating and maintaining BORs**

- 406. We consider that, to the extent possible, the BO Policy should encourage in-scope companies to create and maintain their individual BORs in a consistent format. This would facilitate providing access to BOI in a consistent format, and would minimise the risk of unauthorised disclosure by in-scope companies.
- 407. For instance, while the BO Policy will require in-scope companies to collect full date of birth information, the new legislation will only authorise the in-scope company to grant access to the month and year of a beneficial owner's birth to members of the public with a legitimate purpose to access the information. We think that there is risk that in-scope companies may over disclose BOI in response to such requests if, for example, they store all BOI they hold in a single document or fail to remove the month of birth from an entry prior to disclosure.

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<sup>44</sup> *Corporations Act 2001* (Cth) s 178D.

408. One method for combatting this is to prescribe or promote a template or format for a BOR. This format could:
- 408.1. have pages or sheets,
  - 408.2. be formatted such that all pieces of BOI collected are entered in one page or sheet, and the pieces of BOI that can be disclosed to the public are automatically carried across to another page or sheet,
  - 408.3. have clear indications with each page or sheet about whether the BO Policy authorises disclosure to the public, or to law enforcement agencies and regulators,
  - 408.4. have fields with defined rules, to ensure that in scope companies enter all BOI in a consistent format (eg: dd/mm/yyyy rather than 1 January 2023),
  - 408.5. be uploaded by the in-scope company directly to the PCBOR once Stage 2 goes live.

**Recommendation 10 – The Commonwealth prescribe or promote a method for creating and maintaining BORs**

**Issue:** Allowing in-scope companies to create and maintain BORs in idiosyncratic formats risks recording BOI in inconsistent formats. This may cause data quality issues in Stage 2 and/or risk unauthorised disclosure in Stage 1.

**AGS Recommendation:** The Commonwealth prescribe or promote a template or format for in-scope companies to use to create and maintain their BORs. For example, a document or workbook with locked, defined formatting rules presents the most significant benefits.

**Response:**

**Maintenance of records to substantiate decision-making process**

- 409. The proposed legislation will require in-scope companies to maintain records of point-in-time versions of their BORs for 7 years. This requirement is in line with the requirement in s 169 of the Corporations Act for companies to keep records of their membership information for 7 years.
- 410. Because law enforcement agencies and regulators may require access to BOI about individuals who are no longer beneficial owners of in-scope companies in conducting their functions, we think that this requirement is reasonable and proportionate.
- 411. Additionally, in-scope companies must keep records to demonstrate to ASIC that they have discharged their obligation to take reasonable steps to identify beneficial owners, and to ensure their register is accurate and up-to-date.
- 412. We think this requirement is reasonable and proportionate to the extent that it enables ASIC to conduct its audit and compliance functions. However, we think that steps should be taken to minimise the privacy impact to beneficial owners occasioned by this requirement. This is particularly so in the case of individuals whom in-scope companies ultimately determine are not beneficial owners.

413. To support a data-minimisation approach recommended above, guidance documents should provide examples of the kinds of records an in-scope entity should maintain to substantiate their decision-making process, as outlined in [Annexure A](#).

**Guidance materials and compliance**

414. Obligations under the BO Policy may impact on beneficial owners located outside Australia who may not communicate in English as their first language, or at all. ASIC has received funding to translate guidance materials into a number of languages other than English.

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**APP 10.2 – Use and disclosure of personal information**

415. Ensuring that in-scope companies collect accurate, up-to-date and complete BOI is important to ensuring in-scope companies use or disclose accurate, up-to-date and complete BOI.
416. In-scope companies will unavoidably risk relying on inaccurate, out-of-date or incomplete information when issuing notices to potential or existing beneficial owners to satisfy their obligations in **Activities 1 and 6**.
- 416.1. **Activity 1** involves in-scope companies issuing a request for BOI from suspected beneficial owners. As this activity will usually involve in-scope companies acting on a suspicion of a person being a beneficial owner and potentially incomplete information, there is some risk that an in-scope company could incorrectly identify a person as a suspected beneficial owner.
- 416.2. Treasury anticipates that persons incorrectly issued notices would either fail to respond or notify the in-scope company that they are not a beneficial owner. This may result in the in-scope company referring the person to ASIC for investigation but in-scope companies will not populate their BOR with that person's information. The risk to privacy is therefore minimal and necessary for the in-scope company to satisfy its obligations to identify suspected beneficial owners with limited information.
- 416.3. **Activity 6** carries some risk similar to the above where an in-scope company, relying on inaccurate, out-of-date or incomplete information, erroneously issues a request for updated BOI from an existing beneficial owner. This risk is minimal as existing beneficial owners would likely inform the in-scope entity if the information contained in a request is inaccurate, out-of-date or incomplete, and in-scope companies could update their BOR as required.
417. In-scope companies will use collected BOI to populate their BOR. Ensuring that in-scope companies collect accurate, up-to-date and complete BOI is the best approach to ensuring a BOR contains accurate, up-to-date and complete BOI. Where in-scope companies populate their BOR with prescribed BOI only, the use of such data will be relevant. Similarly, when in-scope companies comply with legal requirements in relation to notifying ASIC, and granting access to BORs, it will take reasonable steps to ensure use and disclosure is relevant.

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## APP 11 – Security of personal information

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### APP 11.1 – Protecting personal information held by APP entity

418. APP 11.1 broadly deals with the ‘protection’ of personal information and requires an APP entity that holds personal information to take reasonable steps to protect the information from misuse, interference or loss, as well as unauthorised access, modification or disclosure. The ‘reasonable steps’ an APP entity is required to take to ensure the security of personal information will depend on the circumstances, including the following:
- 418.1. the nature of the entity
  - 418.2. the amount and sensitivity of the personal information held
  - 418.3. the possible adverse consequences for individuals in the case of a breach
  - 418.4. the practical implications of implementing the security measure, including the time and cost involved
  - 418.5. whether any relevant security measure is itself privacy invasive.
419. The OAIC’s [Guide to securing personal information, June 2018 \(Security Guide\)](#) outlines 9 broad topics that ought to be considered when assessing how to best secure personal information held by an APP entity. The ‘reasonable steps’ an APP entity is required to take should, where relevant, include steps and strategies in relation to these topics. We have addressed these below except for destruction and de-identification which is dealt with under APP 11.2.

#### In-scope entities

420. As noted above, if the amendments to the Privacy Act pass into law, all in scope entities will come within the definition of an APP entity under the Privacy Act. As such, an obligation to take reasonable steps to protect personal information, including BORs, will apply to all in-scope entities.
421. In the event these amendments to the Privacy Act do not occur, or if they occur after enactment of the BO Policy, we consider the BO Policy should impose an obligation on in-scope entities to take reasonable steps to protect the personal information held in association with a BOR. This would extend beyond the BOR itself to other information including correspondence sent as part of Activity 1, and details of individuals who make an access application (**Activity 5**).
422. Consistent with earlier recommendations, in-scope entities should receive guidance on the measures that would comprise reasonable steps to protect personal information, addressing the same topics as the OAIC’s Security Guide (see [Annexure A](#)). Specific guidance could include:

Topic	Explanation
<b>Governance, culture and training</b>	<ul style="list-style-type: none"><li>• Ensure all employees are sufficiently trained in how to secure personal information and respond to data breaches.</li><li>• Implement governance arrangements including risk management for information security and clear decision-making responsibilities and frameworks for managing personal information security and breaches.</li></ul>

Topic	Explanation
<b>Internal practices, procedures and systems</b>	<ul style="list-style-type: none"> <li>• Develop standard operating procedures for managing BOR.</li> <li>• Use a consistent format for the creation and maintenance of BOR, designed to facilitate automatic removal of suppressed data, and facilitate data sharing where appropriate.</li> <li>• Alternatively, or additionally, appropriately redact information from PDF copies of a BOR using a dedicated redaction tool (e.g. Adobe Acrobat Professional).</li> </ul>
<b>ICT security</b>	<ul style="list-style-type: none"> <li>• Assess whether email and network security sufficiently protects BOR, including via encryption and other measures, and if information is securely backed up.</li> </ul>
<b>Access security</b>	<ul style="list-style-type: none"> <li>• Restricting BOR access to staff who need access only, and review access privileges regularly.</li> <li>• Keep logs of access to, and amendment of the BOR, and review audit logs regularly.</li> <li>• Maintaining a strong identity management and authentication framework, including through the use of passwords and passphrases.</li> </ul>
<b>Third party providers</b>	<ul style="list-style-type: none"> <li>• Ensure contracts with third party providers contain appropriate measures to require the contractor to handle personal information as if they were the in-scope company (i.e. to take steps to protect the BOR).</li> </ul>
<b>Physical security</b>	<ul style="list-style-type: none"> <li>• Ensure appropriate physical security measures in relation to access to premises, devices and hard copy documents.</li> </ul>
<b>Data breaches</b>	<ul style="list-style-type: none"> <li>• Ensure the entity has a data breach response plan (<b>DBRP</b>) which covers responding to a data breach involving the BOR and is prepared with regard to the OAIC guide <a href="#">Data breach preparation and response – a guide to managing data breaches in accordance with the Privacy Act 1988</a> (July 2019)</li> </ul>
<b>Standards<sup>45</sup></b>	<ul style="list-style-type: none"> <li>• Ensure BORs are maintained in accordance with any requirements in the BO Policy.</li> </ul>

### ASIC and the RCA

423. To the extent ASIC and the RCA will hold personal information, we anticipate that
- 423.1. existing arrangements for securing personal information will apply
- 423.2. each entity will consider whether additional or expanded measures to protect personal information associated with the BO Policy should be implemented.
424. In the case of the RCA, this will include implementing appropriate ICT arrangements for the PCBOR.
425. Due to the nature of the BO Policy, we consider ASIC and the RCA will need to conduct their own PIAs to assess privacy risks of implementing the BO Policy.<sup>46</sup> As

<sup>45</sup> We note that Treasury is considering whether the PCBOR can meet the standards set out in the Open Ownership Beneficial Ownership Data Standard. Research into this is ongoing and is outside the scope of this PIA.

<sup>46</sup> As a 'high risk' project for the purposes of s 12 of the Privacy Code.

each agency will examine security arrangements as part of these PIAs, we have not addressed these matters in this PIA

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### **APP 11.2 – Destruction or de-identification of information**

426. APP 11.2 requires APP entities to take reasonable steps to destroy or de-identify personal information that the entity no longer needs for a purpose permitted under the APPs. This obligation applies even where the entity does not physically possess the personal information, but has the right or power to deal with it.<sup>47</sup>
427. The proposed legislation will require in-scope companies to maintain records of point-in-time versions of their BORs for 7 years, however this obligation will not extend to other documents associated with the BO Policy, such as documents sighted as part of an identity check.
428. To comply with APP 11 or any security obligation under the BO Policy, in-scope entities will need to:
- 428.1. delete BOR information at the end of the record keeping period
  - 428.2. delete other associated records which it no longer requires for a BO purpose.
429. Destruction of personal information may occur through irretrievable destruction, or where this is not possible for electronic information, putting the information 'beyond use'.
430. Guidance prepared for in-scope entities should address appropriate destruction or de-identification of personal information, as set out in [Appendix A](#).

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### **APP 12 – Access to personal information**

431. APP 12.1 requires an APP entity that holds personal information about an individual to give the individual access to that information on request. APP 12.4 provides that access must be given within a reasonable period after the request is made.
432. APP 12 also sets out other requirements in relation to giving access, including how access is to be given and when access can be refused. There are separate grounds on which agencies and organisations may refuse to give access.
433. We expect that, where beneficial owners wish to access personal information held about them by ASIC or the RCA, access requests would be made and facilitated in accordance with:
- 433.1. the BO Policy in relation to information held within the PCBOR in Stage 2
  - 433.2. these agencies' ordinary processes and privacy policies in relation to other kinds of personal information.
434. Similarly, in-scope companies could provide access to BOI held in the BOR under the BO Policy or, if an APP entity, APP 12.1.

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<sup>47</sup> Security Guide at p 39 citing APP Guidelines.



435. Where a beneficial owner seeks access to other personal information held by an in-scope entity that is subject to the APPs, the in-scope entity would need to decide whether to release the information.
436. APP 12.3 provides a range of circumstances in which an in-scope company would be entitled to refuse to give to a beneficial owner the personal information that it holds about them. These circumstances include if doing so would post a serious threat to health, life or safety, if there would be an unreasonable privacy impact on other individuals, the request is frivolous or vexatious, it would prejudice enforcement activity or denying access is required or authorised by or under an Australian law.
437. However, we expect that in most cases it is unlikely that any of the APP 12.3 circumstances would apply to a request by a beneficial owner to access the personal information an in-scope company holds about them.
438. APP 12.8 allows for APP entities to charge individuals for giving access to the personal information, but requires that the charge must not be excessive and must not apply to the making of the request.
439. To assist in-scope companies to comply with their obligations under APP 12, guidance should be provided outlining the reasons they can refuse to provide access under APP 12.3, and the requirement to provide access within a reasonable period under APP 12.4. Recommendations for the content of such guidance are included in the table at [Annexure A](#).

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## **APP 13 – Correction of personal information**

440. APP 13.1 requires an APP entity to take reasonable steps to correct personal information to ensure that, having regard to the purpose for which it is held, it is accurate, up-to-date, complete, relevant and not misleading.
441. This requirement applies where:
- 441.1. the APP entity is satisfied the personal information is inaccurate, out-of-date, incomplete, irrelevant or misleading, having regard to a purpose for which it is held, or
  - 441.2. the individual requests the entity to correct the personal information.
442. APP 13.2 provides that if a correction is made, and the individual asks the APP entity to notify another APP entity of the correction, the first APP entity must take reasonable steps to do so.
443. APP 13.3 provides that an APP entity must advise an individual of certain matters if it refuses to correct personal information, including the reasons for the refusal and mechanisms available to complain about the refusal. APP 13.5 provides that organisations must respond to correction requests within 30 days.
444. We expect that, where beneficial owners wish to correct personal information held about them by ASIC or the RCA, correction requests would be made and facilitated in accordance with these agencies' ordinary processes and privacy policies.

445. Accordingly, we confine the below analysis to requests to correct personal information held by in-scope companies. Treasury has requested specific advice on the privacy impacts of different record-keeping requirements.
446. We consider that there are two approaches available in prescribing record-keeping requirements for in-scope companies in relation to corrected personal information:
- 446.1. first, the BO Policy could require in-scope companies to delete/destroy or de-identify any records containing the incorrect information (**Option 1**), or
- 446.2. second, the BO Policy could require in-scope companies to hold corrected personal information in BORs for 7 years, in line with the record keeping requirements for registers of company members set by s 169 of the Corporations Act (**Option 2**).
447. In our view, the preferred approach will depend on the nature of the information. Where an in-scope company corrects a typographical error in a record, the obligation to retain a record of the incorrect information for 7 years should not apply. This reduces the risk of inadvertent future uses or disclosures of incorrect personal information within the in-scope company. It also mitigates against the risk of in-scope companies entering incorrect personal information into the PCBOR in Stage 2.
448. However, where an individual corrects other information, such as their name or address, we think the in-scope entity should retain records of these changes. We anticipate these details would serve a benefit to law enforcement agencies or regulators, including ASIC in conducting its auditing and compliance functions in requiring in-scope companies to maintain up-to-date BORs.
449. Additionally, in-scope entities could keep a central log of corrections made to the BOR (e.g. a versions log).

#### **Recommendation 11 – Require in-scope companies to maintain a log of corrections**

**Issue:** Where incorrect information in a BOR is updated, the obligation to retain records for 7 years may conflict with the need, under APP 11.2, to destroy personal information an entity no longer requires for a purpose under the APPs.

**AGS Recommendation:** The BO Policy require in-scope companies who correct incorrect personal information in a BOR to:

- delete/destroy or de-identify any BOR altered to correct typographical errors
- keep a record of corrections to the BOR for 7 years as per recording keeping obligations
- keep a central log of corrections to personal information within a BOR.

**Response:**

450. Guidance should also be provided to in-scope companies detailing their obligations under APP 13 if they detect that they hold incorrect personal information, or receive a request to correct personal information. Our recommendations for such are included in the table at [Annexure A](#).

## Annexure A – Guidance to provide to in-scope companies

#	Activity	APPs	Advice para	Matters to include in guidance
2.	Collection by in-scope companies of BOI	APP 3.2	[317]	<ul style="list-style-type: none"> <li>The kinds of information the in-scope entity may need to collect to give effect to the BO Policy, as well as data minimisation strategies (e.g. use of approved formats).</li> </ul>
		APP 4	[340]	<ul style="list-style-type: none"> <li>If in-scope companies receive unsolicited personal information when collecting BOI, they must determine whether they could have solicited the personal information in accordance with APP 3</li> <li>If they cannot collect the personal information, they must, if it is lawful and reasonable to do so, destroy the information or ensure that it is de-identified.</li> </ul>
		APP3 APP 11	[295]	<ul style="list-style-type: none"> <li>Where an in-scope company collects personal information about suspected beneficial owners who are not in fact beneficial owners, they will need to implement practices to minimise collection of this information, and/or destroy or delete this information upon deciding the individual is not a beneficial owner</li> </ul>
3.	In-scope company verifies identity of natural person beneficial owner	APP 3.2 APP 10.1	[394]	<ul style="list-style-type: none"> <li>The types of personal information that would support in-scope companies to be satisfied that they are reasonably assured of the identity of a beneficial owner</li> <li>That in-scope companies should request the minimum information necessary for them to be reasonably assured of the beneficial owner's identity.</li> <li>That in-scope companies should not require personal information be provided unless it is reasonably necessary to reach this state of satisfaction</li> <li>How to describe information that supported their decision-making without disclosing the actual personal information</li> </ul>
		APP 4	[340]	<ul style="list-style-type: none"> <li>To request specific identity documents from beneficial owners, rather than making broad requests for documents to verify a beneficial owner's identity, which risks collecting unsolicited personal information</li> <li>If unsolicited personal information is received, that they are required to assess whether they could have solicited personal information received in accordance with APP 4.1</li> <li>To destroy or de-identify unsolicited personal information that they could not have solicited in accordance with APP 4.1</li> <li>Sources from which in-scope companies can learn more about their APP 4 obligations</li> </ul>

#	Activity	APPs	Advice para	Matters to include in guidance
4.	Applications to suppress personal information	APP 6	[355]	<ul style="list-style-type: none"> <li>That the role of in-scope companies in determining whether they must redact BOI is limited to determining whether one of the following four factual circumstances exist:               <ol style="list-style-type: none"> <li>a suppression application remains with ASIC</li> <li>a beneficial owner is under 18 years of age</li> <li>the beneficial owner is a silent voter on the electoral role</li> <li>ASIC has approved the suppression application.</li> </ol> </li> <li>That in-scope companies must apply suppression rules where a beneficial owner satisfies a factual circumstance.</li> <li>That it is not the role of in-scope companies to assess applications for suppression based on 'other reasons', and that they must not request any reasons or other information about applications on this basis</li> <li>That their role is limited to informing the individual about how to make the application to ASIC.</li> <li>That, where a beneficial owner has applied for the suppression of their BOI, the in-scope company must keep their BOI redacted until advised by ASIC of the outcome of the application and all review processes have concluded.</li> </ul>
		APP 11	[420]	<ul style="list-style-type: none"> <li>Information on redaction best practice, including the use of dedicated redaction tools, and the option to print and scan a copy of a redacted BOR before providing it to a member of the public</li> <li>The types of BOI that must be redacted before provision to members of the public.</li> </ul>
7.	Consideration and fulfilment of BOI access requests	APP 6	[363]	<ul style="list-style-type: none"> <li>If access is restricted to people who do not have an improper purpose for seeking access to the BOR in line with the improper purposes set by reg 2C.1.03 of the <i>Corporations Regulation 2001</i>, guidance can be confined to explaining the prescribed improper purposes for which access must not be granted</li> <li>If access is restricted to people who have a legitimate interest, guidance should be provided to in-scope companies to assist them to make the more evaluative judgements required by this approach</li> <li>Information for inclusion in records substantiating decisions made in response to requests for access</li> </ul>
N/A	Responding to requests to access and correct information	APP 12	[439]	<ul style="list-style-type: none"> <li>That in-scope companies must give individuals access to their own personal information on request, and must do so within a reasonable time</li> <li>The grounds on which such a request may be refused, including if doing so would post a threat to health, life or safety, if there would be an unreasonable privacy impact on other individuals, the request is frivolous or vexatious, or is likely to prejudice ongoing enforcement activities by an enforcement body</li> <li>That in scope companies can charge individuals for giving access, but that a charge must not be excessive and must not apply to the making of the request (or that the charge must be the charge prescribed by Treasury, if applicable)</li> </ul>
		APP 13	[450]	<ul style="list-style-type: none"> <li>That in-scope companies must take reasonable steps to correct personal information to ensure that, having regard to the purpose for which it is held, it is accurate, up-to-date, complete, relevant and not misleading</li> </ul>

#	Activity	APPs	Advice para	Matters to include in guidance
				<ul style="list-style-type: none"> <li>• That this obligation arises if the in-scope company becomes aware of inaccuracies themselves, or if they receive a request to correct personal information</li> <li>• That if a correction is made, the individual asks the APP entity to notify another APP entity of the correction, the first APP entity must take reasonable steps to do so</li> <li>• That they must respond to correction requests within a reasonable time</li> <li>• Once Treasury determines how it wants in-scope companies to handle incorrect personal information that has been corrected, guidance on complying with this process</li> </ul>

## Annexure B – Matters to be included in collection notices

Para	Initial collection notice	RCA collection notice	Suppression collection notice
<b>APP 5.2(a)</b> Identity and contact details	Identity and contact information of the entity providing the collection notice, including the relevant team		
<b>APP 5.2(b)</b> Third party collection	N/A – in-scope companies will collect BOI directly from beneficial owners	The RCA will collect BOI from in-scope companies, unless provided directly by the individual	ASIC will collect personal information directly from beneficial owners.
<b>APP 5.2(c)</b> Authorisation	Refer to the proposed legislation and explain that it requires the collection of BOI.		Refer to the proposed legislation and explain that ASIC will collect personal information to assess an application to suppress personal information
<b>APP 5.2(d)</b> Purpose of collection	<ul style="list-style-type: none"> <li>To develop and maintain a BOR to combat money laundering and terrorism funding.</li> </ul>		To assessing suppression applications.
<b>APP 5.2(e)</b> Consequences	Explain: <ul style="list-style-type: none"> <li>the enforcement procedures outlined under Activity 8 that a person who receives a request to provide BOI but is not actually a beneficial owner does not need to respond</li> </ul>		Explain any timeframes for a response, and the consequences if these are not complied with (eg, refusal of the request after a certain time).
<b>APP 5.2(f)</b> Usual disclosures	Explain: <ul style="list-style-type: none"> <li>the circumstances in which an in-scope company will disclose BOR to an access applicant</li> <li>That identity verification services may be engaged</li> <li>that if they want to be included in the suppression regime, they will need to apply to ASIC</li> <li>that relevant law enforcement agencies and regulators will have unlimited access to BOI</li> <li>that, once the PCBOR is live, in-scope companies will be required to enter their BOR into it.</li> </ul>	Identical to the initial collection notice, except that it should also explain: <ul style="list-style-type: none"> <li>the circumstances in which the PCBOR will be accessible by the public</li> </ul>	N/A – ASIC will not disclose personal information received for this purpose.

Para	Initial collection notice	RCA collection notice	Suppression collection notice
<b>APP 5.2(g)</b> Access and correction	Explain that the individual should contact the in-scope company for information about how to access and correct personal information.	Explain that they should review the Agency's privacy policy for information about how they can access and seek correction of their personal information.	
<b>APP 5.2(h)</b> Complaints procedure	Explain: <ul style="list-style-type: none"> <li>• how a complaint can be made about a breach of the APPs,</li> <li>• how the in-scope company or agency will deal with such a complaint</li> <li>• that the in-scope company or agency may have a registered APP code that binds the entity</li> </ul>		
<b>APP 5.2(i) &amp; 5.2(j)</b> Overseas recipients	Explain that personal information may be disclosed to overseas recipients in accordance with and authorised by the proposed legislation		N/A – ASIC will not disclose personal information received for this purpose.

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## Appendix 1 – Exclusions

The scope of this PIA is limited to examining the handling of personal information as part of Stages 1 and 2 of the BO Policy as set out at [92] above.

This PIA does not examine the following matters:

- the final content of forms and notices used as part of the BO Policy
- ICT systems and processes used to collect, use, disclose and store personal information within individual BORs or the PCBOR
- the handling of personal information of Agency and in-scope entity staff
- the handling of records in accordance with the *Archives Act 1983*

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## Appendix 2 – Material considered in this PIA

In preparation of this PIA, we have considered the following material.

### Material provided by Treasury

#	File name	Public		Provided
001	Legislative Design Policy Parameters	No	Summary of updated policy positions, issues to be considered by PIA, and submissions to consultation containing recommendations related to privacy issues	2 Feb 2024
002	Information flows	No	Diagram of proposed information flows in Stages 1 and 2	9 Feb 2024
003	Information request mock-up	No	Mock-up of Information request for collection of beneficial ownership information. Includes link to UK forms for PSC register	9 Feb 2024
004	Summary of changes to policy positions	No	Summary of updated policy positions post-2022 consultation process	9 Feb 2024
005a	Consultation Submissions Issue Summary	No	Summary of consultation submissions received	9 Feb 2024
005b	Prof David Chaikin submission (confidential)	No	Confidential submission provided by David Chaikin	9 Feb 2024
005c	Equifax submission (confidential)	Non-public	Confidential submission provided by Equifax	9 Feb 2024
005d	FIRST Advisors submission (confidential).pdf	Non-public	Confidential submission provided by FIRST Advisors	9 Feb 2024
006a	Policy basis for register (Extract from draft IA)	Non-public	Extract from Impact Analysis containing summary of policy rationale for register	9 Feb 2024



#	File name	Public		Provided
006b	FATF Beneficial Ownership Guidance (policy basis)	Public	FATF Best Practice Guidelines on Recommendation 24 - containing information about adherence to recommendation regarding collection of beneficial ownership information for legal persons, including regarding publishing information	9 Feb 2024
006c	FATF Beneficial Ownership Best Practice (policy basis)	Public	FATF Guidance on Recommendation 24 - containing information about best practice collection of beneficial ownership information for legal persons, including regarding publishing information	9 Feb 2024
007	MS22-002723 Briefing on ECJ decision	Non-public	Ministerial Submission summarising decision of European Court of Justice regarding public beneficial ownership registers in EU	9 Feb 2024
008	Responses to additional AGS questions	Non-public	Responses to additional questions provided by AGS on 13 February 2024	19 Feb 2024
008a	Response to Q16, Information fields and justification	Non-public	Table created in response to question 16 of additional questions	19 Feb 2024
009	Beneficial Ownership PIA - Summary of policy positions updated for DIs	Non-public	Summary of policy positions updated for development of drafting instructions	16 April 2024
010	Beneficial Ownership PIA – Updated information fields and justification	Non-public	Update of table created in response to question 16 of additional questions to reflect new entity types	23 May 2024

#### Material identified by AGS through research

No.	Description
1.	<a href="#">2023 Australian Community Attitudes to Privacy Survey</a>
2.	The Australian Business Registry Services webpage, ' <a href="#">About director ID</a> '
3.	<a href="#">AIT18 v Australian Information Commissioner [2018] FCAFC 192</a>
4.	<a href="#">Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)</a>
5.	Attorney-General's Department, <a href="#">Privacy Act Review Report 2022</a> published 16 February 2023
6.	AUSTRAC's webpage, ' <a href="#">Customer identification: Know your customer (KYC)</a> '
7.	AUSTRAC's webpage, ' <a href="#">New to AUSTRAC</a> '
8.	<a href="#">Charter of Fundamental Rights of the European Union.</a>

No.	Description
9.	<a href="#">Communication No. 488/1992, Toonan v. Australia</a> see also Communication <a href="#">Nos. 903/1999</a> , and <a href="#">1482/2006</a> .
10.	<a href="#">Corporations Act 2001 (Cth)</a>
11.	<a href="#">Corporations Regulations 2001 (Cth)</a>
12.	<a href="#">Directive 2015/849 of the European Parliament of 20 May 2015</a>
13.	<a href="#">Economic Crime and Corporate Transparency Act 2023 (UK)</a>
14.	FATF's <a href="#">Guidance on Beneficial Ownership for Legal Persons</a>
15.	FATF's <a href="#">International Standards on Combating Money Laundering and the Financing of Terrorism &amp; Proliferation</a>
16.	<a href="#">FATF's webpage on high-risk and other monitored jurisdictions</a>
17.	<a href="#">Australian Government response to the Privacy Act Review Report</a> published 16 February 2024
18.	Innovation, Science and Economic Development Canada's webpage, ' <a href="#">How to find information about individuals with significant control</a> '
19.	<a href="#">International Covenant on Civil and Political Rights</a>
20.	Report prepared by Norton Rose Fulbright, ' <a href="#">Regulation Around the World: Beneficial Ownership Registers</a> '
21.	Second Reading Speech for Corporations Amendment (No 1) Bill 2010 (Cth).
22.	<a href="#">Sovim SA v. Luxembourg Business Registers, C-601/20 and WM v. Luxembourg Business Registers, C-37/20</a>
23.	The French Trade Registry's webpage, ' <a href="#">French Register of Beneficiaries: A Legal Framework for Transparency and Compliance</a> '
24.	The OAIC's <a href="#">Data breach preparation and response – a guide to managing data breaches in accordance with the Privacy Act 1988</a>
25.	The OAIC's <a href="#">Guide to securing personal information, June 2018</a>
26.	The Singaporean Accounting and Corporate Regulatory Authority's webpage, ' <a href="#">Register of Registrable Controllers (RORC) Frequently Asked Questions</a> '
27.	UK Department for Business, Energy & Industrial Strategy's ' <a href="#">Review of the implementation of the PSC Register</a> '
28.	UN Human Rights Committee, <a href="#">General Comment No. 16</a>

**Material prepared by the Office of the Australian Information Commissioner:**

- APP Guidelines (as at March 2018)
- Guide to undertaking privacy impact assessments (Reviewed May 2020)
- Guide to securing personal information – 'reasonable steps' to protect personal information (June 2018)
- Data breach notification preparation and response – A guide to managing data breaches in accordance with the Privacy Act (February 2018)
- Sending personal information overseas (June 2020)

## Appendix 3 – Glossary

Term	Definition
<b>AAT</b>	Administrative Appeals Tribunal
<b>AEC</b>	Australian Electoral Commission
<b>AML/CTF Act</b>	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)</i>
<b>AML/CTF Rules</b>	<i>Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)</i>
<b>APP</b>	Australian Privacy Principle
<b>ASIC</b>	Australian Securities & Investments Commission
<b>BO Policy</b>	Beneficial Ownership Policy
<b>BOI</b>	Beneficial Ownership Information
<b>BOR</b>	Beneficial Ownership Register
<b>BCA</b>	Canada Business Corporations Act
<b>CBLG</b>	Companies limited by guarantee
<b>CCIV</b>	Corporate Collective Investment Vehicle
<b>Charter</b>	<i>Charter of Fundamental Rights of the European Union</i>
<b>Companies Register</b>	The register of companies maintained by ASIC
<b>Corporations Act</b>	<i>Corporations Act 2001 (Cth)</i>
<b>CTA</b>	<i>Corporate Transparency Act 2001 (US)</i>
<b>Directive</b>	Directive 2015/849 of the European Parliament of 20 May 2015
<b>director ID</b>	Director Identification Number
<b>DRBP</b>	Data breach response plan
<b>ECJ</b>	European Court of Justice
<b>ECJ decision</b>	The ECJ's decision in the Luxembourg Cases
<b>EU</b>	European Union
<b>FinCEN</b>	Financial Crimes Enforcement Network
<b>GDPR</b>	General Data Protection Regulation
<b>ICCPR</b>	<i>International Covenant on Civil and Political Rights</i>
<b>Initial collection notice</b>	Collection notice provided by in-scope companies to beneficial owners, prior to providing their BOI
<b>International Standard</b>	FATF's <i>International Standards on Combating Money Laundering and the Financing of Terrorism &amp; Proliferation</i>
<b>ISC</b>	Individuals with Significant Control
<b>KYC</b>	Know Your Customer
<b>KYC reporting entities</b>	Entities who conduct certain business activities in the financial services, bullion, gambling, digital currency exchange sectors
<b>Luxembourg Cases</b>	<i>Sovim SA v. Luxembourg Business Registers, C-601/20 and WM v. Luxembourg Business Registers, C-37/20</i> <i>Sovim SA v. Luxembourg Business Registers, C-601/20 and WM v. Luxembourg Business Registers, C-37/20</i>