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Submission from the Tax Justice Network Australia, Centre for International Corporate Tax Accountability & Research, Transparency International Australia, Publish What You Pay Australia, the Australian Council of Trade Unions, U Ethical, United Workers Union, and the Synod of Victoria and Tasmania, Uniting Church in Australia to the 'Multinational tax integrity: Public Beneficial Ownership Register' consultation paper

16 December 2022

The Tax Justice Network Australia (TJN-Aus), Centre for International Corporate Tax Accountability & Research (CICTAR), Transparency International Australia (TIA), Publish What You Pay Australia (PWYP-Aus), the Australian Council of Trade Unions (ACTU), United Workers Union (UWU), U Ethical and the Synod of Victoria and Tasmania, Uniting Church in Australia (UCA) welcome this opportunity to provide a submission to the 'Multinational tax integrity: Public Beneficial Ownership Register' consultation paper.

Reforms to create a central public register of beneficial ownership in Australia are long overdue, and we welcome these initial proposals. Australia currently lags behind much of the rest of the world regarding beneficial ownership disclosure. To increase transparency, ensure appropriate tax

compliance, eliminate opportunities for criminal activity, violations of sanctions and money laundering, a public register of beneficial ownership is urgently needed in Australia. Previously Australia has made commitments to beneficial ownership at the G7, G20 and under the Open Government Plan National Action Plans.¹²

In 2018, 34 jurisdictions had laws establishing beneficial ownership registries. That increased to 80 by 2020 and 97 by 2022.³

Research by Findley, Nielson and Sharman also found that Australian corporate service providers were near the top of corporate service providers in terms of being willing to set up an untraceable shell company even when there was a significant risk the company in question would be used for illicit purposes.⁴

The submitting bodies do not regard a beneficial ownership register as a panacea but as one necessary component out of several that contribute to the transparency of legal entities. Verified beneficial ownership does not remove the need for verified legal ownership. The need for legal ownership disclosure and verification is especially relevant when the beneficial owner controls an entity, not directly, but through other entities.⁵ Legal ownership disclosure is necessary to identify the ownership chain and verify beneficial ownership.⁶ In the experience of the submitting bodies, the existing ASIC register contains a significant amount of false information, as the information has not been verified. With the modernising of business registers project, it is vital that the regulating authority have the resources to verify information about the legal ownership of entities on the business registries.

As noted in the discussion paper (pp. 7-8), the ability to conceal beneficial ownership with legal entities: "*gives rise to opportunities to:*

- *Conceal ownership of assets through overseas companies or trusts to evade tax liabilities, debts or sanction laws;*
- *Launder money and disguise the true ownership of assets acquired with illegally obtained wealth;*
- *Conceal related party transactions and other dealings which are not arm's length."*

While a small step forward with the initial phase outlined in the consultation paper, the measures outlined in the consultation paper are unlikely to impact the above serious crimes much.

With the measures outlined in the initial phase, regulated entities not set up for wilful or recklessly engaging in criminal activity might detect criminals or sanctioned people amongst their beneficial owners. However, when criminals have set up an entity to conceal their identities, asking them to voluntarily disclose the criminals owning and controlling the entity will undoubtedly fail.

¹ Transparency International, 'Up to the Task? The state of play in countries committed to freezing and seizing Russian dirty money'. 2022.

² Prime Minister & Cabinet, 'Australia's First Open Government National Action Plan 2016 – 2018', 2016

³ Andres Knobel and Florencia Lorenzo, 'Beneficial Ownership Registration around the World', Tax Justice Network, 2022, 8.

⁴ Michael Findley, Daniel Nielson and Jason Sharman, 'Global Shell Games: Testing Money Launderers' and Terrorist Financiers' Access to Shell Companies', Centre for Governance and Public Policy, Griffith University, 2012, 21.

⁵ Andres Knobel and Florencia Lorenzo, 'Beneficial Ownership Registration around the World', Tax Justice Network, 2022, 35.

⁶ Ibid., 38.

The critical measure that must be included in the design of a beneficial ownership register is that a person acting as a nominee or front for a beneficial owner must face severe sanctions for failing to disclose that they are acting as a nominee or front. Often people who act as nominees or fronts for criminal beneficial owners are chosen because they do not have a criminal record and have no involvement in the illegal activity the legal entity is being used for. Thus, facing serious sanctions for acting as a nominee or front for a beneficial owner and not disclosing the fact creates a deterrent to playing such a role. It should make it harder for criminals to find people to act as nominees or fronts to conceal their ownership and control.

There needs to be a regulator that conducts audits of the identity information for declared beneficial owners as a deterrent against providing fraudulent identity documents for a supposed beneficial owner.

It is vital that the process that is proposed ends with a central, searchable register of beneficial owners to make the information useable. Regulated entities under the *Anti-Money Laundering/Counter Financing Terrorism Act 2006* need to be able to search to find what other entities a beneficial owner they are dealing with may hold as part of enhanced due diligence when it is required. That will not be possible where beneficial ownership is disclosed on websites by each entity required to disclose beneficial ownership. Allowing civil society organisations, journalists and researchers to access searchable beneficial ownership registers ensures that authorities and criminals are held to account. It also provides for the following:⁷

- Areas for improvement to be identified;
- Mistakes to be detected;
- Tips to be provided to law enforcement agencies for investigations to be started; and,
- The enforcement of sanctions.

Currently, we are aware of 94 jurisdictions that have different forms of beneficial ownership registers.⁸ Of these, 39 offered public access to beneficial ownership information (irrespective of loopholes in the legal framework, implementation status or access challenges):⁹

- | | | | |
|-------------|--------------|---------------|-------------------|
| • Albania | • Austria | • Belgium | • Bulgaria |
| • Cyprus | • Czechia | • Germany | • Ghana |
| • Gibraltar | • Greece | • Croatia | • Hungary |
| • Indonesia | • Ireland | • Iceland | • Italy |
| • Lithuania | • Luxembourg | • Latvia | • North Macedonia |
| • Malta | • Nigeria | • Netherlands | • Norway |
| • Poland | • Portugal | • Romania | • Serbia |
| • Sweden | • Slovenia | • Slovakia | • Ukraine |
| • Denmark | • Ecuador | • Estonia | • Spain |
| • Finland | • France | • UK | |

However, we note with concern that following the Court of Justice of the European Union ruling on 22 November 2022, Austria, Belgium, Cyprus, Germany, Ireland, Luxembourg, Malta and the Netherlands have suspended access to their beneficial ownership registers.¹⁰ Nevertheless, the EU Court of Justice has confirmed that the media and civil society organisations related to the fight

⁷ Ibid., 15.

⁸ Ibid., 14.

⁹ Ibid., 16.

¹⁰ Access Info Europe, 'Missing Data Opens the Door to Corruption', Media Release, 9 December 2022.

against money laundering have a legitimate interest in accessing beneficial ownership information. For this reason, some countries that closed their registries, such as Belgium and Luxembourg, are already considering ways to restore access to the media and civil society organisations. Other EU countries, such as Latvia or Estonia, believe that public access to beneficial ownership will be maintained because it serves more purposes beyond curbing money laundering.

Of the 94 jurisdictions that have beneficial ownership registers:¹¹

- 64 cover legal persons and trusts;
- 24 cover only legal persons;
- 8 cover only companies; and
- One covers only trusts.

¹¹ Andres Knobel and Florencia Lorenzo, 'Beneficial Ownership Registration around the World', Tax Justice Network, 2022, 19.

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Examples of cases linked to Australia of criminal activity facilitated by concealed beneficial ownership

Union Standard Group

The ABC's 7.30 Report reported one clear example. The Union Standard Group was issued a financial service license in Australia and allegedly used this privilege to illegally sell financial services to clients in mainland China and Taiwan, who have now lost hundreds of millions of dollars.¹² On paper, this company is owned by a Myanmar man, Soe Hein Minn, but there are serious doubts about whether this individual exists or if the identity was created from forged documents. Within the company structure and its history, there appear to be other individuals who are likely to be false identities. Had there been an effective check of the beneficial ownership, it is very likely that this entity would not have been issued a financial services license by ASIC to operate in Australia. As a result, Australia's reputation as a well-regulated market has been significantly undermined.

At this point, it is not known who the company's ultimate beneficial owner is. The company is still operating under a financial services license in the UK, where Soe Hein Minn is listed as the beneficial owner but entirely unverified.¹³ Given the measures taken to hide the ultimate beneficial ownership of this company, it seems likely that it could be people or entities engaged in money laundering, criminal activity or attempting to avoid international sanctions. The Union Standard Group's business sells services and/or investment products related to trading in foreign exchange.

A forthcoming report by the ABC's 7.30 Report will reveal how the Union Standard Group's financial services license was used by another entity operating as TradeFred to allegedly defraud investors in Australia. ASIC's statement of claim against this company and the related parties alleges that its advertised services were either false, misleading or deceptive.¹⁴ ASIC alleges that its behaviour was unconscionable conduct and that 95 to 99% of its clients lost money. This Australian company was owned via the UK; on paper, the owner is an Israeli citizen.¹⁵ However, it is not clear whether the person is genuinely the owner or fronting for others.

If there had been an effective public register of beneficial ownership, it is likely that ASIC would not have issued a financial services license and that Australians would not have been allegedly defrauded and lost their investments through the entity. Although ASIC has taken action now, the conduct should have been prevented from occurring in the first place.

¹² https://www.abc.net.au/news/2022-11-25/union-standard-collapse-under-investigation-liquidators/101690238?utm_campaign=abc_news_web&utm_content=link&utm_medium=content_shared&utm_source=abc_news_web ; https://www.abc.net.au/news/2022-11-25/union-standard-collapse-under-investigation-liquidators/101690238?utm_campaign=abc_news_web&utm_content=link&utm_medium=content_shared&utm_source=abc_news_web

¹³ <https://find-and-update.company-information.service.gov.uk/company/10702813/persons-with-significant-control>

¹⁴ <https://download.asic.gov.au/media/rtup05ix/20-319mr-statement-of-claim-filed-by-asic-dated-12-april-2021-sealed.pdf>

¹⁵ <https://find-and-update.company-information.service.gov.uk/company/09917834/persons-with-significant-control>

Paul Whyte

In 2020, former senior Western Australian state public servant Paul Whyte pleaded guilty to stealing \$22 million in public funds over 11 years, using a fake invoice scheme through three shell companies.¹⁶

Philip Northam

An example of a case where nominees were used to try and conceal criminal activity in Australia, the Australian Taxation Office (ATO) and the Australian Federal Police obtained the conviction of Philip Northam to six years in prison for tax evasion-related offences in 2020. Australian companies were stripped of their assets and left in a position where they could not pay their tax debts. Once the company's assets were stripped, new straw directors and shareholders were put in place before the company was wound up. The joint ATO and AFP investigation recovered \$4.5 million of lost government revenue from the criminal conduct.¹⁷

Plutus Payroll

In the case of the Plutus Payroll fraud, the criminals involved set up a significant number of shell companies with straw directors. In addition, one of the criminals involved had a full-time role in managing and controlling the straw directors.¹⁸ Plutus issued false invoices to the shell companies and siphoned out the PAYG not paid on behalf of the client companies using its payroll service.¹⁹ The shell companies would be wound up and replaced with a new shell company with a new straw director to try and avoid action by the ATO.²⁰ It was found that Devyn Hammond would sign off on records in place of the straw directors and impersonate them in e-mails.²¹ The scheme allegedly defrauded the Commonwealth Government of \$105 million over three years.²² As of July 2020, 16 people had been charged with criminal conduct, and five had been sentenced to prison.²³

The trial for Lauren Anne Cranston, Adam Michael Cranston, Dev Menon, Jason Cornell Onley and Patrick Willmott commenced in the NSW Supreme Court in April 2022.²⁴

In the Plutus case, some straw directors knew who the criminal beneficial owners of the companies were. Aaron Leo Paul was employed by Adam Cranston as a personal assistant and then to recruit straw directors for the fraud.²⁵ If these straw directors had faced severe sanctions for failing to disclose the beneficial owners, they would likely have been less willing to act as straw directors.

¹⁶ <https://www.abc.net.au/news/2021-11-19/disgraced-public-servant-paul-whyte-sentencing/100630840>; and https://transparency.org.au/wp-content/uploads/2020/11/NIS_FULL_REPORT_Web.pdf (pp. A-15)

¹⁷ ATO, '19-year tax fraud probe ends in jail time for scheme promoter', 17 August 2020, <https://www.ato.gov.au/Media-centre/Media-releases/19-year-tax-fraud-probe-ends-in-jail-time-for-scheme-promoter/>

¹⁸ Cactus Consulting, 'Plutus Payroll Case Study; Significant tax fraud', 26 November 2019.

¹⁹ Ibid.

²⁰ Cactus Consulting, 'Plutus Payroll Case Study; Significant tax fraud', 26 November 2019; and David Marin-Guzman, 'Architect' of Plutus tax fraud pleads guilty', *The Australian Financial Review*, 26 November 2019.

²¹ David Marin-Guzman, 'Fourth Plutus tax fraud conspirator sentenced to jail', *The Australian Financial Review*, 10 July 2020.

²² ATO, 'Plutus Payroll founder jailed in Operation Elbrus', 31 July 2020.

²³ Ibid.

²⁴ [Trial begins for five accused of \\$105 million ATO fraud conspiracy \(smh.com.au\)](https://www.smh.com.au/news/2022/04/19/trial-begins-for-five-accused-of-105-million-ato-fraud-conspiracy-20220419)

²⁵ Tiffanie Turnbull, 'Plutus jail for addict in despair', *The Australian Financial Review*, 22 February 2020. Aaron Leo Paul was sentenced to three years and four months in prison for his part in the fraud scheme.

Technocash and Liberty Reserve

As an example of a case where shell companies with concealed ownership were allegedly used to facilitate money laundering through Australia, US authorities sought to seize the assets in three Westpac accounts held by Technocash Ltd holding up to \$36.9 million.²⁶ Technocash Limited was an Australian registered company. The funds are alleged to be connected to shell companies owned by the defendants in the case.²⁷ It is unclear if Westpac had detected the connection between Technocash and key figures in Liberty Reserve and their alleged criminal activities, particularly money laundering. According to the case filed by the US Attorney for the Southern District of New York, Liberty Reserve SA operated one of the world's most widely used digital currencies at the time. Through its website, the Costa Rican company provided its clients with what it described as "instant, real-time currency for international commerce", which could be used to "send and receive payments from anyone, anywhere on the globe". The US authorities allege that the people behind Liberty Reserve:²⁸

...intentionally created, structured, and operated Liberty Reserve as a criminal business venture, one designed to help criminals conduct illegal transactions and launder the proceeds of their crimes. Liberty Reserve was designed to attract and maintain a customer base of criminals by, among other things, enabling users to conduct anonymous and untraceable financial transactions.

Liberty Reserve emerged as one of the principal means by which cyber-criminals around the world distributed, stored and laundered the proceeds of their illegal activity. Indeed, Liberty Reserve became a financial hub of the cyber-crime world, facilitating a broad range of online criminal activity, including credit card fraud, identity theft, investment fraud, computer hacking, child pornography, and narcotics trafficking. Virtually all of Liberty Reserve's business derived from suspected criminal activity.

The scope of Liberty Reserve's criminal operations was staggering. Estimated to have had more than one million users worldwide, with more than 200,000 users in the United States, Liberty Reserve processed more than 12 million financial transactions annually, with a combined value of more than \$1.4 billion. From 2006 to May 2013, Liberty Reserve processed an estimated 55 million separate financial transactions and is believed to have laundered more than \$6 billion in criminal proceeds.

US authorities further alleged that for an additional "privacy fee" of 75 cents per transaction, a user could hide their own Liberty Reserve account number when transferring funds, effectively making the transfer completely untraceable, even within Liberty Reserve's already opaque system.²⁹

US authorities alleged that defendant Arthur Budovsky used Technocash to receive funds from exchangers. Mr Budovsky, the alleged principal founder of Liberty Reserve,³⁰ allegedly used his bank to wire funds to Technocash bank accounts held by Westpac.³¹ He is also alleged to be the registered agent for Webdata Inc, which held an account with SunTrust. Technocash records allegedly showed

²⁶ USA vs Liberty Reserve, US District Court, Southern District of New York, 13 CRIM368, para 29, 43.

²⁷ Ibid., para 21.

²⁸ US Attorney for the Southern District of New York, 13 Civ 3565, 28 May 2013, 4-5.

²⁹ Ibid., 6.

³⁰ US Department of Justice, 'One of the World's Largest Digital Currency Companies and Seven of Its Principals and Employees Charged in Manhattan Federal Court and Running Alleged \$6 Billion Money Laundering Scheme', 28 May 2013.

³¹ USA vs Liberty Reserve, US District Court, Southern District of New York, 13 CRIM368, para 29.

deposits into the SunTrust account from Technocash accounts associated with Liberty Reserve between April 2010 and November 2012 of more than \$300,000.³²

Arthur Budovsky was allegedly listed as the president of Worldwide E-commerce Business Sociedad Anonima (WEBSA) and defendant Maxim Chukharev as the secretary. Maxim Chukharev allegedly helped design and maintain Liberty Reserve's technological infrastructure.³³ WEBSA allegedly provided information technology support services to Liberty Reserve and served as a vehicle for distributing Liberty Reserve profits to Liberty Reserve principals and employees.³⁴ It is alleged bank records showed that from July 2010 to January 2013, the WEBSA account in Costa Rica received more than \$590,000 from accounts at Technocash associated with Liberty Reserve.³⁵

It is alleged that Arthur Budovsky was the president of Grupo Lulu Limitada, which was allegedly used to transfer and disguise Liberty Reserve Funds.³⁶ Records from Technocash allegedly indicated that from August 2011 to November 2011, a Costa Rican bank account held by Grupo Lulu received more than \$83,000 from accounts at Technocash associated with Liberty Reserve.³⁷

Further, defendant Azzeddine El Amine, manager of Liberty Reserve's financial accounts,³⁸ was the Technocash account holder for Swiftexchanger. It is alleged e-mails showed that exchangers wishing to purchase Liberty Reserve currency wired funds to Swiftexchanger. When Swiftexchanger received funds in its Technocash account, an e-mail alert was sent to El Amine, notifying him of the transfer. Based on these alerts, it is alleged that between 12 June 2012 and 1 May 2013, exchangers doing business with Liberty Reserve sent approximately \$36,919,884 to accounts held by Technocash at Westpac.³⁹

The defendants are alleged to have used Technocash services to transfer funds to nine Liberty Reserve-controlled accounts in Cyprus.⁴⁰

Technocash Limited was forced out of business in Australia following the action by US authorities when it was denied the ability to establish accounts in Australia by financial institutions.⁴¹

Publicly listed corporations should be included in beneficial ownership disclosure

The submitting bodies believe that beneficial ownership registration can only be effective if no loopholes exist. Thus, publicly listed corporations should be part of the requirement to disclose

³² Ibid., para 36.

³³ US Department of Justice, 'One of the World's Largest Digital Currency Companies and Seven of Its Principals and Employees Charged in Manhattan Federal Court and Running Alleged \$6 Billion Money Laundering Scheme', 28 May 2013.

³⁴ USA vs Liberty Reserve, US District Court, Southern District of New York, 13 CRIM368, para 37.

³⁵ Ibid., para 36.

³⁵ Ibid., para 38.

³⁶ Ibid., para 36.

³⁶ Ibid., para 40.

³⁷ Ibid., para 36.

³⁷ Ibid., para 41.

³⁸ US Department of Justice, 'One of the World's Largest Digital Currency Companies and Seven of Its Principals and Employees Charged in Manhattan Federal Court and Running Alleged \$6 Billion Money Laundering Scheme', 28 May 2013.

³⁹ USA vs Liberty Reserve, US District Court, Southern District of New York, 13 CRIM368, para 30.

⁴⁰ Ibid., para 31.

⁴¹ Technocash, 'Opportunity: Own the Technocash Payment Platform', Media Release, 5 July 2013.

beneficial ownership publicly.⁴² Other businesses have a right to know whom they are dealing with and who owns the companies they do business with. Customers have a right to know who are the ultimate beneficiaries of the companies they purchase products from.

Listing information is produced for the benefit of investors. Listing information is not combined into a single public register. The lack of a central searchable register makes it challenging to search for information, as the information may be in various types of proprietary formats, limiting the ability of organisations and institutions to use the data in a meaningful way, such as conducting anti-money laundering due diligence checks.⁴³

Publicly listed companies have not been above involvement with subsidiaries with hidden ownership to engage in serious criminal activity. For example, Alcoa, the world's third-largest aluminium producer, used anonymous companies formed in the British Virgin Islands to transfer millions of dollars in bribe payments to Bahraini officials to secure a supply deal.⁴⁴ As such, full ownership chains should be disclosed for publicly listed companies.

In 2014, Alcoa and a joint venture it controlled agreed to pay US\$384 million to resolve charges of bribing officials of a Bahraini state-controlled aluminium smelter, marking one of the largest US anti-corruption settlements of its kind.⁴⁵ The payment was to settle criminal and civil allegations that two of the joint venture's subsidiaries bribed officials for years so they could supply raw materials to Aluminum Bahrain or Alba.⁴⁶ Alcoa's mining operations in Australia were the source of the alumina that Alcoa supplied to Alba.⁴⁷

Alcoa failed to maintain adequate internal controls to prevent or detect more than US\$110 million in improper payments funnelled to Alba through a consultant between 1989 and 2009, according to the US Securities and Exchange Commission (SEC), which brought civil charges under the *Foreign Corrupt Practices Act*. In the words of the SEC:⁴⁸

An SEC investigation found that more than \$110 million in corrupt payments were made to Bahraini officials with influence over contract negotiations between Alcoa and a major government-operated aluminium plant. Alcoa's subsidiaries used a London-based consultant with connections to Bahrain's royal family as an intermediary to negotiate with government officials and funnel the illicit payments to retain Alcoa's business as a supplier to the plant. Alcoa lacked sufficient internal controls to prevent and detect the bribes, which were improperly recorded in Alcoa's books and records as legitimate commissions or sales to a distributor.

⁴² Andres Knobel, 'Beneficial ownership transparency for companies listed on the stock exchange', Tax Justice Network, 5 November 2020, <https://taxjustice.net/wp-content/uploads/2020/12/Listed-companies-BO-requirements-Final.pdf>

⁴³ Transparency International UK, 'Submission on the register of people with significant control – regulations', July 2015.

⁴⁴ Murray Worthy, 'The UK's Tax Havens: Top 10 Corruption Cases involving anonymous companies', Global Witness, 21 February 2017; and US Securities and Exchange Commission, 'SEC charges Alcoa with FCPA violations', 9 January 2014, <https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540596936>

⁴⁵ Allison Martell, 'Alcoa to pay \$384 million to settle Bahrain bribery charges', *Reuters Business News*, 9 January 2014, <http://www.reuters.com/article/us-alcoa-settlement-idUSBREA080PN20140109>

⁴⁶ Ibid.

⁴⁷ US Securities and Exchange Commission, 'SEC charges Alcoa with FCPA violations', 9 January 2014, <https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540596936>

⁴⁸ Ibid.

The Department of Justice brought criminal charges under the same law.⁴⁹

The US SEC said Alcoa's subsidiaries used a London-based consultant to funnel the payments to officials. The subsidiaries cited by the US SEC were Alcoa World Alumina and Alcoa of Australia, both of which were parts of the joint venture.⁵⁰ The SEC stated:⁵¹

According to the SEC's order, Alcoa's Australian subsidiary retained a consultant to assist in negotiations for long-term alumina supply agreements with Alba and Bahraini government officials. A manager at the subsidiary described the consultant as "well versed in the normal ways of Middle East business" and one who "will keep the various stakeholders in the Alba smelter happy..." Despite the red flags inherent in this arrangement, Alcoa's subsidiary inserted the intermediary into the Alba sales supply chain, and the consultant generated the funds needed to pay bribes to Bahraini officials. Money used for the bribes came from the commissions that Alcoa's subsidiary paid to the consultant, as well as price markups the consultant made between the purchase price of the product from Alcoa and the sale price to Alba.

The Department of Justice's settlement was with Alcoa World Alumina LLC, a joint venture with Australia's Alumina Ltd. The venture, 60 per cent owned by Alcoa, agreed to plead guilty to a single count of violating the *Foreign Corrupt Practices Act* and pay US\$223 million in five instalments over four years.⁵²

Alcoa was listed on the ASX as of 15 June 2000 and removed itself from the ASX listing in 2016.⁵³

Trusts need to be included in beneficial ownership disclosure

There is a need to require trusts to disclose their beneficial ownership. Trusts are widely misused to obscure company ownership and facilitate money laundering.⁵⁴ Trust arrangements can be used to conceal beneficial owners relatively easily whilst providing benefits over other arrangements by enabling maximum profit and improving financial flows.⁵⁵

All parties to a trust should be disclosed - settlors, trustees and beneficiaries – so that the real natural persons of each party to the trust are identified and recorded.

Using a trust for wage theft

Marco worked as a waiter in a restaurant. He was paid a flat rate per hour, well below the minimum rate, on a cash-in-hand basis, including for work done on weekends, Christmas Day and other public holidays. He decided to get some legal advice because he wasn't paid at all for his last few shifts. When JobWatch asked him who his employer was, he gave us his boss' first name, the trading name of the restaurant and the boss' mobile phone number. JobWatch sent a letter of demand addressed

⁴⁹ Allison Martell, 'Alcoa to pay \$384 million to settle Bahrain bribery charges', *Reuters Business News*, 9 January 2014, <http://www.reuters.com/article/us-alcoa-settlement-idUSBREA080PN20140109>

⁵⁰ Ibid.

⁵¹ US Securities and Exchange Commission, 'SEC charges Alcoa with FCPA violations', 9 January 2014, <https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540596936>

⁵² Allison Martell, 'Alcoa to pay \$384 million to settle Bahrain bribery charges', *Reuters Business News*, 9 January 2014, <http://www.reuters.com/article/us-alcoa-settlement-idUSBREA080PN20140109>

⁵³ <http://www.aspecthuntley.com.au/asxdata/20160913/pdf/01778365.pdf>

⁵⁴ Paul Michael Gilmour, 'Lifting the veil on beneficial ownership', *Journal of Money Laundering Control* **23(4)**, (2020), 721.

⁵⁵ Ibid., 724.

to the business, but it was returned to the sender, and Marco subsequently instructed us that the business had closed down. We later discovered that the holder of the trading name was the trustee of a trust. Unfortunately, Marco had no way of establishing who the trustee was or what their address for service was. Accordingly, he couldn't properly identify the correct legal entity as his employer in court proceedings, and even if he had a name, he couldn't properly serve the court documents on the respondent.

Case study provided by JobWatch

There are problems with trusts where the primary beneficiaries are not included in the trust at the point of its creation. They are added later. The default beneficiary listed will be a prominent charity that does not know it has been listed.⁵⁶ Those setting up the trust do not intend to distribute to the charity named.⁵⁷

⁵⁶ 'Saunders v Vautier in the Channel Islands: An Update', Walkers.

⁵⁷ Sarah Aughwane, 'When is a trust not a trust?', withersworldwide.

Introduction

1. **Should substantial holding and tracing notices be amended to capture additional beneficial ownership information to identify and disclose the true beneficial owners of listed entities? If so, what additional information should be captured?**

Substantial holding and tracing notices should require the disclosure of ultimate beneficial owners, where those currently required to disclose are acting on behalf of others. We are concerned that a natural person seeking to conceal their beneficial ownership of a legal entity can do so with layers of corporate ownership in the entity. For example, they have ownership in a company with ownership in another company with ownership in the entity required to disclose the beneficial ownership.

It must be an offence for someone to fail to disclose that they are not the ultimate beneficial owner and are acting on behalf of another.

The World Bank pointed out in 2009 that in one jurisdiction they did not name, customers of financial institutions were required to complete a written declaration of the identity and details of the beneficial owner(s). The requirement was under an agreement between the jurisdiction's bankers association and signatory banks. The form was signed and dated by the contracting party and includes a statement that it is a criminal offence (document forgery) to provide false information on the form, with a penalty of up to five years imprisonment or a fine. The form approach had been adopted by banks in other jurisdictions, even when not required by law or regulation. In the jurisdiction where the form was used, the prosecuting authority had prosecuted cases of forgery (that is, falsely establishing in a written document a fact with the legal application or what is referred to as an 'intellectual lie').⁵⁸

The World Bank argued that the written declaration of beneficial ownership is a valuable tool for several reasons. First, it assists in focusing on identifying the beneficial owner at the outset, not only for the bank officials but also for the contracting party. Second, it provides the background information that will assist the bank with verification and determining if the beneficial owner(s) is a Politically Exposed Person (PEP). Third, it assists regulatory authorities in evaluating beneficial ownership practices and enables better oversight of how banks handle beneficial ownership issues. Finally, the requirement to sign under penalty of a criminal offence and, where appropriate, the additional consequences of non-conviction-based or criminal forfeiture serves to alert the contracting party to the seriousness and importance of the information and therefore acts as a deterrent. It may not be a deterrent for a serious criminal or corrupt PEP, but for intermediaries and others (including family and close associates) acting as the contracting party.⁵⁹

2. **Should the tracing notice and substantial holding notice regimes be fully aligned, so responses to each notice capture the same information?**

It would make sense for the disclosure requirements of the tracing notices and the substantial holding notice to be aligned. In aligning the two, we strongly support the more significant requirements for disclosure from each to be brought into one consistent requirement. We note the substantial holding notices already require disclosure where a person, together with their associates,

⁵⁸ Theodore Greenberg, Larissa Gray, Delphine Schantz, Michael Latham and Carolin Gardner, 'Stolen Asset Recovery. Politically Exposed Persons. A policy paper on strengthening preventative measures', The World Bank, 2009, 37.

⁵⁹ Theodore Greenberg, Larissa Gray, Delphine Schantz, Michael Latham and Carolin Gardner, 'Stolen Asset Recovery. Politically Exposed Persons. A policy paper on strengthening preventative measures', The World Bank, 2009, 37.

has a relevant interest in five per cent or more of the entity's voting shares or voting interests. We believe that the five per cent threshold should be maintained across all beneficial ownership requirements.

3. As is the case for tracing notices, should listed entities be required to maintain a register of information collected by substantial holding notices?

We support listed entities being required to maintain a register of information collected for substantial holding notices. While the requirements for reporting changes in substantial holdings appear to be effective in providing changes to ownership information, the current requirements for ASX-listed companies to disclose the top 20 shareholders in annual reports are insufficient. This disclosure frequently includes 'nominees' and other entities where it is difficult, if not impossible, to determine actual beneficial ownership. Additional disclosure should be required, with beneficial ownership information, on an annual basis or updated at regular intervals.

4. How could the accessibility and useability of registers maintained by listed entities of information received from tracing notices be improved for users of beneficial ownership information?

Listed entities could be required to list the top 20 shareholders, with beneficial ownership information, as a separate annual filing with the ASX and with the listing made available via company websites.

Definition of beneficial ownership

5. Are there any elements missing from the proposed definition of beneficial ownership?

The submitting organisations support the elements within the proposed beneficial ownership definition. We urge that the drafted definition in the legislation captures informal agreements that grant an individual part control or financial benefit from the legal entity. Such an arrangement may be through exercising control via a family member or associate without a legal contract being in place.⁶⁰ Such arrangements can be exposed by placing a meaningful sanction on the family member or associate if they fail to disclose that they are acting on behalf of the actual beneficial owner.

The definition of the beneficial owner also needs to capture any person or entity that is entitled to an economic interest at the level of the threshold, however that arrangement of economic interest is achieved.⁶¹ Colombia, the Czech Republic, El Salvador and Japan include such a provision in their definition of the beneficial owner.⁶² Structuring the legislation to ensure it captures outcomes of beneficial ownership reduces the risk that the legislative definition will have loopholes that can be exploited.

Where no beneficial owners of the legal entity reach the threshold for disclosure, all board members and senior management officials not already disclosed on the business registry should be disclosed as parties responsible for the declaration.⁶³ In such a case, it must be clear that no beneficial owner

⁶⁰ Tymon Kiepe and Peter Low, 'Beneficial ownership in law: Definitions and thresholds', Open Ownership, 27 October 2020.

⁶¹ Ibid.

⁶² Open-ended Intergovernmental Working Group on Asset Recovery, 'Good practices and challenges with respect to beneficial ownership and how it can foster and enhance the effective recovery and return of proceeds of crime', CAC/COSP/WG.2/2022/CRP.1, 15 October 2022, 4.

⁶³ Tymon Kiepe and Peter Low, 'Beneficial ownership in law: Definitions and thresholds', Open Ownership, 27 October 2020.

was identified and that they represent the business. Slovakia has adopted such an approach in Act no. 315/2015 (*Act on the Register of Public Sector Partners and on Amendments to Certain Laws*).⁶⁴ Such a measure also helps to combat arrangements such as circular ownership designed to defeat beneficial ownership disclosure. An example of circular ownership is where company A is owned by company B, company B is owned by company C, and company C is owned by company A in an attempt to create an arrangement where there is no beneficial owner.⁶⁵

While a threshold of 20 per cent ownership is an improvement on 25 per cent that applies in the UK, Singapore, France and many other jurisdictions, we believe the threshold should be set at five per cent as outlined in answer to question 6.

6. Are there any potential unintended consequences which could result from adopting a 20 per cent threshold for beneficial ownership?

We are disappointed that the threshold for being a beneficial owner might be set as high as 20 per cent. The banking industry often uses a definition of ten per cent, as does the US FACTA Act, which requires foreign financial institutions to provide information on US taxpayers to the US authorities. The submitting organisations favour a five per cent or lower threshold to be used. Corruption often flourishes through shareholdings of smaller stakes, as these entities draw less attention to themselves. The lower threshold is particularly important for high-risk sectors or companies using high risk business models.

It is widely regarded that investors with five per cent holdings can have a significant influence on management decisions, particularly when coordinating approaches or interventions with other investors. In particular, hedge funds with less than five per cent holdings have had a significant impact on pushing for corporate changes. For example, Elliott Management, with a five per cent holding, pushed for substantial changes in BHP.⁶⁶ Elliott Management currently holds three per cent of German healthcare giant Fresenius and appears to be pushing for significant changes there as well.⁶⁷

There is a danger that by using a high threshold, the process will fail to reveal many beneficial owners and will result in only cursory information that will be of limited benefit. As a result, fewer actual owners will be identified, allowing the identities of those involved in potentially corrupt and criminal behaviour to remain hidden. A lower threshold will help prevent this.

Further, it has been argued that a higher threshold makes it easier to circumvent beneficial ownership disclosure by layering company ownership.⁶⁸ Such a technique is rendered more difficult the lower the beneficial ownership threshold.

In the case of the UK PSC register, 8.7 per cent of 1.3 million companies that had provided information for the register as of November 2016 stated they had no beneficial owners meeting the

⁶⁴ Ibid.

⁶⁵ Daniel Nielson and Jason Sharman, 'Signatures for Sale. How Nominee Services for Shell Companies Are Abused to Conceal Beneficial Owners', Stolen Asset Recovery Initiative, The World Bank, UN Office on Drugs and Crime, 2022, 11.

⁶⁶ <https://citywire.com/au/news/feared-activist-investor-sells-out-of-bhp/a2401770>

⁶⁷ <https://www.bloomberg.com/news/articles/2022-10-31/fresenius-to-review-portfolio-as-elliott-stake-climbs-over-3>

⁶⁸ Paul Michael Gilmour, 'Lifting the veil on beneficial ownership', *Journal of Money Laundering Control* **23(4)**, (2020), 730.

criteria for disclosure⁶⁹, which shows the problem of having a high threshold of ownership or control before disclosure needs to be made. Global Witness reported in a subsequent analysis of the PSC register in July 2018, that 335,000 companies were able to declare they did not have any beneficial owners that needed to be disclosed.⁷⁰

Global Witness has provided the following examples of where less than 25 per cent ownership or control would have raised red flags:⁷¹

- In Azerbaijan, a gold mine was awarded to a UK company that allegedly involved the daughters and wife of Azeri President Ilham Aliyev. They ultimately owned 11 per cent of the company.
- In Zimbabwe, a diamond mining concession was allocated to a company called Mbada. Just under 25 per cent of Mbada was passed to a third party, Transfrontier, which has an opaque company structure based in secrecy jurisdictions and tax havens. The beneficial owners of Transfrontier are unknown.
- A US company, Cobalt International Energy, formed joint ventures in Angola with two companies, Nazaki Oil and Gas and Alper. Nazaki initially held 30 per cent, later dropping to 15 per cent. Alper held 10 per cent. Nazaki was found to be owned by Angolan Vice President Vicente, Director of the National Reconstruction Office General Kopelipa and his advisor General Dino. Alper's ownership is also suspected to include officials. Cobalt International Energy was under a US *Foreign Corrupt Practices Act* investigation as a result but revealed that the US Department of Justice informed it that the investigation had been closed without any regulatory action in February 2017.⁷² Cobalt International Energy subsequently went bankrupt. A Texas federal judge approved US\$173.8 million in settlements of investor class action claims in February 2019. The investors claimed losses due to the Cobalt International Energy failing to disclose that it was under investigation for allegedly bribing Angolan officials.⁷³
- In July 2005, Norsk Hydro (a company that later merged with Statoil) was awarded a 20 per cent share in an oil licence in Angola. Two 15 per cent slices were awarded to two Angolan private companies, Somoil and Angola Consultancy Resources. At the time, Norsk Hydro was "concerned about partnering with a company whose owners are unknown" but went ahead with the deal anyway.
- In 2005, a subsidiary of Swiss corporation Weatherford entered into a joint venture in Angola with two local entities. The joint venture was split 45/45/10, with the ten per cent share held by "the relative of an Angolan Minister."

In addition, ex-Kazakh minister and former chair of BTA Bank, Mukhtar Ablyazov, allegedly laundered US\$6 billion from BTA Bank. He is alleged to have used multiple entities to ensure he held just under ten per cent of shares in BTA Bank through any one entity. The ten per cent threshold was the disclosure threshold in Kazakhstan at the time. Consequently, he was able to conceal that he was a beneficial owner of the Bank.⁷⁴ Following the assets in the case necessitated investigating corporate structures composed of several thousand linked corporate entities. Separate legal action was needed in the British Virgin Islands, the UK, France, Kazakhstan, Russia, the US and Seychelles. Mr Ablyazov fled Kazakhstan in 2009 after the collapse of BTA Bank, and the Kazakh authorities subsequently accused the oligarch of looting \$7.5 billion from the bank. The billionaire ended up in

⁶⁹ Robert Palmer and Sam Leon, 'What does the UK beneficial ownership data show us?', UNCA Coalition, 22 November 2016.

⁷⁰ Global Witness, 'The Companies We Keep', July 2018, i.

⁷¹ Global Witness, 'Assessment of EITI Beneficial Ownership pilots', March 2015, 7.

⁷² <http://www.cobaltintl.com/newsroom/cobalt-announces-closing-of-doj-investigation>

⁷³ Rick Archer, '\$173.8M In Deals OK'd To Settle Cobalt Energy Bribery Claims', Law360, 13 February 2019.

⁷⁴ Paul Michael Gilmour, 'Lifting the veil on beneficial ownership', *Journal of Money Laundering Control* **23(4)**, (2020), 726.

France and is trying to stay in the country by claiming political asylum.⁷⁵ The National Asylum Court (CNDA) in France is due to rule on the oligarch's refugee status.⁷⁶

In the public disclosure of beneficial ownership under the Extractive Industries Transparency Initiative (EITI), Honduras, Liberia, Tajikistan, and the Kyrgyzstan Republic have all adopted a five per cent ownership threshold for the disclosure of beneficial ownership.⁷⁷

Liberia initially decided on a ten per cent threshold, but this has since been lowered to five per cent for companies involved in agriculture, mining and oil (the threshold of ten per cent remains for other companies). An additional point of disclosure has also been added to the Liberian process – that if no single shareholder holds over the relevant threshold (five per cent or ten per cent, depending on the sector), then the top five shareholders by percentage must be revealed. The requirement is a valuable addition to the beneficial owner definition.

However, the submitting bodies note that of the 94 jurisdictions that have some form of beneficial ownership register:⁷⁸

- 62 have set the disclosure threshold at 25 per cent;⁷⁹
- Six have set the disclosure threshold at 20 per cent;⁸⁰
- Two have set the disclosure threshold at 15 per cent;
- Eight have set the disclosure threshold at ten per cent;⁸¹
- Two have set the disclosure threshold at five per cent;⁸² and
- Five require the disclosure of all beneficial owners, regardless of ownership level.⁸³

Senegal has a disclosure threshold of two per cent beneficial ownership.⁸⁴

⁷⁵ [French asylum court prepares to hear Mukhtar Ablyazov case - EU Reporter](#)

⁷⁶ [French asylum court prepares to hear Mukhtar Ablyazov case - EU Reporter](#)

⁷⁷ Global Witness, 'Assessment of EITI Beneficial Ownership pilots', March 2015, 8.

⁷⁸ Andres Knobel and Florencia Lorenzo, 'Beneficial Ownership Registration around the World', Tax Justice Network, 2022, 23.

⁷⁹ Including Austria, Brazil, Canada, Cote d'Ivoire, Czech Republic, France, Germany, Honduras, Israel, Italy, Japan, Lithuania, Moldova, Morocco, Pakistan, Panama, Portugal, the Russian Federation, Saudi Arabia, Sweden, and Turkey, Open-ended Intergovernmental Working Group on Asset Recovery, 'Good practices and challenges with respect to beneficial ownership and how it can foster and enhance the effective recovery and return of proceeds of crime', CAC/COSP/WG.2/2022/CRP.1, 15 October 2022, 4.

⁸⁰ Including Armenia, Bosnia and Herzegovina and Namibia, Open-ended Intergovernmental Working Group on Asset Recovery, 'Good practices and challenges with respect to beneficial ownership and how it can foster and enhance the effective recovery and return of proceeds of crime', CAC/COSP/WG.2/2022/CRP.1, 15 October 2022, 4.

⁸¹ Including Belarus, Cayman Islands, Chile, El Salvador, Kenya, Paraguay and Peru, Open-ended Intergovernmental Working Group on Asset Recovery, 'Good practices and challenges with respect to beneficial ownership and how it can foster and enhance the effective recovery and return of proceeds of crime', CAC/COSP/WG.2/2022/CRP.1, 15 October 2022, 4; and Tymon Kiepe and Peter Low, 'Beneficial ownership in law: Definitions and thresholds', Open Ownership, 27 October 2020.

⁸² Including Nigeria, Tymon Kiepe and Peter Low, 'Beneficial ownership in law: Definitions and thresholds', Open Ownership, 27 October 2020.

⁸³ Including Argentina, Botswana and Ecuador, Tymon Kiepe and Peter Low, 'Beneficial ownership in law: Definitions and thresholds', Open Ownership, 27 October 2020.

⁸⁴ Tymon Kiepe and Peter Low, 'Beneficial ownership in law: Definitions and thresholds', Open Ownership, 27 October 2020.

Some jurisdictions have added undesirable complexity by having different thresholds for beneficial ownership between shareholding and voting rights.⁸⁵

Entities subject to beneficial ownership disclosure requirements

7. **Should the requirement to maintain a beneficial ownership register be applied to any other entities or legal vehicles (noting beneficial ownership requirements for property not including regulated entities held on trust will be subject to a separate consultation process)?**

The requirement to maintain a beneficial ownership register should be extended to foreign companies operating in Australia. Such a requirement should apply to any foreign company that has a permanent establishment in Australia, owns real estate in Australia or owns another registered asset in Australia. It should also apply to any foreign business that generates more than \$100 million in revenue in Australia, mirroring the requirement of such entities to produce a Modern Slavery Statement under the *Modern Slavery Act*.

An effective anti-money laundering regime requires a robust and up-to-date understanding of how criminals might misuse domestic and foreign legal persons to commit crimes and launder money. While there is sufficient evidence that criminals misuse legal vehicles to, among other things, make bribe payments, transfer embezzled funds, hide the true ownership of assets and engage in tax evasion, the specific types and characteristics of legal structures may entail different levels of risk. Therefore, understanding the particular risks associated with each type of legal person or arrangement operating in a given country, for example, by taking into account the requirements for company formation, reporting obligations, level of disclosure and transparency and business operations, will allow countries to establish the necessary mitigation measures and appropriate regulatory environment. Given the cross-border nature of money laundering and many predicate offences, analysing the risks posed by foreign legal persons in a similar manner is also essential. Such analysis is particularly relevant to Australia as evidence from FAFT demonstrates that Australia is an 'attractive destination' for the proceeds of corruption in the Asia-Pacific region, particularly from China.⁸⁶

The requirement should also apply to any entity capable of anonymising ownership, especially if that entity can own land (ensuring that no loophole provides that opportunity before the next phase).

8. **Should some entities, such as certain not-for-profit entities, have bespoke or limited beneficial ownership register requirements? If so, what types of entities, and what relief from the general disclosure requirements should be provided?**

We do not support having more limited beneficial ownership requirements for certain entities, given the threshold of ownership will only apply to those with a significant ownership interest. Relief for some entities and not others may create an opportunity for certain criminal actors motivated to counteract beneficial ownership regulation to seek to take advantage of the loopholes created.

As an example of the sort of concern a carve out for certain entities would create, the charity called Rule of Law Institute associated with the Family Office Institute Australia purported to represent members when they had none.

⁸⁵ Open-ended Intergovernmental Working Group on Asset Recovery, 'Good practices and challenges with respect to beneficial ownership and how it can foster and enhance the effective recovery and return of proceeds of crime', CAC/COSP/WG.2/2022/CRP.1, 15 October 2022, 5.

⁸⁶ FAFT, 'Mutual Evaluation Report: Australia' (2015)

9. What factors would be relevant to determining whether a regulated entity has taken reasonable steps to identify its beneficial owners?

There should be an enforceable requirement for entities to undertake reasonable due diligence to determine their ultimate beneficial owners, similar to the due diligence obligation for entities regulated under the *Anti-Money Laundering/ Counter Financing Terrorism Act 2006* to know their customers. It is not sufficient for entities only need to issue a notice to its owners for the disclosure of beneficial ownership where there is reason to suspect the ultimate beneficial owner is being concealed. There needs to be adequate sanctions available to be applied to regulated entities that fail to make reasonable efforts to identify their ultimate beneficial owners. In instances, where the beneficial owner cannot be identified, companies should be required to record the steps they have taken to identify the beneficial owner.

The Treasury proposal on verification could be strengthened. Like the UK, the focus is almost entirely on verification of identity, but FATF now also requires reasonable steps to be taken to verify the "status" of beneficial ownership, or whether and how a person actually exercises ownership and control.⁸⁷ Without a central register, it seems to make sense that the burden of proof of accuracy would be with companies or third parties. In future, hopefully the register will have provisions for pro-active checks such as the model of verification for Austria's beneficial ownership register.

Since auditing every single report in the register would not be feasible, the Austrian register's authority conducts risk-based supervision.⁸⁸ The supervision starts with a risk assessment of legal entities and arrangements following the detailed conclusions of Austria's National Risk Assessment. Each report is assigned a specific amount of risk points (the higher the number, the higher the risk), which account for the risk of an entity or arrangement being misused for money laundering or terrorist financing purposes. It also accounts for the report being potentially incorrect.

A monthly sample is generated, using a weighting system to proportionally select more higher risk than lower risk cases, although some low-risk cases are still selected. The authority's review also includes ad hoc cases selected by the register's authority, which include but are not limited to the cases reported by obliged entities for discrepancy.⁸⁹

Recording requirements

10. What, issues, if any, may arise with the proposed recording requirements?

The experience of the submitting bodies is that trusts provide a more effective vehicle for criminals and sanctioned individuals to conceal their ownership of an entity.

As a further resource for consideration by Treasury with regards to the registration of trusts as part of public beneficial ownership reform and the abuse of trusts, we suggest an examination of the Tax Justice Network's recent global review of 'Trust Registration around the World'.⁹⁰

Transparency International's 2019 report: 'Who is behind the wheel?' demonstrates that relying on companies (regulated entities) to maintain the information on their own is not sufficient to ensure access to adequate beneficial ownership information by authorities in a timely manner.⁹¹ The

⁸⁷ FATF, 'Recommendations 2012', Rec24, (2012)

⁸⁸ Federal Ministry of Republic of Austria, 'Register of Beneficial Ownership

⁸⁹ Ibid

⁹⁰ <https://taxjustice.net/wp-content/uploads/2022/07/Trusts-FATF-R-25-1.pdf>

⁹¹ Transparency International, 'Who is behind the wheel?; Fixing the global standards on company ownership', (2019)

report assessed 83 FATF country assessment since 2014 and found that the great majority of competent authorities do not have timely access to beneficial ownership information, as they usually must rely on reporting entities.⁹² Furthermore, the analysis of the mutual evaluation reports also showed that the approach was not guaranteeing access to accurate and reliable information.⁹³

For example, Hong Kong has a self-reporting model. Large number of companies fail to comply with the rules that beneficial ownership details are maintained, accurate and up to date.⁹⁴

The proposed two-tier approach also goes against the recent FATF reform that emphasises the importance of a multi-pronged approach with a government register (or similar mechanism) as a key component.

We strongly recommend that if Treasury proceeds with a two-phase approach, that the self-reporting should be an interim measure and a clear timeline and process is provided for when a centralised, free and public beneficial ownership register is established.

11. Should regulated entities have bespoke disclosure requirements with respect to discretionary trusts listed on their beneficial ownership registers? If so, what information should be disclosed?

Regulated entities should have disclosure requirements concerning discretionary trusts listed on beneficial ownership registers. As indicated above, listed company information on top 20 owners is frequently dominated by ‘nominee’ entities which does not provide meaningful or useful information on beneficial ownership. There must be some requirements to identify beneficial ownership of ownership through discretionary trusts or nominee entities. It is not reasonable to expect users of beneficial ownership registers to attempt to trace ownership through possible layers of trust entities. Not requiring more complete beneficial ownership reporting may create loopholes that are easily exploited.

In case a trust (including a discretionary trust) owns a company subject to beneficial ownership registration, all the parties to the trust (economic and legal settlors, trustees, protectors, beneficiaries, purposes and any other individual with effective control) should be identified as beneficial owners of the company. Discretionary beneficiaries should be identified and registered as beneficial owners regardless if or when they receive a distribution. If any of the parties of the trust is a legal person, then the beneficial owners of such entity-party to the trust should disclose its own beneficial owners.

Content and availability of beneficial ownership register

12. How should public access of regulated entities’ registers be facilitated? Should registers be accessible on request or published on the regulated entities’ websites?

Beneficial ownership registries should be available on regulated entities websites in the lead up to the establishment of a central public register. Having to request access from a regulated entity will allow regulated entities to impede and obfuscate access to the registries. One of the benefits of beneficial ownership registries is to assist reporting entities under the *Anti-Money Laundering/Counter Financing Terrorism Act 2006* in conducting their due diligence of entities they are doing business with. Such due diligence should be made easy by having the registers publicly accessible.

⁹² Ibid, p11

⁹³ Ibid, p13

⁹⁴ Ibid, p24

Access to the registers of beneficial ownership should be free. Regulated entities should not be permitted to charge a fee for access to the registers. Data should be free, accessible, open and consistent with the Beneficial Open Data Standard established by Open Ownership.⁹⁵

Regulations should require that all regulated entities are required to have the same format for the beneficial ownership registers. Common format of the registries will make them more user-friendly. Common format of the registries will also make it easier to establish a central register of beneficial ownership in the future.

In addition, the regulated entities should be required to submit their beneficial ownership information to the ATO, in anticipation of a central beneficial ownership register being established. Having the beneficial information before the central register is established would allow the ATO to have a base of information to be able to draw on when the register is established.

Where a reporting entity under the *Anti-Money Laundering/ Counter Financing Terrorism Act 2006* has reason to suspect suspicious activity or ownership of an regulated entity, it should be able to apply to gain the full beneficial ownership details from the regulator or relevant law enforcement agency.

13. What other information should be collected on the beneficial ownership register?

In addition to the information proposed to be collected in table 5.1, where a natural person has a Director Identification Number (DIN) the DIN should be collected and publicly disclosed. Where the person does not have a DIN, they should be required to provide a Tax File Number or passport number to verify their identity. The Tax File Number or passport number would only be kept for access by law enforcement agencies.⁹⁶

We believe that there is no need for the home address to be available to the public. However, the country of domicile, state-province and postcode of ultimate beneficial owners should be publicly available.

The beneficial owner should also be required to disclose if they are a politically exposed person and if they hold other tax residencies. Such information should be available to law enforcement authorities and reporting entities under the *Anti-Money Laundering/ Counter Financing Terrorism Act 2006*.

There should be a requirement for regulated entities to disclose if they have been unable to identify beneficial owners and the proportion of unidentified ownership.

The requirement for an address for communication for and service should be backed by a significant sanction for providing a fake address.

It is desirable that the register capture previous beneficial owners, to impede criminal strategies that involve changing ownership to conceal previous ownership. Such a strategy may involve:

- Set up a trust which owns shares in a company (or a chain of companies or trusts);

⁹⁵ Open Ownership, 'Beneficial Ownership Open Data Standard', (2022).

⁹⁶ Such information is recommended for collection by FATF Recommendation 24. Open-ended Intergovernmental Working Group on Asset Recovery, 'Good practices and challenges with respect to beneficial ownership and how it can foster and enhance the effective recovery and return of proceeds of crime', CAC/COSP/WG.2/2022/CRP.1, 15 October 2022, 9

- The company (or chain of companies) launder criminal proceeds;
- The trust alters beneficiaries to the criminals generating the proceeds of crime;
- Distributions made which are effectively laundered monies to these persons;
- The trust alters beneficiaries back to people who are not the criminals;
- The trail is now opaque.

A reasonable limit on recording information on previous beneficial owners could apply, such as maintaining the information for seven years. To have to keep the information for seven years would align the requirement with the period of retention for know your customer records for regulated entities under the *Anti-Money Laundering/ Counter Financing Terrorism Act 2006*.

14. Should any of the proposed beneficial ownership information not be collected?

All the proposed information should be collected.

15. What key risks, if any (including privacy risks), are associated with making the proposed information available to the public? How can these risks be mitigated?

There continued claims by lawyers and peak bodies representing corporate directors and owners of privacy and other risks are highly exaggerated. Most companies have very simple structures, where the shareholders and beneficial owners are the same people. So for large numbers of companies on the existing business registries, beneficial ownership has been disclosed.

Further, beneficial ownership disclosure does not reveal the wealth of the beneficial owner. There are much easier ways to identify wealthy people through publicly available information.

When asked to provide evidence that the current much higher level of disclosure of personal information for company directors on the ASIC registries has led to identity theft or safety concerns lawyers and peak bodies representing corporate directors and owners fail to provide more than a miniscule number of cases. Against these risks is a vast array of severe real cases where the ability to conceal the true directors and owners of corporate entities and trusts has inflicted severe harm on thousands of people. Corporate vehicles with concealed control and ownership have facilitated fraud, wage theft, money-laundering, tax evasion and tax avoidance on a vast scale.

As an example, hundreds of people were subject to prolonged wage theft through a network of labour hire businesses used by chicken processing corporation Baiada. There was also evidence of significant tax evasion. The ability to set up corporations with fake names, fake addresses and no disclosure of the real owners and controllers of the labour hire companies meant no one was held to account for the criminal activity by these businesses. The use of labour hire businesses that were shell companies with false addresses was used to frustrate the Fair Work Ombudsman. For example, concerning the Hanwood site, the Fair Work Ombudsman reported:⁹⁷

As Figure 5 demonstrates, this site has a complicated procurement chain at the bottom level and the Inquiry was unsuccessful in its efforts to engage with a number of the lower level contractors, with all but one ceasing operations when contacted by the FWO.

⁹⁷ Fair Work Ombudsman (2015), 'A report on the Fair Work Ombudsman's Inquiry into the labour procurement arrangements of the Baiada Group in New South Wales', 23.

DMY Trading Pty Ltd and Yu Lin Trading Pty Ltd, operated by husband and wife directors, provided Fair Work Inspectors with records for their six subcontractors at the Hanwood site. When Fair Work Inspectors attempted to serve a Notice to Produce on one subcontractor, they found an automotive workshop. The director of that business advised he had been at the registered address for 25 years and had never heard of the subcontractor named in the Notice.

Contact with two further entities identified they operated as clothing manufacturers and were not involved in the poultry processing industry. One of these entities had ceased operating in 2012, and the other ceased operating during the course of the Inquiry. Referrals are being made to other relevant enforcement agencies.

Further:⁹⁸

In one example, the director of DHA Australia Pty Ltd operating in Hanwood and Azurenet Pty Ltd operating in Beresfield agreed to meet with Fair Work Inspectors. The day before the meeting was to take place, he sent an email advising Fair Work Inspectors that as a result of the inquiry, he was liquidating the entities. The liquidator sought records from the director, which he failed to provide.

In another example, a labour hire business with concealed ownership and control structure was reported by FWO as not being able to account for a large amount of money it had been paid and was shut down to avoid repaying workers it had stolen money from. As reported by FWO:⁹⁹

Early on in the Inquiry, another principal contractor Mushland Pty Ltd (Mushland), provided a limited number of records though failed to disclose information that was specifically requested by Fair Work Inspectors. During the course of the Inquiry, the phones of both the company director and accountant were disconnected, and the Baiada Group was unable to provide any further contact details for the parties.

Analysis of the limited records, which included invoices and pay records provided by Mushland, identified the entity was paid \$255,415.07 by the Baiada Group for the month of October 2013 (the Inquiry's sample period). The records also disclosed Mushland paid \$52,460.85 in wages to 18 employees during this period, leaving a margin of \$202,954.22.

An underpayment of \$3,378.76 for 11 employees during the one month sample period was also identified. Mushland deregistered on 16 July 2014 without back payment to the workers being made.

As it stands, the proposed disclosure of information for natural persons who are beneficial owners would be the bare minimum to run a person through a database like Sayari to check if the person is on a sanctions list or has a conviction for criminal activity. Providing any less information will make such basic due diligence checks far more difficult. Often without a date of birth and an address it can be hard to distinguish between people with the same name when conducting basic due diligence checks.

In the first six months of operation of the UK's People with Significant Control register, 270 people applied from an exemption from public disclosure. In only five cases was there an assessment that

⁹⁸ Ibid., 11.

⁹⁹ Ibid., 18.

the threat to safety justified the exemption.¹⁰⁰ However, later analysis found that between April 2016 and January 2019, Companies House received 903 applications for exemption from public disclosure on the People of Significant Control register. Approximately half of those applications were approved.¹⁰¹ Of those that had not been approved, 24 per cent were awaiting decision, 18 per cent were denied and five per cent were rejected due to an issue with the application.¹⁰²

16. Are there any potential unintended consequences which could result from adopting the proposed approach to protect some beneficial owners' information from public disclosure?

The granting of exemption from public disclosure of beneficial owners' information from public disclosure needs to be robust and should only be granted where there is solid evidence the person in question faces a real safety risk. As noted in the paper, that could be evidence that the person is in danger of family violence. In the case of family violence, the range of evidence accepted by the Department of Home Affairs as evidence that someone on a temporary visa is being subject to family violence should be accepted. These are spelt out in the Department of Home Affairs 'IMMI12-116 FV – Family Violence Evidentiary Requirements'.

Open Ownership reported in May 2019 they had been unable to identify documented examples of harms that have arisen from the publication of beneficial ownership data in open registers.¹⁰³ Risks of harm seem higher from the information disclosed about them on social media.¹⁰⁴ Open Contracting Partnership "found remarkably little evidence of harm" directly resulting from disclosure of contracts. However, there was the example of a New Orleans contractor who was harassed for taking a contract to remove a Confederate monument.¹⁰⁵

There is a risk that allowing for a broad range of exception may create a business opportunity for law firms that wish to offer a specialist service to people wanting to conceal their beneficial ownership from public scrutiny. Such services may be highly attractive to those engaged in criminal activity, reducing the possibility of an investigator outside of law enforcement detecting their involvement in a regulated entity. The key way to limit the establishment of such a business model of specialising in seeking exemption is to limit the ability to gain exemption to a limited number of grounds that involve genuine safety risks.

There is a danger that people who have moved to Australia from overseas and who have shifted stolen assets into Australia from the jurisdiction they have come from will claim a safety risk to protect themselves from detection by foreign law enforcement agencies seeking their extradition or recovery of the stolen assets.

The Danish beneficial ownership register allows for exemptions from public publication of information about beneficial owners where there are 'special protection considerations'. Special protection considerations do not include a person concerned about inquiries from unsatisfied

¹⁰⁰ Adriana Edmeades-Jones, Tom Parker and Tom Walker, 'Data protection and privacy in beneficial ownership disclosure', The B Team, The Engine Room and Open Ownership, 20 May 2019.

¹⁰¹ UK Department for Business, Energy & Industrial Strategy, 'Review of the implementation of the PSC Register', BEIS Research Paper Number 2019/005, March 2019, 7.

¹⁰² Ibid., 7.

¹⁰³ Adriana Edmeades-Jones, Tom Parker and Tom Walker, 'Data protection and privacy in beneficial ownership disclosure', The B Team, The Engine Room and Open Ownership, 20 May 2019.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

customers or creditors. People cannot have their information exempt based solely on their employment in certain industries or areas or work.¹⁰⁶

17. In what other circumstances should beneficial ownership information be protected from disclosure? What should be the scope of the protection in those circumstances?

In addition to cases of family or domestic violence threat, protection from disclosure should be available where law enforcement agencies have confirmed a person is subject to an identified risk to their safety.

18. Should disclosure exemptions be granted on a graduated basis, so in each case, only the specific details on the register that would put a person's personal safety at risk are exempt from disclosure (e.g. a beneficial owner's name may still be publicly accessible while other identifying information about the owner on the register may be exempt)?

The exemption from disclosure of information should be limited to concealing the least amount of information necessary to ensure the person's safety. For example, in a case of family and domestic violence concealing the month and year of a person's birth will not assist in their safety.

Accuracy and currency of beneficial ownership register

22. What are the key privacy risks, if any, arising from a requirement to verify the identities of beneficial owners? How could these be mitigated?

The ability to own legal entities and the limited liability privilege that often follows should come with responsibilities to use the privileges granted responsibly. Privacy considerations should not act as a shield for a person to use the legal entity to harm others and engage in severe criminal activity without being able to be identified and held to account. The benefits of knowing who the beneficial owners of legal entities are outweigh the privacy risks.

The consultation paper already proposes special measures for people at risk from harm such as through family violence.

There should not be additional carve outs to further weaken the limited beneficial ownership disclosure any further.

Enforcement and penalties

23. Is it appropriate to grant ASIC powers in the Corporations Act (equivalent to those it has under sections 72 and 73 of the ASIC Act) for responding to non-compliance with substantial holding notices and tracing notices? Why or why not?

It is appropriate to grant ASIC powers in the *Corporations Act* for responding to non-compliance with substantial holding notices and tracing notices. However, the penalties may be too light. Where a beneficial owner may be engaged in serious financial crime, they will be able to pay the fine for a front person to not disclose who is the beneficial owner. The person or people who obstruct the disclosure of the beneficial owner need to face severe consequences to deter their willingness to conceal the beneficial owner. Often the front people will not have involvement in the more serious criminal activity of the beneficial owner they are concealing.

¹⁰⁶ Ibid.

Where only fines are available as the sanction, the fine acts as a price criminals need to pay to have the cover of concealed ownership. Where the underlying criminal activity generates profits vastly greater than the level of the fine, criminals may find the price of the fine is worth paying for the benefit of maintaining hidden ownership. Thus, there must be more effective sanctions than just fines.

If fines are applied, they should accrue for everyday the beneficial ownership information is not disclosed.

North Macedonia and Paraguay have required financial institutions to freeze accounts where beneficial ownership information is not disclosed.

25. What other enforcement, incentive or penalty options could be introduced to encourage greater compliance with the proposed beneficial ownership register requirements?

As is the case in Slovakia, entities that fail to comply with beneficial ownership obligations should be prohibited from being able to bid for government contracts.¹⁰⁷ Additionally, Slovakia has also introduced a reverse burden of proof where in the case of discrepancies, the legal entity must prove that the information is correct.¹⁰⁸

The ATO should be authorised to conduct data-matching with beneficial ownership disclosure, to increase the likelihood of detecting fraudulent claims.

There should be an offence for businesses and individuals who advise on schemes and arrangements that seek to conceal beneficial ownership in violation of the new requirements. Research has shown that professional intermediaries have assisted in money laundering by creating legal structures that conceal the true beneficial ownership.¹⁰⁹ Using a professional intermediary to facilitate concealment of beneficial ownership for criminal purposes offers legitimacy to company formation.¹¹⁰ *The Age* reported in October 2020 of an Australian lawyer that advises clients to use Seychelles' private foundations to conceal the actual ownership of companies and conceal activities from law enforcement agencies. He was quoted as advising, "In the event of a lawsuit or tax investigation or regulatory inquiry, your client can swear under oath, 'I am not the legal or beneficial owner of this company', which could be the difference between being charged with/ jailed for tax evasion and walking away a free man."¹¹¹

A recent 'mystery shopping' exercise for the Stolen Asset Recovery Initiative of the World Bank and the UN Office on Drugs and Crime found nominee services often explicitly marketed to clients shopping for shell companies as a device to keep the identity of the beneficial owner off the public record. In 14 per cent of active responses to e-mail solicitations asking to set up shell companies, company service providers suggested, unprompted, to use a nominee type arrangement.¹¹²

¹⁰⁷ Tymon Kiepe and Peter Low, 'Beneficial ownership in law: Definitions and thresholds', *Open Ownership*, 27 October 2020.

¹⁰⁸ *Open Ownership*, 'Early impacts of public registers of beneficial ownership: Slovakia', (2020).

¹⁰⁹ Paul Michael Gilmour, 'Lifting the veil on beneficial ownership', *Journal of Money Laundering Control* **23(4)**, (2020), 723.

¹¹⁰ *Ibid.*, 723.

¹¹¹ Nick McKenzie, Charlotte Grieve and Joel Tozer, 'Lawyer who built a booming practise on finding loopholes', *The Age*, 20 October 2020.

¹¹² Daniel Nielson and Jason Sharman, 'Signatures for Sale. How Nominee Services for Shell Companies Are Abused to Conceal Beneficial Owners', *Stolen Asset Recovery Initiative, The World Bank, UN Office on Drugs and Crime*, 2022, 2.

Mossack Fonseca allowed for shell companies to be set up with sham directors that signed three initial documents that are sent to the real beneficial owners. The first is a waiver declaring they won't pursue claims against the true beneficial owners of their companies. The second is a power of attorney that ensures the sham director hands over control of the company to the beneficial owner. The third is the sham director's termination of employment letter, which is signed without a date. That way, the beneficial owners can fire their sham directors retroactively at any time. In addition to these three documents, sham directors sign papers such as forms required to open a bank account, or the minutes of annual general meetings.¹¹³

A corporate service provider based in the UK provided a nominee for a UK shell company complete with a pre-signed, but undated letter of resignation and a power of attorney agreement. Thus, the nominee could be fired by the beneficial owner, if necessary, retroactively. Each party also agreed to indemnify the other. The beneficial owner committed not to pursue legal action against the nominee for damages caused to the company or its assets. The nominee committed to give a reciprocal undertaking. Beyond the above arrangements, the nominee had no relationship with the beneficial owner. The UK corporate service provider explained the role of the nominee was only to prevent the beneficial owner having to reveal their control of the company.¹¹⁴

A Canadian nominee sold her services at \$100 for each directorship of 200 companies, some of which were involved in criminal activities netting \$100 million in proceeds of crime.¹¹⁵ In court she stated that she never questioned the legality of documents she signed for the companies she was the nominee director for because they came to her from lawyers.¹¹⁶

Geoffrey Taylor, the founder of New Zealand GT Group, a corporate service provider, has stated that he can "act as Director or Shareholder for clients without arousing suspicion that he is a nominee only. In this way he can act as your front man and attract attention away from you."¹¹⁷

The alleged involvement of lawyer Dev Menon in the Plutus tax fraud further highlights the need to send strong signals to professional facilitators about the need not to assist criminal activity involving concealed ownership. Christian Paul Budd-Madison was a director of Hartford Investments. Mr Budd-Madison stated that the company was set up for Paul Larcombe. The Plutus-linked labour hire business, Uneek Consulting Services, would transfer more than \$3 million into Hartford Investments in 2015 and 2016.¹¹⁸

In July 2016, Uneek Consulting Services sued Hartford Investments and Mr Budd-Madison in the NSW Supreme Court, claiming they had breached a verbal agreement to pay ten per cent returns on its "capital protected investment". Mr Budd-Madison did not initially defend the claim, resulting in a default judgement against himself and Hartford Investments.¹¹⁹

Mr Larcombe took his own life in August 2016. Mr Budd-Madison wound up Hartford Investments in September 2016. In March 2017, Mr Budd-Madison filed a motion to set aside the judgment, along with an affidavit. In the affidavit, he claimed that in early 2016 he became aware that Adam Cranston, Jay Onley, Patrick Willmott and Paul Larcombe "were or had been in charge of multiple

¹¹³ Ibid., 8.

¹¹⁴ Ibid., 8.

¹¹⁵ Ibid., 8.

¹¹⁶ Ibid., 9.

¹¹⁷ Ibid., 9.

¹¹⁸ David Marin-Guzman, 'Entrepreneur threatened to blow whistle', *The Australian Financial Review*, 20 August 2018, 8.

¹¹⁹ Ibid.

entities using dummy directors.” He stated that the companies passed on pay as you go (PATG) tax to Mr Cranston, Mr Onley and Mr Larcombe. He further stated:¹²⁰

Rather than pay, the director would state they were under financial difficulty and enter into payment arrangements to stave off attention from the ATO. The dummy companies would then direct and collected PAYG payments to Cranston, Onley and Larcombe.

He stated that in May 2016, Mr Cranston contacted Mr Budd-Madison to meet at the Sydney office of Clamenz Lawyers with Mr Cranston’s lawyer, Dev Menon, present. Mr Budd-Madison claimed that at the meeting he was told that Mr Larcombe and “his associate Mr Willmott had stolen funds from Cranston and Onley and they wanted these funds back.”¹²¹ Mr Budd-Madison’s affidavit stated, “They were quite open about their involvement in the ongoing affairs of labour hire businesses which I then understood to be illicit.”¹²² He further stated, “I said to Cranston that they shouldn’t be so obvious in their discussions in the open. To which he said “Mate I am with my lawyer, it’s all privilege.””¹²³

The next month, Mr Cranston called Mr Budd-Madison again to convene a second meeting at Café Sydney, which Mr Onley and the lawyer from Clamenz Lawyers also attended. At the meeting, Mr Budd-Madison claimed that they told him they were concerned the ATO would “come after them and me and they should put in place a mechanism to mitigate exposure.”¹²⁴ He further alleged, “They informed me that they would commence legal proceedings on behalf of Uneek Consulting Services Pty Ltd to act as a barrier to the ATO recovering funds from Uneek Consulting.”¹²⁵

Within 36 hours of receiving the affidavit, Uneek Consulting Services signed consent orders to set aside the previous judgement against Mr Budd-Madison and the affidavit was never tendered in open court.¹²⁶

Dev Menon was arrested for his role in the Plutus tax fraud.¹²⁷ He was caught on AFP phone taps allegedly advising members of the fraud how to structure and disguise subcontractor companies.¹²⁸ The trial involving Mr Menon commenced in the NSW Supreme Court in April 2022.¹²⁹

Regulatory costs and benefits

26. What regulatory and compliance costs are already incurred by regulated entities to collect, verify, and maintain beneficial ownership information under existing regimes including member register and anti-money laundering and counter terrorism financing obligations?

Verifying beneficial ownership information for regulated entities under the *Anti-Money Laundering/Counter Financing Terrorism Act 2006* is expensive. We do not have Australian data for the cost

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Shamsher Kainth, “Lawyer Dev Menon among those arrested in alleged \$165 million ATO scam”, *SBS*, 2 August 2022.

¹²⁸ Ibid.

¹²⁹ Sarah McPhee, ‘Trial begins for five accused of \$105 million ATO fraud conspiracy’, *The Sydney Morning Herald*, 26 April 2022, <https://www.smh.com.au/national/nsw/trial-begins-for-five-accused-of-105-million-ato-fraud-conspiracy-20220426-p5ag6d.html>.

involved. However, a major Australian bank reported that they had over 500 staff involved in due diligence activities to address financial crime. Such a disclosure is consistent with the British Banks' Association stating that in 2017 the banks in the UK spent over £890 million on financial crime compliance.¹³⁰ It is difficult to estimate the cost savings in due diligence activities that will be achieved through greater disclosure of beneficial ownership.

No actor is immune from being exploited in the money-laundering process, so making it easier to identify illicit finance and the people involved may help prevent otherwise innocent financial markets and actors being exploited for criminal purposes.¹³¹

27. What additional financial costs would regulated entities or listed entities incur to comply with the proposals in this paper? Which entities would be affected and what would be the quantified estimate of regulatory burden incurred?

Research by the UK Government into the implementation of their People of Significant Control (PSC) register found the costs to comply for most businesses were low to trivial. Two thirds of businesses had already kept records of their beneficial ownership before the PSC register was introduced.¹³² It was found that:¹³³

- Eight per cent had no PSC;
- 43 per cent of businesses had only one PSC;
- 37 per cent had two PSCs; and,
- Only 13 per cent had three or more PSCs.

The median cost of compliance in the UK was £125 and an average cost of £287.¹³⁴ It would appear the average cost was much higher than the median cost due to the costs incurred by businesses with large and complex structures. After the initial submission of information onto the register the annual cost to maintain information on the PSC register has a median cost of £2 and an average cost of £29.¹³⁵ In the initial two years of operation of the PSC register only 10 per cent of businesses needed to change their PSC information.¹³⁶

Companies that have bank accounts are likely to have already had to provide beneficial ownership information if the financial institution has applied a know your customer process as part of their anti-money laundering processes. So many businesses will already have the information about their beneficial owners.

28. What other impacts would the proposals in this paper have on businesses and the economy more broadly? What information can you provide to assist with quantifying the benefits and costs?

UK Government research conducted on their PSC register in 2019 found that 22 per cent of businesses surveyed used the register to look up information about the PSCs of other businesses. Of

¹³⁰ Paul Michael Gilmour, 'Lifting the veil on beneficial ownership', *Journal of Money Laundering Control* **23(4)**, (2020), 727.

¹³¹ *Ibid.*, 728.

¹³² UK Department for Business, Energy & Industrial Strategy, 'Review of the implementation of the PSC Register', BEIS Research Paper Number 2019/005, March 2019, 4.

¹³³ *Ibid.*, 4.

¹³⁴ *Ibid.*, 5.

¹³⁵ *Ibid.*, 5.

¹³⁶ *Ibid.*, 5.

businesses that used the PSC register to look up information about PSCs, 64 per cent found the information useful of which 29 per cent found it very useful.¹³⁷

The research also found that all law enforcement agencies consulted used the PSC register to inform criminal investigations. Most reported that they used it weekly.¹³⁸

All financial institutions interviewed had used the PSC register. The main reason they used the PSC register was to identify the PSCs of prospective corporate clients during the on-boarding process.¹³⁹

It was noted that some stakeholder entities found the benefits of the PSC register were weakened due to concerns about the data quality and that they could not rely on the PSC register as a source of information.¹⁴⁰ That finding points to the importance of having mechanisms and resources to verify information on a beneficial ownership register if the benefits of the register are to be maximised. Many stakeholders in the UK suggested that Companies House introduce both validation (checks at the point information is submitted) and verification processes (checks to verify information submitted). Stakeholders felt the combination of these two processes would significantly improve the quality of the information held on the PSC register and so make the register more useful.¹⁴¹

However, all civil society organisations, most law enforcement organisations and some financial institutions felt that the introduction of the PSC register had a positive effect on their work. The main reason was that the register made the process of obtaining information about beneficial ownership quicker and easier, and in some cases cheaper.¹⁴²

Stakeholders in the UK also suggested that there should be a beneficial ownership identification number, similar to a director identification number.¹⁴³

29. What other information is relevant to assessing the costs and benefits and regulatory burden of introducing the proposals outlined in this paper?

There will be significant challenges in quantifying the benefits of the beneficial ownership disclosure in deterring serious crime, as the level of crime and harm inflicted by concealed ownership will be very difficult to quantify. Much of the crime involved is likely to go undetected or unreported. The case studies outlined previously in the submission give some indication of the kinds of egregious cases that concealed beneficial ownership can assist in facilitating. The key benefit of beneficial ownership disclosure is to deter such criminal behaviour. It will be extremely difficult to quantify the level of crime prevented by beneficial ownership disclosure.

¹³⁷ Ibid., 6.

¹³⁸ Ibid., 6.

¹³⁹ Ibid., 6.

¹⁴⁰ Ibid., 6.

¹⁴¹ Ibid., 6.

¹⁴² Ibid., 6.

¹⁴³ Ibid., 6.

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About the Centre for International Corporate Tax Accountability & Research (CICTAR)

CICTAR is a global corporate tax research centre that produces information and analysis to untangle the corporate tax web. The Centre is a collective resource for workers and the wider public to understand how multinational tax policy and practice affect their daily lives. CICTAR's work supports public participation in the tax debate so that everybody can participate in decision-making that affects their communities.

For more information, visit the CICTAR website here: <https://cictar.org/>

About Publish What You Pay Australia

Publish What You Pay Australia is part of a global movement of 50 national coalitions made up of over 1000 organisations united in calling for transparency and accountability in the oil, gas and mining sectors. In Australia, we are made up of 30 anti-corruption, human rights, trade union, environmental, faith-based, economists and transparency organisations. We campaign for a world where everyone benefits from our environment, resources and a just transition.

About the Australian Council of Trade Unions

The Australian Council of Trade Unions (ACTU) is the peak trade union body in Australia, with 43 affiliated unions and states and regional trades and labour councils, representing approximately 2 million workers across the country.

About Transparency International Australia

Transparency International Australia is the national chapter of [Transparency International](https://www.transparency.org/), a global coalition against corruption operating in over 100 countries. Each chapter is independent and unique, and together we aspire to a unified vision: a world free of corruption.

Our mission is to tackle corruption by shining a light on the illegal practices and unfair laws that weaken our democracy. We shine a spotlight through our research, which informs our evidence-based advocacy to build a better system. We work collaboratively with businesses, government agencies and community groups to close the loopholes on corruption. More detail can be found at <https://transparency.org.au/>

About the Tax Justice Network Australia

The Tax Justice Network Australia (TJN-Aus) is the Australian branch of the Tax Justice Network (TJN) and the Global Alliance for Tax Justice. TJN is an independent organisation launched in the British Houses of Parliament in March 2003. It is dedicated to high-level research, analysis and advocacy in the field of tax and regulation. TJN works to map, analyse and explain the role of taxation and the harmful impacts of tax evasion, tax avoidance, tax competition and tax havens. TJN's objective is to encourage reform at the global and national levels.

The Tax Justice Network aims to:

- (a) promote sustainable finance for development;
- (b) promote international cooperation on tax regulation and tax-related crimes;
- (c) oppose tax havens;
- (d) promote progressive and equitable taxation;
- (e) promote corporate responsibility and accountability; and
- (f) promote tax compliance and a culture of responsibility.

In Australia, the current members of TJN-Aus are:

- ActionAid Australia
- Aid/Watch
- Anglican Overseas Aid
- Australian Council for International Development (ACFID)
- Australian Council of Social Service (ACOSS)
- Australian Council of Trade Unions (ACTU)
- Australian Education Union (AEU)
- Australian Manufacturing Workers Union (AMWU)
- Australian Nursing & Midwifery Federation (ANMF)
- Australian Services Union (ASU)
- Australian Workers Union, Victorian Branch (AWU)
- Baptist World Aid
- Caritas Australia
- Centre for International Corporate Tax Accountability & Research (CICTAR)
- Community and Public Service Union (CPSU)
- Electrical Trades Union, Victorian Branch (ETU)
- Evatt Foundation
- Friends of the Earth (FoE)
- GetUp!
- Greenpeace Australia Pacific
- International Transport Workers Federation (ITF)
- Jubilee Australia
- Maritime Union of Australia (MUA)
- National Tertiary Education Union (NTEU)
- New South Wales Nurses and Midwives' Association (NSWMWA)
- Oaktree Foundation
- Oxfam Australia
- Save the Children Australia
- Save Our Schools
- SEARCH Foundation
- SJ around the Bay
- Social Policy Connections
- TEAR Australia
- The Australia Institute
- Union Aid Abroad – APHEDA
- United Workers' Union (UWU)
- Uniting Church in Australia, Synod of Victoria and Tasmania
- UnitingWorld
- Victorian Trades Hall Council
- World Vision Australia

About the Uniting Church in Australia, Synod of Victoria and Tasmania

The Synod of Victoria and Tasmania is part of the Uniting Church in Australia, the country's third largest Christian denomination. The Uniting Church in Australia was formed in 1977, when three

congregations – the Methodist Church of Australasia, the Presbyterian Church of Australia and the Congregational Union of Australia – came together.

We are one of six Synods, comprising 600 congregations and more than 60,000 members. We also have 12 schools. We worship every week in more than 40 languages. Through worship, sharing the story of Jesus, and service in the community, we witness to the belief that life is most fully found in God.

Through UnitingCare, the Uniting Church in Australia is the largest non-government provider of community services in Australia, employing more than 70,000 Australians.

We have a strong sense of social justice and actively campaign on a range of issues, including the environment, modern slavery, asylum seekers, work justice and family violence.

About the United Workers Union

United Workers Union (UWU) is a national trade union with 150,000 workers across the country from more than 45 industries, including early childhood education and care, aged care, hospitality, logistics, disability, farms and manufacturing. Our work reaches millions of people every single day of their lives. We feed you, educate you, provide care for you, keep your communities safe, and get you the goods you need. Without essential workers like us, everything stops.

About U Ethical

U Ethical Investors is an investment manager who believes in creating a better world by investing with purpose, engaging in active stewardship and advocacy. Their first funds were established in 1985 and over recent years have grown steadily to become one of the largest ethical investment managers in Australia with over \$1.3 billion under management. U Ethical are an autonomous social enterprise of the Uniting Church with an independent board.