



Response to privacy impact assessment of the beneficial ownership register for unlisted companies

Treasury engaged the Australian Government Solicitor (AGS) to conduct a privacy impact assessment (PIA) of proposed policy specifications for the first stage of implementation of a beneficial ownership register (BOR) for unlisted companies.

As a result of the PIA, the Government has decided to limit eligibility to access BORs to law enforcement, regulators, journalists and academics in the initial stage of the reform. The Government has also decided that ASIC is best placed to receive applications for BORs, consider applicant eligibility, administer suppression applications and ultimately provide BORs to eligible applicants.

The table below sets out the Government’s response to the eleven recommendations AGS made in the PIA for the purposes of the first stage of the reform. Decisions on settings for the next stage of the reform will be made at a later date, also informed by this PIA.

Issue	Recommendation	Response
<p>The intrusion into personal privacy caused by permitting public access to BOI [beneficial ownership information] will be proportionate to the benefits if appropriate measures are implemented to protect BOI.</p> <p>Limiting access to BOI to individuals who do not seek access for an improper purpose may be a difficult test to administer. It also does not align with international standards.</p> <p>We consider that a small fee, and a requirement that a person has a ‘legitimate interest’ in being granted access, are the reasonable and appropriate conditions / protections.</p>	<p>Treasury amend the BO Policy to limit access to the BORs in Stage 1 and the PCBOR in Stage 2 to persons and groups who:</p> <ul style="list-style-type: none"> pay a fee not exceeding the administrative cost of making the information available (except for persons who will be exempt from paying the fee, such as journalists and academics), <u>and</u> demonstrate a legitimate interest in accessing the information. 	<p>As a result of this recommendation, the Government has decided to limited access to BORs in stage 1 to law enforcement, regulators, academics and journalists.</p> <p>Each of these groups has a legitimate interest and is fee-exempt.</p>
<p>Interference with privacy may occur if individuals or groups that access BOI for a legitimate purpose use or disclose the data for a different purpose.</p>	<p>The BO Policy:</p> <ul style="list-style-type: none"> require access applicants in Stages 1 and/or 2 to declare the purposes for which they seek access, and require, as a condition of access, that they undertake to only use or disclose received BOI for the declared purposes authorise the RCA to impose conditions on how persons who access data in the PCBOR may use or disclose the data. 	<p>As a result of this PIA, access to BORs in stage 1 will be limited to law enforcement, regulators, academics and journalists.</p> <p>Applicants will only be permitted to use information obtained from BORs for the purposes of the profession that made them eligible.</p>
<p>Prescribing the detail of the BO Policy in delegated legislation risks later ‘function creep’, i.e. expansion of the policy to collect</p>	<p>Treasury prescribe the core elements of the BO Policy in primary legislation, including:</p> <ul style="list-style-type: none"> the types of BOI, 	<p>The primary legislation will set out:</p> <ul style="list-style-type: none"> the types of BOI,



<p>additional personal information, or permit the use/disclosure of BOI for unanticipated purposes.</p>	<ul style="list-style-type: none"> the law enforcement agencies and regulators who will have unlimited access to BOI, the purposes for which law enforcement agencies and regulators can seek unlimited access to BOI the scope of ASIC’s enforcement powers, the reasons for which a person seeking to access BOR may have an ‘improper purpose’. 	<ul style="list-style-type: none"> the law enforcement agencies and regulators who will have unlimited access to BOI, the purposes for which law enforcement agencies and regulators can seek unlimited access to BOI, and the scope of ASIC’s enforcement powers. <p>Given that in stage 1 only law enforcement, regulators, academics and journalists will have access to BORs, and they will only be able to use information for the purposes of that profession, Treasury considers that improper purposes do not need to be set out in the primary legislation.</p>
<p>The introduction of the BO Policy will require in-scope companies to prepare or update policies (including privacy policies where they have chosen or are required to have a privacy policy) and implement new practices to collect, store, use and disclose BOI that is personal information.</p>	<p>To promote a ‘privacy by design’ approach, the Commonwealth develop guidance for in-scope companies on appropriate content for entity privacy policies, and necessary practices, procedures and systems that entities should implement to comply with the APPs in Annexure A.</p> <p>To promote a ‘privacy by design’ approach, in-scope companies who are not subject to the APPs should be encouraged to voluntarily comply with the APPs in their handling of BOI that is personal information.</p>	<p>Agreed</p>
<p>Beneficial owners may over-provide personal information when supplying BOI, such as additional documents demonstrating their status as a beneficial owner, or a submission in support of an application to suppress their BOI (which they should provide to ASIC only, not in-scope companies).</p>	<p>The approved format should include guidance to beneficial owners explaining:</p> <ul style="list-style-type: none"> the categories of information they must supply, other kinds of information that are not needed, and should not be supplied. 	<p>Agreed</p>
<p>APP entities must, before or as soon as practicable after collecting personal information, notify the individual of prescribed matters, or otherwise ensure that they are aware of such matters.</p>	<p>In-scope companies, ASIC and the RCA provide collection notices addressing the matters outlined at Annexure A, before, or as soon as practicable after, they collect personal information.</p>	<p>Agreed</p>



<p>Unless ASIC notifies an in-scope company about the receipt and outcome of a suppression application, the in-scope company may not know whether a suppression entitlement exists, or when the entitlement ends (e.g. if ASIC refuses the application or a review is unsuccessful).</p>	<ul style="list-style-type: none"> • ASIC notify in-scope companies of the receipt and outcome of a suppression application. • In-scope companies suppress BOI from the register for 28 days after receiving notice of a beneficial owner’s intent to apply for suppression, or after they receive notice of an application until they receive a negative final outcome notice. 	<p>As a result of this PIA, ASIC will now be responsible for assessing and actioning suppression applications.</p>
<p>Any uncertainty over the operation of the suppression regime may impact the privacy of beneficial owners, for example, if they believe they are ineligible for suppression and fail to apply, or over-provide information supporting their suppression application.</p>	<p>The Commonwealth develop:</p> <ul style="list-style-type: none"> • guidance for beneficial owners on the kinds of circumstances where it will grant a suppression application, as well as the types of information an individual could supply to substantiate a suppression application • an approved format to supply information in support of a suppression application. 	<p>Agreed</p>
<p>Many in-scope companies will have limited experience in identity verification. This may cause harm to beneficial owners, e.g. if in-scope companies over collect and/or fail to delete identity documents after verifying identity (e.g. in the event of a data breach).</p>	<p>The Commonwealth encourage in-scope companies to engage professional identity verification service providers.</p>	<p>Agreed</p>
<p>Allowing in-scope companies to create and maintain BORs in idiosyncratic formats risks recording BOI in inconsistent formats. This may cause data quality issues in Stage 2 and/or risk unauthorised disclosure in Stage 1.</p>	<p>The Commonwealth prescribe or promote a template or format for in-scope companies to use to create and maintain their BORs. For example, a document or workbook with locked, defined formatting rules presents the most significant benefits.</p>	<p>Agreed</p>
<p>Where incorrect information in a BOR is updated, the obligation to retain records for 7 years may conflict with the need, under APP 11.2, to destroy personal information an entity no longer requires for a purpose under the APPs.</p>	<p>The BO Policy require in-scope companies who correct incorrect personal information in a BOR to:</p> <ul style="list-style-type: none"> • delete/destroy or de-identify any BOR altered to correct typographical errors • keep a record of corrections to the BOR for 7 years as per recording keeping obligations • keep a central log of corrections to personal information within a BOR. 	<p>Agreed</p>