



## Tax Insights

### A new frontier of transparency for private groups

Australia's corporate landscape is set to undergo a significant change with the government's commitment to establish a beneficial ownership register. This significant reform intends to shine a light on the underlying ownership of Australian companies, making previously private information accessible first to regulators, journalists and academics, and later to the broader public. While designed to strengthen Australia's position in combating money laundering and terrorism financing, this initiative will fundamentally change the amount of ownership information that is disclosed to the public.

#### Background

On 5 December 2024, Treasury published [new policy specifications](#) for a proposed **two stage approach** to a **transparency regime for unlisted companies**. This is a further step towards the implementation of an open register of beneficial ownership, a key component of the ALP's "Multinational tax plan" at the May 2022 federal election.

As a starting point, in November 2022, Treasury released a [consultation paper](#) on the proposed design of a first phase of a beneficial ownership register for unlisted entities regulated under the *Corporations Act 2001*. Also included was proposed reforms to the substantial holding notice and tracing notice regimes in the *Corporations Act* with respect to listed entities (which in November 2024 progressed to draft legislation). Progress from that point has been slow due to the difficulties in putting such a framework in place.

The new December 2024 policy specifications update the 2022 consultation paper with feedback from that consultation and incorporate findings of a privacy impact assessment also released by Treasury in December 2024.

The policy document highlights the governments priorities and direction and will form the basis of the next stage of the reform, which will involve public consultation on exposure draft amendments to the *Corporations Act*.

**No timing has yet been announced as to the start date of the regime.**

## Scope of a beneficial ownership register for unlisted companies

The government is proposing to establish a new regulatory transparency regime, which will include:

- a requirement for unlisted companies to collect, verify and record information about their beneficial owners
- a requirement for beneficial owners to self-identify to unlisted companies
- appropriate ASIC powers to enforce the new obligations.

## Entities subject to requirements

The changes will affect “regulated entities” being:

- unlisted proprietary companies
- unlisted public companies (including companies limited by guarantee and no liability companies), and
- unlimited liability companies.

## Obligations of regulated entities

It is proposed that regulated entities will be required to take reasonable steps to:

- identify and verify registrable beneficial owners, and the nature of their ownership
- collect, update and retain accurate and up-to-date records of beneficial ownership information
- create and maintain an accurate register of registrable beneficial owners, and
- provide ASIC access to their register on request.

## Definition of beneficial owner

The definition of a beneficial owner is proposed to cover:

- the ownership either directly or indirectly of 25 per cent of the shares or voting rights in the regulated entity and
- any party that has the right to exercise, or actually exercise, significant influence or control over the regulated entity.

Share ownership would be calculated based on the total shares in the regulated entity (the total number of shares across different classes of share types). Direct and indirect interests should be considered but, as noted in the policy paper, so should ownership which is effected by agreements and arrangements.

## Reporting required only for registrable beneficial owners

To simplify requirements for entities in complex ownership chains, registers would only have to include a subset of beneficial owners described as “registrable beneficial owners”. Where a regulated entity has a registrable beneficial owner in its ownership chain, it does not need to continue to trace-through its ownership structure.

There are a number of registerable beneficial owners listed in the paper that would not require trace-through, such as natural person beneficial owners, other regulated entities, foreign companies not registered in Australia but with equivalent disclosure obligations in their jurisdiction of registration, listed entities, managed investment schemes and not for profits registered as companies. In the case of natural persons there is no basis to trace through and other entities have their own disclosure obligations or are generally deemed lower risk.

Wholly owned subsidiaries

Corporate groups comprised of wholly-owned subsidiaries of a regulated entity would be able to meet their beneficial ownership disclosure requirements by one of their number (e.g. the parent company) creating a consolidated register for the group.

Director-owner companies

Regulated entities that do not have beneficial owners outside of the directors of the entity will be able to satisfy the requirement to have a beneficial ownership register by certifying that no individuals or entities other than the directors satisfy the definition of beneficial owner and the information about directors already provided to ASIC is an accurate and complete record of the entity's beneficial owners.

Obligations of registrable beneficial owners

Under the proposed regime, registrable beneficial owners would be obliged to identify themselves to regulated entities and advise of any relevant changes as soon as possible.

Verification, accuracy and record keeping

Proposed obligations of regulated entities are quite onerous. They would be required to be **'reasonably satisfied'** of the identity of a beneficial owner and the accuracy of the information on the register. This may require entities to engage a third-party to verify a beneficial owner's identity or alternatively carry out the verification itself.

Regulated entities would be required to update information on the register within 14 days of being notified of a change.

Further, regulated entities would need to ensure that the beneficial owner has either personally provided the information or confirmed that information the regulated entity proposes to enter on the register is accurate and complete.

Records of information collected, and the identity verification procedures must be kept for seven years.

Data sets for different types of registrable beneficial owner

Table 1 of the policy paper outlines the information to be made available to journalists and academics at Stage 1 and 2 and the Public at Stage 2.

The information a regulated entity would need to collect, verify, record, and maintain on their register is tailored to the specific type of beneficial owner and is set out in a number of Tables – 2 and 2a in the policy document.

We do not reproduce Tables 1, 2 and 2a in their entirety but note some key items for certain registrable beneficial owners below.

Type of Registrable Beneficial Owner	Information
<b>Natural person</b>	I. Full legal name (including any previous legal names)
	II. Date of birth
	III. Contact address (can be postal or electronic)
	IV. Residential address
	V. Nationality/ nationalities
	VI. The nature of their beneficial ownership (e.g. range of percentage shareholding or voting rights if applicable)
	VII. Date person became, or stopped being, a registrable beneficial owner
<b>Companies, Registered MISs, and CCIVs (including for listed entities)</b>	Company/MIS/CCIV name (including any previous legal names)
	Registered office address of company, responsible entity of MIS / corporate director of CCIV
	Electronic address
	Entity type (legal form) e.g., company, MIS, CCIV
	Date of registration
	Country of registration
	Registration number e.g., ABN, ARFN, or overseas company equivalent
	Nature of control or influence
	Date the person became, or stopped being, a registrable beneficial owner
<b>Trusts</b>	Name of trust (including any previous legal names)
	Unique Superannuation Identifier (where available)/ABN
	Date of creation
	The following information required for natural persons who are the trust's trustees, income, and capital beneficiaries (including named beneficiaries), appointors, settlors <sup>1</sup> , and any other member of the trust: - Full legal name (including any previous legal names) - Date of birth - Contact address (can be postal or electronic) - Residential address - Nationality/ nationalities - The nature of their beneficial ownership as well as their range of percentage shareholding or voting rights - Date person became, or stopped being a beneficial owner - the above information for any person who, according to the trust instrument, has the power (either alone or together with other persons) to remove a trustee and/or appoint a new trustee (appointor of the trust) / control trust property / change the trust property or beneficiaries / directly control the trust
	For discretionary trusts, the trustee would also be required to provide the regulated entity: persons who would receive a distribution from the trust / persons who has received a distribution in the last three years / persons who has significant influence or control in the trust excluding its existing beneficiaries
<b>Partner(s) in a partnership</b>	The full name of the partnership (including any previous legal names)
	The full business name (if any) of the partnership as registered under any State or Territory business names legislation (including any previous legal names)
	Date and where the partnership was set up
	Registered business address
	ABN
	Required information about all partners in the partnership, unless the partnership is confirmed by checking the current membership list of the relevant professional association

<sup>1</sup> If a settlor only acts in a professional advisory capacity, has no other ongoing connection to the trust, and has not contributed more than \$1,000 to the trust, they would be excluded from being required to appear on the relevant beneficial ownership register.

Access to beneficial owner information

During the initial stage, journalists and academics would have fee-free access to inspect the subset of beneficial ownership information on a regulated entity's register set out at in the table below by making a request to ASIC. ASIC would assess the credentials of the applicant before making a request to the regulated entity on behalf of the requestor. ASIC would be empowered to deny vexatious or excessive requests.

Entities with Know Your Customer (KYC) obligations under AML/CTF regulatory regime, will have the ability to request access to regulated entity's register from the regulated entity itself to fulfil their KYC obligations. Specified regulators, law enforcement and AUSTRAC reporting entities will have access to the entire register, (including full date of birth and residential address) as this data is necessary for their respective functions.

Under Stage 2 the Government will be responsible for publication on the public Commonwealth operated register and will make publicly available the subset of information in the table below.

Summary of information available to journalists and academics on beneficial ownership registers via ASIC in stage 1 and to the public during stage 2; in respect of the more common types of beneficial owners (refer Table 1 in the policy paper for a complete list of disclosures)

Type of Registrable Beneficial Owner	Information available
Natural person	Full legal name (including any previous legal names)
	Month and year of birth
	Country of residence
	Nationality/nationalities
	Nature of control or influence
	Date person became, or stopped being a registrable beneficial owner
Companies, Registered MISs, and CCIVs (including for listed entities)	Company/MIS/CCIV name (including any previous legal names)
	Registered office address
	Entity type (legal form)
	Date and country of registration
	Registration number
	Nature of control or influence
Trusts	Date person became, or stopped being a registrable beneficial owner
	Identical information to that collected by the unlisted entity
Partner(s) in a partnership	The full name of the partnership name (including any previous legal names)
	The full business name (if any) of the partnership as registered under any State or Territory business names legislation (including any previous legal names)
	Date and country of establishment
	ABN
	Information in row 1 (above) about natural persons identified for this type of registrable beneficial owner

Beneficial ownership register for trusts

The updated policy paper noted that many stakeholders highlighted the need for beneficial ownership reforms for legal vehicles, such as trusts. Treasury is at the early policy development phase of considering potential beneficial ownership regimes for trusts. Alongside this process, the Treasurer announced in November 2024, that the Council of Federal Financial Relations (comprising of the states and territories) will [explore legislative options](#) for a nationally consistent beneficial ownership of trusts regime.

This would be a separate disclosure regime to that described in this publication, and possibly require different disclosures to those described here. No further details are available at this time.

## Deloitte comments

It is unsurprising that the government has had to resort to a staged approach of implementation, due to the complexities of incorporating this type of information into existing registers, particularly where the government is still working on stabilising the existing companies register after the abandonment of the Modernising Business Registers program.

The updated policy specifications have taken into account some concerns from many stakeholders over privacy, and restricted access to the data in both the first and second stages of the register are welcome. Nonetheless, the scope of the data to be collected, the verification obligations on regulated entities and the organisations allowed access to this data will likely surprise many private groups.

There remains a disconnect in respect of the policy objectives and outcomes. For example, the Government justifies the register on the basis it is needed to tackle tax evasion, money laundering and other financial crimes. Steps directed at investigating and prosecuting such matters are appropriate, however, allowing access to some of the quite personal information (age, nationality, country of residence) to the public is hard to justify on this basis.

There are also many uncertainties in the policy document. For example while the paper establishes a clear 25% threshold for ownership of shares or voting rights, it is less explicit about other control arrangements. The reference to "ownership characterised by agreements or arrangements would also trigger disclosure obligations" raises the question whether we look beyond traditional share ownership and include broader control mechanisms such as management agreements, economic interest arrangements, or informal understandings. As a result this is likely to create more challenges for businesses and their advisors in determining what arrangements need to be disclosed. This is particularly the case in complex corporate structures where control may be exercised through various formal and informal mechanisms. In a difficult economic environment, leaving privacy concerns aside, any such initiative will likely add to the compliance costs borne by Australian business.

Where a trust appears in the ownership chain, the trustee will be required to disclose beneficial ownership information about the trust, including the trustee as well as individuals or entities under the trust instrument with the ability to remove a trustee, together with potential and actual beneficiaries (including identifying who would receive a distribution and has received distributions in the last 3 years). In many private groups the question of control will prove to be problematic as to the level of detail required. It is made clear the relevant trust would be required to identify persons who have significant influence or control in the trust excluding its existing beneficiaries.

In addition, the need to verify the information provided, places an undue burden on the unlisted entity, particularly where a like burden is not placed on listed entities or the regulatory authorities themselves.

Private groups are encouraged to familiarise themselves with the proposed policy changes and prepare for the release of the relevant draft legislation. It will be important to lodge submissions where concerns remain, and joint submissions with representative organisations are likely to hold greater weight. Please do not hesitate to contact us should you require assistance.

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