

18 December 2024

Director
Beneficial Ownership and Transparency Unit
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

BeneficialOwnership@TREASURY.GOV.AU

To whom it may concern:

Australian Custodial Services Association Response to Treasury Consultation Paper on Beneficial ownership Reforms

The Australian Custodial Services Association (**ACSA**) is the peak industry body representing members of Australia's custodial and investment administration sector. Our mission is to promote efficiency and international best practice for members, our clients, and the market. Members of ACSA include NAB Asset Servicing, J.P. Morgan, HSBC, State Street, BNP Paribas, BNY Mellon, Citi, Clearstream, and The Northern Trust Company.

Collectively, the members of ACSA hold securities and investments in excess of AUD \$5 trillion¹ in value in custody and under administration for Australian clients comprising institutional investors such as the trustees of major industry, retail and corporate superannuation funds, life insurance companies, responsible entities and trustees of wholesale and retail investment funds, and various forms of international investors into Australia.

The implementation of a beneficial ownership register could result in an excessive burden of compliance for custodians and their clients. It is critical that the laws and regulations accompanying this regime explicitly acknowledges the role of custodians in the Australian market and the global financial system. When custodians receive a beneficial ownership information request they should be required to provide the legally necessary details of their customers to enable a regulated entity to continue their beneficial ownership investigation.

Overview of the custody structure as relates to beneficial ownership

ACSA has published a guide to custody on its website, which can be accessed here:

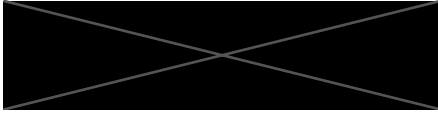
https://cdn.ymaws.com/acsa.com.au/resource/resmgr/website_images/website_documents/institutional_investor_servi.pdf. The guide describes the role of custodians in the Australian market and their role in Australia as it relates to inbound international investment. The guide also details how custodians use omnibus accounts to bring efficiency to post trade operations and thus help keep costs lower for investors.

In relation to this consultation, ACSA thanks Treasury the opportunity to respond to your consultation on Beneficial Ownership Reforms and our answers to the consultation's questions are appended below, also attached is ACSA's prior submission on Beneficial Ownership in Dec 2022 for reference. ACSA welcomes the recent engagement with Treasury regarding the matters we have raised in this consultation.

If you have any questions in relation to this submission please do not hesitate to contact me.

¹ As at 30 June 2024, <https://acsa.com.au/page/IndustryStatistics>

Yours sincerely



David Travers

Chief Executive office

Australian Custodial Services Association

Email: david.travers@acsa.com.au

Ph: 0466576471

About ACSA

Custodians provide a range of institutional services, with clients typically favouring a bundled approach to custody and investment administration. Solutions may include traditional custody and safekeeping, investment administration, foreign exchange, securities lending, tax and financial reporting, investment analytics (risk, compliance and performance reporting), investment operations middle office outsourcing and ancillary banking services.

These services represent key investment back office functions – often representing the client’s asset book of record and essential source data in relation to the investments they hold.

The key sectors supported by ACSA members include large superannuation funds and investment managers, as well as other domestic and international institutions.

ACSA works with peer associations, regulators and other market participants on a pre-competitive basis to encourage standards, promote consistency, market reform and operating efficiency.

Note: The views expressed in this letter are prepared by ACSA for the purposes of consideration by Treasury in response to Treasury Consultation Paper Multinational Tax Integrity: Public Beneficial Ownership Register (November 2022) and should not be relied upon for any other purpose. The comments in this letter do not comprise financial, legal or taxation advice and should not be regarded as the views of any particular member of ACSA.

www.acsa.com.au



Consultation questions

Disclosure of information about ownership of listed entities – Derivative based interests

1. The draft Bill proposes the repeal of s609(6) and redefines ‘derivatives’ in s608A. What impact would the expanded definition of relevant interests in s608A and 608B have on ownership transparency and regulatory burden?

1.1. What impact will the removal of this exclusion have?

As Custodians are not the registered holders of derivatives, whether physically settled or not physically settled, we have no view regarding this change to include derivatives in the definition of relevant interests. However, we want to provide the following context again, regarding the role Custodians play within the industry and the important considerations to factor in concerning this policy change.

The implementation of a beneficial ownership register could result in an excessive burden of compliance for custodians and their clients. It is critical that the laws and regulations accompanying this regime explicitly acknowledges the role of custodians in the Australian market and the global financial system. When custodians receive a beneficial ownership information request they should be required to provide the legally necessary details of their customers to enable a regulated entity to continue their beneficial ownership investigation.

ACSA has published a guide to custody on its website, which can be accessed here:

https://cdn.ymaws.com/acsa.com.au/resource/resmgr/website_images/website_documents/institutional_investor_servi.pdf.

The guide describes the role of custodians in the Australian market and their role in Australia as it relates to inbound international investment.

In relation to this consultation, the custody guide gives context to custodians being recognised as the largest shareholders of Australian listed (and some unlisted) companies, it further notes these shareholdings are held as a nominee or bare trustee and not as the beneficial owner. The custodian has no beneficial rights to the shares it holds and as a “bare trustee” act on the authorised instructions of its clients pursuant to the contractual arrangements agreed between custodian and client.

The custodian cannot vote, sell, or seek to influence the company’s business or participate in any corporate event without instruction from its client (who has control of their actions as owner of the shares). Custodians act purely as a clients’ agent in the local market and support clients through connectivity to market infrastructure, expertise in laws and regulations, and a general understanding of the market environment and how to navigate it.

When it comes to substantial shareholder declarations, custodians and nominees are not considered to have a relevant interest in the securities they hold on behalf of their clients for the purpose of determining a substantial shareholding. Section 609 of the CORPORATIONS ACT 2001 states that “a



financial services licensee does not have a relevant interest in securities merely because they hold securities on behalf of someone else in the ordinary course of their financial services business”.

There is no circumstance in which a custodian’s holding in a company will meet the definition of beneficial ownership by the custodian in its own right. The laws and regulations put in place to support the public beneficial owner register should not require a custodian to provide its list of owners or shareholders for a public beneficial owner register as the custodian does hold an interest recognised as a beneficial owner.

Financial markets seek ongoing efficiency which has resulted in custodians acting in capacities where they will have both direct beneficial owner client relationships and have other interposed relationships where a custodian’s direct client may not be the ultimate beneficial owner. For example, a custodian may act as nominee in Australia on behalf of a client of who themselves are a custodian (in Australia or internationally), and the relationships may go many layers deep as outlines in our 2022 response.

2. Subsection 608(8) is key in defining one of the categories of derivate-based interests that must be disclosed under the proposed amendments to Chapter 6C. The draft Bill assumes subsection 608(8) operates as outlined in ASIC Regulatory Guide 5 (RG 5) *Relevant interests and substantial holding notices*, at (RG 5.163-5.166) where ASIC observes in effect that the provision:

- is not intended to be limited to arrangements regarding designated parcels of underlying securities; and
- should be applied on the basis that the person who has a relevant interest in underlying securities will satisfy their relevant obligations by applying the securities they have a relevant interest in (even for example if they have less than the number held at the time).

As Custodians are not subject to substantial holding notices, and not registered holders of derivatives, we have no view regarding questions 2.1 to 2.3.

ASIC Regulatory Guide 5 - Relevant interests and substantial holding notices recognises the nature of a custodian when taking into account who has a relevant interest. The Treasury bill needs to be aligned with the understanding of the custodian as per RG5.

- 2.1. Is the operation of the provision outlined in the regulatory guidance sufficiently clear and followed in practice?
- 2.2. Would the legislation benefit from expressly clarifying the operation of subsection 608(8) in any way – for example, specifying the relevant assumption to be made regarding how a counterparty will satisfy their obligations for the purposes of applying the provision?
- 2.3. If it were to do so, should the assumption depend on the reason the relevant interest arises?



3. In relation to the disclosure of non-physically settled derivatives, the draft Bill proposes ASIC be empowered to make a legislative instrument to determine either:
 - the number of issued securities in which the other person is taken to have a relevant interest; or
 - the method of working out the number of issued securities the other person is taken to have a relevant interest in.

The ability for ASIC to determine a specific number is intended to cover the situation whereby ASIC may need to remove certain derivatives from consideration and thereby determine the value to be zero.

[As Custodians are not registered holders of derivatives, we have no view regarding questions 3.1 to 3.2](#)

- 3.1. Is this approach preferable to enabling ASIC to exclude particular kinds of derivatives from the beneficial ownership disclosure requirements? If not, what alternative approach would be better?
 - 3.2. Should ASIC have additional flexibility in the way it prescribes, or allows parties to a derivative to determine, the number of underlying securities a person is deemed to have an interest in?
4. The draft Bill includes provisions intended to ensure that arrangements and interests that simultaneously meet the definition of more than one category of derivative-based relevant interest are not double counted.

Are all instances of potential double counting effectively avoided under current drafting?

[As Custodians are not registered holders of derivatives, we have no view regarding this question.](#)

5. The draft Bill intends to attribute the new deemed relevant interests to the party to the transaction that is in the bought position. Is that intention achieved, or is further clarity required?

[As Custodians are not registered holders of derivatives, we have no view regarding this question.](#)

Substantial holding information (including disclosure of derivative-based holdings)

6. The draft Bill proposes providing ASIC with the power to approve the form in which substantial holder notices are lodged, removing a legislative obstacle to moving towards machine readable lodgements.
 - 6.1. What processes would be involved in meeting a requirement that substantial holder notices be lodged in machine readable format? [As mentioned in ACSA's response to question 20 in the 2022 consultation paper, regulations should allow for electronic lodgement of beneficial ownership information through secure apps or websites. Furthermore, Custodians have connectivity and operating processes to transfer information via SWIFT messaging or API messaging. Utilizing these industry standard](#)



platforms ensures standardization of responses across all Custodians. We strongly support the adoption of international standards such as those introduced as part of the European Shareholder Rights Directive II (SRD II) which has enabled participants to automate the disclosure process. Adoption of these standards in Australia may also increase the response times and quality of information provided by entities based in the EU.

- 6.2. What impact would carrying-out these processes have on businesses? As mentioned in ACSA's response to question 21 in the 2022 consultation paper, rolling out this change may have an impact on regulated entities depending on the company size. Initial phase of this implementation should be more targeted to key industries and of a certain size. Furthermore, if businesses need to design, implement, and maintain registers they would require a standard format of information required which has been directed by the relevant government agency, especially considering the inclusion of a machine readable format lodgement process.
- 6.3. What impact would requiring substantial holder notices to be lodged in machine readable format have on transparency of market operations? Once the initial phase of implementation is bedded down within the industry, lodging and then reading that information will provide a lot of upsides in terms of efficiencies to businesses and relevant interest holders. This should translate into faster rates of transparency in beneficial owner registers, especially before key company events such as AGMs and EMGs (this is not an exhaustive list).

Freezing orders

7. The Explanatory Memorandum outlines relevant considerations regarding how ASIC should balance the rights of third parties with the desire to ensure compliance with the disclosure obligations in exercising its expanded freezing powers.

In support of Australia's continued safety and soundness as an investment destination, ACSA seeks to ensure that a party who has fully complied with Australia's legislative requirements is not affected by another party's non-compliance. ACSA's response to question 23 in the 2022 consultation paper explains the challenges and un-intended impact to those players within the chain of custody.

Blocking of positions for, as examples, local and foreign pension funds, local and foreign asset managers, or foreign sovereign wealth funds could lead to significant negative press, and reassessment of the risk profile of investing in the Australian market if the legal and regulatory environment is perceived to be designed in a way that creates the possibility of a party having their assets frozen despite having fully complied with the law.

ACSA notes that Custodians are obligated by law to provide the information requested by regulated entities and when issued with tracing notices and that this will continue to be the case under the new proposed legislation.

To that end, ACSA recommends that the concept of custodians, nominees, and bare trustee structures is catered for in the legislation in respect to freezing powers. The legislation should recognise beneficial versus legal ownership and the specific role played by licenced custodians



in Australia, addressing the dimensions of how freezing notices are to be applied, and how requests for information from related parties / associates are to be treated.

Freezing Notices

- While ACSA cannot envisage a scenario where a local custodian could not respond to a tracing notice, in the event this were to occur there should be no capability for assets held via a registry, CSD, or by other similar means to be blocked or held due to that custodian's failure to comply.
- Likewise, in the event that a custodian has responded to a tracing notice and a party underlying the custodian then does not do so, the freezing notice with regard to custodial holdings should always be applied by the party servicing the non-complying party, rather than via the company or registry.

A licenced custodian's holdings should never be frozen via a registry, CSD, or other similar venue. Rather the party facing the party who is not complying should be required to freeze the holdings on their books and records. This ensures that only parties who are not complying with the notices are impacted by that non-compliance, with no risk of contagion to the holdings of other parties. Applying a freezing notice on the registered holder, when non-compliance with a tracing notice to an entity "down the custody chain" may resulting in the freezing of assets for Australian Superannuation fund and Foreign Sovereign funds creating unintended market and sovereign risk

Related Parties / Associates

In regard to "associates", Custodians may have other lines of business within the parent company that deal with the same asset. For example:

- Parent company A, has a Custody business and holds asset X for client B (who is the beneficial owner)
- Parent company A, also has an Investments business and may also hold asset X on behalf of Parent company A (who is the beneficial owner)
- Additionally, Parent company A may have other business lines who hold assets on their own behalf.

ACSA recommends that the recognition of custodial, nominee, and bare trustee structures in the legislation also cater for this, so that where a licenced custodian is responding to a tracing notice they are only replying regarding holdings on their books and records, noting that where an associate or related party is using the services of the custodian, their holdings would be included.

Likewise, if other parts of a parent business are issued with tracing notices, the custodian should be excluded from that tracing notice.

A tracing notice can always be issued to both parties where both are to respond, but key to note is they are responding in different capacities and requiring a response from all related entities by default would create noise in the response.



Australian Government

The Treasury



Lastly, the system employed to collect information should take the nature of custody relationships into account and the high number of transactions performed each day by the clients of custodians. The regulated entity should be the entity tasked with gathering this information, and they should be required to follow the chain of custody to the end to determine who the beneficial owners are. As it's possible that one beneficial owner may directly or indirectly use multiple custodians, only the regulated entity will be able to collate a total view of who might meet the beneficial ownership criteria.

- 7.1. Does the guidance strike the right balance?
- 7.2. Is the guidance in the Explanatory Memorandum sufficient or should ASIC be required to give preference to a particular approach by the legislation?

16 December 2022

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To whom it may concern:

Australian Custodial Services Association Response to Treasury Consultation Paper “Multinational Tax Integrity: Public Beneficial Ownership Register”

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In relation to this consultation, the custody guide gives context to custodians being recognised as the largest shareholders of Australian listed (and some unlisted) companies, it further notes these shareholdings are held as a nominee or bare trustee and not as the beneficial owner. The custodian has no beneficial rights to the shares it holds and as a bare trustee acts on the authorised instructions of its clients pursuant to the contractual arrangements agreed between custodian and client.

The custodian cannot vote, sell, or seek to influence the company's business or participate in any corporate event without instruction from its client (who has control of their actions as owner of the shares). Custodians

¹ As at 30 June 2022, <https://acsa.com.au/page/IndustryStatistics>

Custodians provide valuable and necessary asset safekeeping and related services to the financial services sector, including institutional superannuation funds and investment managers. These institutions service a significant portion of the wealth of millions of ordinary Australians and by providing efficient services which keep costs low, ensure that all Australians benefit. The use of omnibus accounts meets this objective whilst also enabling a new investors, both domestic and offshore, efficient timely access to the market. The custodian does not (and cannot) second guess or have a view on the investment decisions made by its clients or override proper instructions, so any framework which intends to uncover the beneficial owner of an asset must take into account the custodian's role in the market.

In relation to enforcement actions being considered, the regime needs to consider the role of custodians and the layers that may exist between it and the ultimate beneficial owner. The enforcement actions should not unfairly penalise shareholders or unit holders who have complied when others may not have responded as this may create market inefficiencies and have the potential for unintended financial implications for compliant beneficial owners.

For example, in the above diagram Prime Broker E has three beneficial owners as clients. If one of the three beneficial owners did not comply with the rules it would not be reasonable for the other two beneficial owners, or for Prime Broker E, or Custodians A, B, and C, or Custodian B's other clients or their underlying clients, to be penalised.

Lastly, the system employed to collect information should take the nature of custody relationships into account and the high number of transactions performed each day by the clients of custodians. The regulated entity should be the entity tasked with gathering this information, and they should be required to follow the chain of custody to the end to determine who the beneficial owners are. As it's possible that one beneficial owner may directly or indirectly use multiple custodians, only the regulated entity will be able to collate a total view of who might meet the beneficial ownership criteria.

Our answers to the consultation's questions are appended below and ACSA welcomes engagement with Treasury regarding any matters we have raised in this consultation.

If you have any questions in relation to this submission please do not hesitate to contact me.

Yours sincerely



David Travers

Chief Executive office

Australian Custodial Services Association

Email: david.travers@acsa.com.au

Ph: 0466576471

About ACSA

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Consultation Questions

Introduction

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

As ACSA is not subject to substantial holding notices we have no view regarding the information those requests contain. Optimising tracing notices to capture the additional information may be an effective means of gathering beneficial ownership information without creating a new process for this purpose and the tracing notice system, while over complicated, has the advantage that companies already use it to drill down through the custody structure to identify the end holder.

It should be noted that the request should be designed in such a way that where the respondent is acting in a custodial or nominee capacity, that they can respond with the details of their clients so the company can reach those parties to determine whether they are the beneficial owners, without needing to provide unnecessary or extraneous information related to the custodian itself. Similar consideration should be given to custody clients who themselves might be custodians, or whose underlying investors may not be relevant. For example, Superannuation funds are not required to detail who their underlying holders are. Other types of custody client such as an unlisted unit trust who holds their underlying assets in a custody account should not be expected to provide the details of their unit holders, but rather the owners of the entity offering that investment product and making the decisions regarding the shareholding or unitholding in the regulated entity.

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

ACSA has no view on the value of harmonising these regimes as we are not subject to substantial holding notices. We expect that tracing notices will not be expanded to capture additional information related to substantial holding notices or, if they are, that custodians will continue to be exempt from that requirement, as the amount of information already required under the tracing notice regime can be excessive and burdensome.

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

As ACSA is not subject to substantial holding notices we have no view regarding whether companies should be required to maintain a register of information collected. However, where a register is maintained any entity maintaining such a register must ensure that it has appropriate systems and controls to enable

the effective management and dispersant of private and confidential information and maintain appropriate systemic controls to protect data from cyber-attacks.

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?

No response

Definition of beneficial ownership

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

The definition is consistent with ACSA's understanding of beneficial ownership.

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

ACSA foresees two areas which will require careful consideration in the drafting of any legislation or regulations related to this register:

1. For example an individual custodian could have a small registered holding in a company, say 1%, but the beneficial owner of that holding may exceed the 20% threshold because they hold securities through multiple custodian layers, the rules should facilitate all layers of ownership respond to a request from a regulated entity confirming the details of their underlying holders until the beneficial owner is identified fully, similar to the 672 concept. This ensures that the regulated entity will have enough of a detail to understand whether any beneficial owner meets the 20% threshold or not. It should be clear that all custodians or recipients of 672 notices must reply to the notice, and not only holders who directly have 20% or more of holdings/voting rights.
2. If the process for compliance with beneficial ownership reporting for their clients is too complex or inefficient they may preclude custodians from holding or servicing certain assets, particularly unlisted assets, or may require custodians to pass on the cost of compliance to clients, which could make it harder for custody clients to hold these assets and increase costs in the market.

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)?

No response

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?

No response

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

A regulated entity should be considered to have taken reasonable steps to identify its beneficial owners when it has successfully sent tracing notices to each party in the chain and received a response, or reached a party who refuses to respond further and escalated that party's refusal to the appropriate enforcement agency. Where it is possible for the regulated entity to perform additional research such as looking at overseas beneficial ownership registers, this could also be undertaken.

Recording requirements

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

Regulated entities must be responsible under legislation and regulations for maintaining their own register in a process similar to that used for 672s. They should not be able to push the requirement to maintain this information down to their shareholders or unit holders. The reason for this is that if an underlying beneficial owner has their holdings spread across multiple agents, the only party who would be able to collate this information and determine beneficial ownership thresholds is the regulated entity itself.

Additionally, unlike listed entities which can generally be transferred instantaneously via CHESS, transfers of holdings in regulated entities are performed via Australian Standard Transfer Form. The laws and regulations governing this regime should acknowledge that respondents to a beneficial ownership question can only respond based on their holdings at the time, and that these holdings can and will change as they do for listed companies.

We note that the UK has similar requirements to the proposed tracing notices and Australia's usage of s672 notices for disclosure of beneficial ownership. In the UK Registered Entities wishing to ascertain the beneficial owners of the holdings may contact the shareholders (via Section 793 of the companies Act) and

request beneficial owner details. Quite often, the nominee holdings can be held by multiple chains of custodians, and agents. Each shareholder must provide their client information to the registrar, the registrar would then contact each client, and they would provide details, and so on until the Bene owner is identified. The UK has a similar nominee model to Australia so this is put forward as global best practice approach.

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?

No response

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?

No response

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

The legislation and regulations should limit the amount of information required to the minimum level of information needed in order to record beneficial ownership. The exact data to be asked for should not be left open to the interpretation of the regulated entity and the regulated entity should be prohibited from asking for more information than is prescribed in the laws and regulations. This is important for privacy purposes, as generally a custodian will only release information about its underlying customers when required to by law or regulations. As such it is equally important that the laws and regulations explicitly define and limit the data points which can be collected under the regime as it is that the laws and regulations ensure sufficient data points are collected such that the regime serves its purposes.

In the same vein as substantial shareholder declarations, the laws and regulations should acknowledge the existence and role of custodians and explicitly limit our role in the regime to being required to provide the number of shares our clients hold, and the clients' contact details.

Where a register is maintained any entity maintaining such a register must ensure that it has appropriate systems and controls to enable the effective management and dispersant of private and confidential information and maintain appropriate systemic controls to protect data from cyber-attacks.

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

No response

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?

No response, however please consider our response to question 13 in the context of this question.

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

No response

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

No response

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)?

No response

Accuracy and currency of beneficial ownership register

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

As stated in the consultation, regulated entities are required to maintain an up to date register, and in the absence of information to the contrary it will be assumed that in order to comply with the laws and regulations a regulated entity must have the register up to date at all times.

It is not feasible for a regulated entity to do this, as at the extreme end it could be taken that a regulated entity would need to send incessant tracing notices in case anything has changed since the last notice was sent. We propose that the rules should require the register to be updated ahead of key events including, as examples but not an exhaustive list, AGMs and EGMs, or other events which Treasury determines might mean that the beneficial ownership of the entity would be relevant. Potentially as a catch all the rules could require a minimum interval of (say) two years to refresh the list in the case that no other event arises which would lead to a refresh. Treasury should also consider companies in liquidation and what requirements might need to apply to them.

20. Are there other methods, procedures, and approaches to verifying the information on beneficial ownership registers?

In terms of minimising compliance burden, it is suggested that the laws and regulations specifically contemplate the role of custodians in the market and limit the information required accordingly as outlined in our other responses to this consultation.

In order to create improved market efficiencies, the regulations should allow for the electronic lodgement of beneficial ownership information through secure apps or websites to eliminate the need for manual or paper based “wet” responses. Identification could further be verified through use of green ID or mygov for individuals and through the inclusion of verifiable identifiers such as ACN, or ABN for companies and trusts.

Given most custodians operate through global operating models, any secure apps or websites should allow for the secure completion of data from a custodian operations team located outside Australia.

21. Are there any potential unintended consequences which could result from implementing the proposed requirements for ensuring beneficial ownership registers are kept up to date? How could these be addressed?

- It is possible that despite the best intentions of all parties, the implementation of the first phase of the register will run into unforeseen practical challenges. We suggest considering whether the scope of regulated entities included in phase 1 can be more targeted, such as (for examples) with a focus on critical infrastructure (in line with the Critical Infrastructure Act) or key industries or a certain company size. Once the regime is established and working as intended it could be expanded further with relative ease.
- As outlined elsewhere in our response, the implied requirement to keep the register up to date would create undue administrative burden both on the company and on the legal shareholders.
- The laws and regulations should explicitly state that the regulated entity must be responsible for each step in the chain and cannot pass responsibility to the registered owner (such as via the terms of holding shares for example).

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?

Where a register is maintained, any entity maintaining such a register must ensure that it has appropriate systems and controls to enable the effective management and dispersant of private and confidential information and maintain appropriate systemic controls to protect data from cyber-attacks.

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?

Overseas enforcement of the requirements can lead to challenges. The registered shareholder or custodian of the assets should not be held responsible for behaviour of a single beneficial owner. As outlined in our introduction accompanying this response, it is also important that if a specific beneficial owner or intermediary fails to comply with the regime, that other beneficial holders or intermediaries in the chain of custody are not impacted or penalised. It should also be noted that in certain overseas jurisdictions there are strict privacy regimes such as the EU General Data Protection Regulations (GDPR) which may prevent an intermediary in the chain of custody from providing information about their customers who are EU residents without certain GDPR requirements being in place ie the customers' consent, the party requesting the beneficiary information confirms appropriate safeguards are in place to protect the personal information being disclosed. It is therefore possible that certain beneficial owners may domicile themselves in "privacy havens" in order to avoid disclosing their identity. It is important that not all the intermediaries and other beneficial owners in the chain of custody are not penalised in this case, but only those who have failed to respond or a prohibited from responding are impact=ed by the penalties.

24. Are there any potential unintended consequences which could result from adopting the proposed enforcement regime for regulated entities, if so, how could these be mitigated?

As outlined in question 21, smaller businesses might find the requirements complicated, or be unaware, and they may fail to comply fully despite acting in their perceived good faith. Limiting the scope of phase 1 may avoid seeing smaller companies fined or penalised while the regime stabilises.

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

No response

Regulatory costs and benefits

No response to any questions in this section

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