

1 April 2021

regmod@treasury.gov.au

Australian Taxation Office

By email

Dear Sir/Madam,

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Corporations Director Identification Number Data Standard 2021 (Data Standard)
Corporations (Director Identification Number) Disclosure Framework (PGPA Bodies, courts and tribunals) 2021 (Disclosure Framework)

Who we are

Governance Institute of Australia is a national membership association, advocating for our network of 40,000 governance and risk management professionals from the listed, unlisted and not-for-profit sectors.

As the only Australian provider of chartered governance accreditation, we offer a range of short courses, certificates and postgraduate study. Our mission is to drive better governance in all organisations, which will in turn create a stronger, better society.

Our members have primary responsibility for developing and implementing governance frameworks in public listed, unlisted and private companies, as well as not-for-profit organisations and the public sector. They have a thorough working knowledge of the operations of the markets and the needs of investors. We regularly contribute to the formation of public policy through our interactions with Treasury, ASIC, APRA, ACCC, ASX, ACNC and the ATO.

Governance Institute is a member of the Modernising Business Registers (MBR) Business Advisory Group and our members have been actively involved in the MBR Project for some time. Governance Institute representatives received a briefing on the Data Standard and the Disclosure Framework from members of the Project Team on 18 March 2021.

Our members have no substantive comments on the Data Standard or the Disclosure Framework. They note that as a legislative instrument, the Data Standard will enable a more flexible means of specifying the information required to obtain a Director Identification Number (director ID).

Our members have the following general comments on practical implementation of the director ID.

1. myGovID and identification

For most directors obtaining a myGovID online will be the first step to obtaining a director ID. Our members consider a critical factor for the Project's success will be an education and communications campaign about the myGovID. In their experience myGovID is not widely known and there is confusion about the distinction between myGovID and myGov, the portal used to access online government services such as Medicare.

In addition, while we understand that approximately 350,000 Australian directors already have a myGovID there are approximately 2 million Australian directors who do not. The scale of the task

is significant. It will be important to engage broadly with groups such as, accountants, lawyers, tax agents, the SMSF sector and those providing services to smaller companies to ensure that they understand and can assist directors with the process. Equally, there will need to be comfort that the myGovID system is sufficiently robust and stable to cope with the significant influx of verification requests over a relatively short period of time.

While it is intended that most directors will apply for a myGovID online there will be a cohort of directors who for a range of reasons cannot apply online and there will need to be arrangements in place to assist this group. Our members also note it will be important to have arrangements in place for foreign directors. In their experience authentication and verification of foreign documents can be a complex and lengthy process. If there is a desire to give the impression to an international audience that Australia is a country with which it is easy to do business, we would urge that the verification process for foreign directors be as straightforward as possible.

Our members would also welcome clarification about the circumstances in which it is contemplated that a director may not be able to apply for a directorID for themselves and would need assistance.

A further issue in relation to verification of identity is the situation of directors who use a name as a director which may differ from their formal identity documents. This could apply to directors from other cultures whose names are shortened or adapted or women who have taken the family name of a partner. These directors may find it difficult to meet the identity requirements and there will need to be arrangements to cater for these individuals.

2. Disclosure to PGPA bodies, courts and tribunals

While our members acknowledge the need for protected information to be provided to some PGPA bodies, courts and tribunals they would also be concerned were all information to be provided to other agencies and bodies which have no demonstrated need for this information to carry out their functions. They would welcome clarification about what sorts of bodies would receive protected information.

3. Information available on the new register

Our members would welcome clarification about the information which will be available for public search on the new register and information about the cost structure for the new register. One of our members' long-standing concerns is that having this type of information publicly available increases the potential for identity fraud.¹

Open publication of birthdates, residential addresses and birth places serves no useful purpose other than for persons with criminal intent. In a world of increasingly faceless transactions, birthdates have become by default the first form of identity check by banks, telecommunications companies and other institutions to ascertain that they are communicating with an authorised person. To make the personal information of officeholders readily available exposes these people to various risks and is a magnet for cyber-criminals. While it is appropriate that the registrar requests and retains the personal details of all officeholders on a database subject to strict authentication protocols, these details should not be available on the public register.

We recognise that there is the issue of legacy data. Existing records of officeholders' personal information are embedded in a vast number of documents filed with ASIC and available on the public register which will still be publicly available as it would be impractical for such information to be removed. We recommend that Australia adopt an approach similar to that adopted by the UK when it moved away from the public display of residential addresses, by removing data from

¹ See Submission to the Senate Economics Legislation Committee [Commonwealth Registers Bill 2019 and Treasury Laws Amendment \(Registries Modernisation and other Measures\) Bill 2019](#), 7 March 2019.

public display only upon application. The Government may wish to charge an appropriate fee to cover the administrative costs of removing historical information from the public record. This fee could be graduated based on the number of years covered.

To ensure that third parties can enforce their rights against company officers and serve documents on officeholders, the director ID regime will need to require each officeholder to provide an address for service. This address will need to be publicly available on the register. The address for service can be chosen by the officeholder but does not need to be their residential address. In most instances, the company's registered address will be selected as the address for service. The advantages that a director ID provides for an officeholder's privacy and security intersects neatly with the advantages of using the director ID to deter and penalise illegal phoenix activity with the director ID acting as a unique identifier for each director providing traceability of their relationships across companies.

Our members recommend that personal details such as home address, place and date of birth are not publicly available on the register. The provision of a director ID removes the need to make address and date and place of birth data publicly available. A director ID will enable those searching public registers for legitimate business purposes to easily and quickly confirm the identity of officeholders. Provided the risks posed by the availability of historical personal information on the ASIC registers are also addressed, the director ID will also protect honest directors and officers from the risk of identity theft and assaults on personal security.

4. Charitable and not-for-profit sector

Our members also consider it will be important for the Project Team to work closely with this sector and with the ACNC. Governance Institute has previously recommended that the Government extend the period of time to apply for a director ID for officeholders of companies in the not-for-profit and charitable sector. We also encourage an education campaign, possibly in conjunction with the ACNC, for this sector given that many officeholders are time-poor volunteers.

Governance Institute looks forward to continuing our involvement in further deliberations on the MBR and director ID projects. If you wish to discuss any of the issues raised in this letter, please contact Catherine Maxwell.

Yours faithfully,



Megan Motto
CEO