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Senate Standing Committees on Economics

PO Box 6100

Parliament House, Canberra ACT 2600

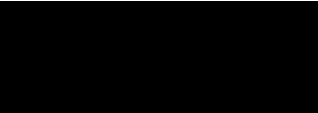
Sent via: economics.sen@aph.gov.au

Dear Dr Sean Turner,

Transparency International Australia is pleased to submit some brief comments to the Committee's Inquiry on proposed amendments to the Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Bill 2025. Our submission focuses specifically on Schedule 1: Amending the *Corporations Act 2001* to enhance beneficial ownership disclosure obligations to match the obligations already applying to entities listed on Australia's financial markets.

We also refer to our submission made in the December 2024 inquiry into these changes which are also attached as an appendix. Transparency International Australia together with partners, also made a detailed joint submission to Treasury as part of Multinational tax integrity: Public Beneficial Ownership Register consultation on beneficial ownership transparency in 2022.¹

Your sincerely,


Clancy Moore

Chief Executive Officer, Transparency International Australia

¹ TJN, TI Australia et al, (2022), Submission into Public Beneficial Ownership Register, accessed: <https://treasury.gov.au/sites/default/files/2023-05/c2022-322265-tjn-aus-et-al.pdf>

For too long in Australia, the true owners of companies have been able to hide in the shadows using shell companies, hidden ownership and nominee directors. Criminals, crooks and corrupt officials have used these loopholes to avoid regulation, hide the proceeds of crime, engage in corruption and launder money. The mining sector is particularly prone to corruption involving hidden ownership. This often fuels further criminal activity with communities, particularly those most vulnerable bearing the impacts.

Transparency International (TI) Australia supports the passing of Schedule 1 relating to amending the *Corporations Act 2001* to enhance beneficial ownership disclosure obligations to match the obligations already applying to entities on Australia's financial markets. These changes would bring the Australian disclosure regime into line with markets such as New Zealand, the UK, Hong Kong and Switzerland. We particularly support the following changes:

- Requirement for foreign-registered entities listed on Australia's financial markets and their shareholders to disclose interests in securities to the same standard as Australian-registered listed entities and their shareholders;
- Improving access to, and usability of, existing registers of information about relevant interests in listed entities collected via tracing notices; and
- Strengthening ASIC's enforcement powers to incentivise compliance with including increased penalties.

Furthermore, we make the following suggestions for strengthening the disclosure requirements in Schedule 1:

- That the registers of information received through tracing notices be accessible, free of charge and open for inspection for anyone to access the register, not just members of the entity, academics and journalists. For example, civil society often undertakes research on beneficial ownership transparency for advocacy. Similarly, business owners and public servants should be able to access data to support them with customer due diligence and know your customer checks to ensure individuals in their supply chains have not engaged in corruption or criminal conduct in Australia or overseas.

- We support that the disclosure threshold in the Bill is 5% and would support it be lowered. We therefore, recommend that it is increased to a higher level.

We also strongly support government's recent commitment to introducing a public, centralised, and accessible beneficial ownership register that includes unlisted companies from 2027.

In 2015, the Financial Action Taskforce (FATF) noted that "Australia's existing measures and mechanisms are not sufficient to ensure that accurate and up-to-date information on beneficial owners is available in a timely manner."² FATF has also updated its guidance on beneficial ownership (standard 24) requiring countries to ensure that competent authorities have access to adequate, accurate and up-to-date information on the true owners of companies and ensure that firms take a multi-pronged approach and collect beneficial ownership information from multiple sources. With Australia's next mutual evaluation under FATF commencing in 2026, the importance of Australia progressing beneficial ownership transparency and reducing the risk of money laundering is increasingly important.

AUSTRAC's 2024 National Risk Assessment also outlined Australia's vulnerability to money laundering, particularly in the real estate sector, due to Australia's weak corporate transparency regime.³ Australia's committed to strengthening beneficial ownership transparency in the Third Open Government Partnership National Action Plan.⁴

There is wide spread support for these reforms. Australian Banking Association has indicated that reliable, accurate and up-to-date beneficial ownership information would significantly

² FATF (2015), Australia's Mutual Evaluation Report, accessed:<https://www.fatf-gafi.org/content/dam/fatf/documents/reports/mer4/mutual-evaluation-report-australia-2015.pdf>

³ AUSTRAC, (2024), Money Laundering in Australia: National Risk Assessment, accessed: <https://www.austrac.gov.au/sites/default/files/2024-07/2024%20AUSTRAC%20Money%20Laundering%20NRA.pdf>

⁴ Commonwealth of Australia, (2024), Australia's Open Government Partnership: National Action Plan 3, accessed: <https://www.ag.gov.au/integrity/australias-open-government-partnership/australias-third-national-action-plan>

improve their ability to comply with their reporting regulations, reduce costs and it would also improve law enforcement's ability to investigate wrongdoing.⁵

There is no evidence suggesting that there is an additional compliance cost on low-risk companies if they are required to identify and report on their beneficial owners. In fact, research from the UK shows that a public beneficial ownership register has resulted in significant cost benefit to entities. For private sector users "The average value of the pre-reform Company Register information is estimated to be around £4,400 per organisation per year for AML compliance activities. The aggregate benefit for private sector users is estimated to be in the region of £170 - £460 million per year."⁶

ABOUT TRANSPARENCY INTERNATIONAL AUSTRALIA

Transparency International Australia is part of a global coalition to fight corruption and promote transparency, integrity and accountability at all levels and across all sectors of society, including in government.

TIA believes that corruption is one of the greatest challenges of the contemporary world. Corruption undermines good government, distorts public policy, leads to the misallocation of resources, harms private and public sector development and particularly hurts the poor. It drives economic inequality and is a major barrier in poverty eradication.

Tackling corruption is only possible with the cooperation of a wide range of stakeholders. We engage with the private sector, government and civil society to build coalitions against corruption. Coalitions against corruption will help shape a world in which government, politics, business, civil society and the daily lives of people are free of corruption.

TI Australia is the national chapter of Transparency International (TI), the global coalition against corruption, with a presence in over 100 countries. TIA was launched in March 1995 to raise awareness of corruption in Australia and to initiate moves to combat it.

⁵ Australian Banking Association, [Consultation Paper: Increasing Transparency of the Beneficial Ownership of Companies](#), 2017.

⁶ Department for Business and Trade and Companies House UK, [Value of Corporate Transparency in Tackling Corporate Crime. Policy Summary](#). 2024.

Appendix

18 December 2024

TI AUSTRALIA SUBMISSION TO THE CONSULTATION ON THE ENHANCED BENEFICIAL OWNERSHIP DISCLOSURE FOR LISTED ENTITIES

Transparency International Australia (TI AUSTRALIA) welcomes the opportunity to make a submission to this consultation on the enhanced beneficial ownership disclosure for listed entities.

We note the Bill would bring the Australian disclosure regime into line with markets such as New Zealand, the UK, Hong Kong and Switzerland.

This important reform, publicly committed to by the government before the 2022 election and as part of Australia's 3rd Open Government Partnership National Action Plan⁷, is long overdue. While the amendments to the Treasury Laws Amendment Bill 2024 are welcome, we note that the most important update to beneficial ownership transparency will be the creation of a centralised, publicly accessible beneficial ownership register of companies and trusts. This update is not part of the current process and is instead proposed for the second stage of the Government's reforms on an as yet undefined timetable. The creation of such a register would significantly increase the effectiveness of other recent anti-corruption reforms including the *Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Amendment Bill 2024* and the *Crimes Legislation Amendment Combatting Foreign Bribery Act 2024*. The Australian Banking Association has also indicated that reliable, accurate and up-to-date beneficial ownership information would significantly improve their ability to comply with their reporting regulations, reduce costs and it would also improve law enforcement's ability to investigate wrongdoing.⁸

Research from the United Kingdom shows that a public beneficial ownership register has resulted in significant cost benefit to entities. For private sector users "The average value of the pre-reform Company Register information is estimated to be around £4,400 per organisation per year for AML compliance activities. The aggregate benefit for private sector users is estimated to be in the region of £170 - £460 million per year."⁹

We take this opportunity to reiterate the benefits of the centralised, publicly accessible registry approach which include:

- direct, timely and unrestricted access by competent authorities
- the ability of authorities to use the register for proactive investigations once they can freely search the register and do not need to request specific information in a reactive manner

⁷ Attorney General's Department, [Australia's Third National Action Plan](#), 2023.

⁸ Australian Banking Association, [Consultation Paper: Increasing Transparency of the Beneficial Ownership of Companies](#), 2017.

⁹ Department for Business and Trade and Companies House UK, [Value of Corporate Transparency in Tackling Corporate Crime. Policy Summary](#), 2024.

- more control over companies' compliance with the rules, ensuring that beneficial ownership information is effectively available
- no risks of alerting or tipping off companies/beneficial owners, as authorities do not need to request the information and can access it directly
- more control over the type of information that is recorded and disclosed.
- more control over cases that could expose people at risk
- the ability to use the data for analysing money laundering risks and therefore improving policies, supervision and enforcement

If registers are open to the public, the benefits are even greater:

- foreign competent authorities have direct access and will not need to resort to often lengthy international cooperation requests
- obliged entities and other businesses can use the data as part of due diligence processes, to vet business partners and suppliers, make decisions on investments, among other purposes
- other government bodies not directly tasked with anti-money laundering have access and can use the information to detect conflicts of interest, fraud and other wrongdoing, including auditors, procurement officials, competition authorities, anti-corruption agencies, election management bodies, environmental agencies, among others
- civil society and journalists can scrutinise the data, revealing conflicts of interest and wrongdoing as well as contributing to the accuracy of the data

We note the government's staged approach to beneficial ownership transparency and look forward to the second stage of this process commencing soon.

TI AUSTRALIA'S COMMENTS ON THE CURRENT CONSULTATION

We support the submission from the Tax Justice Network to the consultation, and provide the following additional comments.

We welcome the change to require foreign companies to follow the same rules on beneficial ownership disclosure that apply to domestic companies in order to invest in the country, including when opening a bank account or purchasing real estate. TI Australia would like to see this requirement expanded to include foreign trusts. We can see the merit of exempting listed Australian companies and wholly owned subsidiaries of those listed in certain approved regulated markets, unless more than 50% of its shares are held by another group which is not listed on an approved stock exchange. However, we note that the 50% threshold is arbitrary. A person can have control over a company because their shares give special rights under the constitution. The 50% threshold would also not apply to companies limited by guarantee. Therefore, a different threshold based on control should be substituted. We also question whether these exemptions will result in barriers to access of information if the foreign jurisdiction does not require the same access requirements as under Australian law.

We also welcome the amendments to strengthen the investigation and enforcement powers of ASIC to issue freezing orders where a person or entity fails to comply with substantial holding and tracing notices. This will incentivise compliance with disclosure obligations and allow ASIC to investigate potential misconduct or financial crime. This power will require additional funding and resources for ASIC to take on this role.

We support that the disclosure threshold in the Bill is 5% and urge that it not be increased to a higher level. We would support it being further lowered. We also note there are other ways to control a company than shareholding and that consideration should be given to identifying control by other means. Control can be exercised through voting rights, the power to appoint the majority of senior management, through positions held within the legal person or through informal means such as through close personal connections to relatives or associates.¹⁰

We note the proposed changes do not deal with entities other than companies and that this will likely result in displacement to other entities including trusts, captive insurance companies, foundations or other similar legal entities which in many cases are not registered with ASIC, but still allow bank accounts and other assets to be held anonymously and allow those holding such assets to avoid being named on the corporate register. We therefore recommend that the proposed changes are expanded to include trusts, foundations and captive insurance companies.

We note the proposed changes do not prohibit nominee shareholders. FATF recommendation 24 requires countries take measures to prevent and mitigate the misuse of nominee shareholding and nominee directors for money laundering and terrorism financing.¹¹ TI Australia's position is that nominee shareholders and the non-disclosure of beneficial owners should be prohibited. At minimum, nominee shareholders should be required to disclose that they are acting as a nominee and the identity of the nominator. Appropriate sanctions should be implemented as a deterrent to the nominees including *de facto* or informal nominees.

We support that Part 6C.2 of the Bill will require listed entities to keep a register of information received through the tracing notices they have issued, or that ASIC has passed on from information obtained via ASIC-issued tracing notices. We welcome that the register must be open for inspection, but in our view the register will be much less valuable if access is restricted to members of the entity, academics and journalists. Citizen oversight can be a positive source of valuable information to verify and update the register. In addition, the employment-based, rather than activities-based test for journalists and academics to access tracing notices may limit access to many professionals working in these increasingly casualised workforces that may not have an official affiliation with an academic institution or media company.

Yours sincerely,



¹⁰ FATF, [Guidance on Beneficial Ownership of Legal Persons](#), 2023.

¹¹ FATF, [Recommendation 24](#), updated November 2023.

TRANSPARENCY INTERNATIONAL AUSTRALIA

Clancy Moore

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