

# Submission on discussion document: Publication of Directors' Residential Addresses on the Companies Register

## Your name and organisation

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Organisation	On behalf of the Office of the Privacy Commissioner

## Please select if your submission contains confidential information:

I would like my submission (or specified parts of my submission) to be kept confidential, and attach my reasons for this for consideration by MBIE.

## Responses to discussion document questions

1 **Do you have any comments of our assessment of the options for approaching directors' residential addresses on the Companies Register?**

The Ministry of Business, Innovation and Employment (MBIE) is progressing work on a director identification number after the Insolvency Working Group recommended a unique identifier for directors in 2016. MBIE consulted on a director identification number in 2017, including with our Office. We advised we had no concerns and did not make a submission.

MBIE is now consulting on changing the requirement for a director's residential address to be publicly available on the Companies Register (the Register). MBIE states a director identification number will fulfil the unique identification role currently served by a publicly available residential address. This means it will no longer be necessary for the Companies Act to require a residential address on the Register. MBIE is consulting on options for directors to elect to provide an address for service instead.

The Companies Office would still collect directors' residential addresses, which are necessary to administer and maintain integrity of the companies system. Directors need to be able to be contacted reliably and independently of their company. We agree with MBIE there are a range of potential legitimate purposes for third parties to access residential addresses and we comment on these under the relevant questions.

**MBIE's assessment of the options against its privacy criterion**

MBIE is consulting on two options for when a director's residential address is required to be publicly available on the Register:

- **Option 1:** allowing directors with specific safety or security concerns to have an address for service published on the Register in lieu of their residential address, or
- **Option 2:** allowing all directors to elect an address for service to be published on the Register in lieu of their residential address (**MBIE's preferred option**)

MBIE has assessed the options against three criteria: integrity of the Register, efficiency for companies and the Companies Office, and privacy.

We agree with MBIE's assessment that Option 2, which offers all directors the choice of an address for service on the Register, is more privacy-protective than Option 1, which is tied to security concerns.

Individuals have privacy interests in their personal information regardless of whether a threat to their physical wellbeing may arise from its disclosure. If it is no longer necessary for the integrity of the Register that directors' residential addresses are publicly available, all directors should have a choice of providing an address for service.

### **Commissioner's wider recommendations on suppressing personal information on public registers**

While Option 2 is the more privacy-protective, any option that provides wider suppression for a director with safety concerns would be better than the status quo. As MBIE notes in its discussion document, suppression of personal information on the Companies Register is narrowly confined to protected persons under section 108 of the Domestic Violence Act.

We have not discussed suppression for people with safety concerns in detail as we agree with MBIE's preferred option of providing all directors a choice of publishing an address for service.

Should the issue of safety concerns arise for other public registers that MBIE administers, we recommend that MBIE notes the public register reform recommendations of the Privacy Commissioner in his 2016 report to the Minister of Justice<sup>1</sup> and discussion by the Law Commission<sup>2</sup> in its review of the law of privacy. The Commissioner has recommended including improved suppression mechanisms in public register statutes, and improving coordination across public agencies for individuals with safety concerns to have their information suppressed from multiple registers.

### **Director identification number and principle 12 of the Privacy Act**

MBIE consulted in 2017 on introducing a director identification number. Our Office did not submit on this consultation but we make brief comments now to assist MBIE's ongoing work.

A director identification number would be a unique identifier for the purposes of the Privacy Act. Principle 12 of the Act controls agencies' use of unique identifiers. Controlling the use of unique identifiers reduces the risk that a universal identifier will be established that could be used to link a wide range of information about an individual without their knowledge or control.

Under principle 12 an agency must not assign a unique identifier to an individual unless it is necessary to enable to agency to carry out its functions efficiently. MBIE propose to assign director identification numbers to accurately identify directors, which is necessary to support the transparency and integrity of the companies system.

In the current consultation document, MBIE contemplates other agencies using the proposed director identification number as part of identifying directors and linking their information to that held by the Companies Office.

Agencies will need to ensure the director identification number is fit for the purpose they are going to use it for, and that the number will not be used by agencies other than the Companies Office as a primary means of identifying the individual. Our Office would be

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<sup>1</sup> Recommendation 6, *Report to the Minister of Justice under Section 26 of the Privacy Act: six recommendations for Privacy Act reform* accessible at <https://www.privacy.org.nz/assets/Files/Reports-to-ParlGovt/OPC-report-to-the-Minister-of-Justice-under-Section-26-of-the-Privacy-Act.pdf>

<sup>2</sup> NZLC Law Commission *Public Registers* (NZLC IP3, 2007)

pleased to provide advice to the Companies Office on the design of future arrangements to share director identification numbers.

## 2 **What is your preferred option?**

We prefer Option 2, to allow all directors to elect an address for service to be published on the Register in lieu of their residential address. This option is better for privacy for the reasons we include in question 1. To expand on those comments, we support MBIE providing all directors with a choice because this option will:

- provide directors with more control over their personal information – requiring an individual to disclose an address for service will typically be less intrusive than a residential address
- limit privacy impacts on other people who live at a residential address, and who are not directors
- assist directors to mitigate security concerns. Our Office receives enquiries from directors who tell us they have security concerns about their residential address being on the Register. These fall into the categories mentioned by MBIE – relating to the nature of their business, their personal circumstances and risk of fraud.

## 3 **Are there interested parties who may have a legitimate reason to need to access directors' residential addresses? If so, who?**

We agree with MBIE that a director's residential addresses should be disclosed to other parties when necessary to enable the companies system to operate as intended.

Such disclosure should be consistent with the Registrar's purpose for collecting it (reflected in principle 11(a) of the Privacy Act 1993). People who deal with or have interests in companies, for example shareholders or creditors, need to be able to contact directors reliably and independently of the company.

MBIE should provide for access to a director's residential address for purposes that are connected to a director's statutory role and duties– such as to exercise rights and enforce obligations involving the company or the director themselves.

Part 17 of the Land Transport Act 1988 may offer a useful model in its provisions for access by third parties to information on the motor vehicles register.

## 4 **Is there a public interest in directors' residential addresses being provided to third parties such as journalists?**

Journalists play a valuable role in investigating misuse of corporate entities, and thereby contribute to maintaining the integrity of the companies system. We suggest MBIE provides accredited news media access to directors' residential addresses in relation to their news activities. This could be by way of a rebuttable presumption in favour of access where the Registrar is not aware of specific safety concerns.

Section 2(1)(b)(xiii) of the Privacy Act provides a comparable carve-out for the news media's actions in respect of their news gathering and news reporting functions. The news media are separately regulated by their own Codes of Practice (through the Press Council, Broadcasting Standards Authority and Online Media Standards Authority) that include privacy standards.

## 5 **Under what circumstances should directors' residential addresses be released to an interested party?**

Our answer to this question follows our comments at question 3 regarding third parties with legitimate reasons to request residential addresses. MBIE proposes a mechanism for interested parties to request a director's residential address if their address for service is insufficient. MBIE suggests interested parties could apply to the Companies Office when a director is not responding via their address for service, or the party is concerned about contacting the director independently of the company.

We recommend MBIE facilitates simple and timely access to a director's residential address for the purposes it expects will be necessary to exercise rights and enforce obligations involving a company. MBIE could "whitelist" these purposes – for example, facilitating liquidation or receivership and claims by employees or creditors.

We suggest that as part of this mechanism the Registrar considers any specific safety concerns they are aware of, and the Companies Office notifies the director that their residential address is being provided to the third party.

6

**Do you agree that government departments and agencies should have automatic access to directors' residential addresses?**

Government agencies should be able to access directors' residential addresses when this is necessary for their law enforcement and wider regulatory purposes.

Because this information is currently on the public register, there is little evidence available to MBIE on who is currently using it and for what purpose. We recommend MBIE provides broadly for government agencies to seek access to the information when they can demonstrate why they need it.

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**Should this access be limited to the enforcement of law or are there other situations where it may be appropriate for government departments and agencies to have access to directors' residential addresses?**

To expand on our comments above, wherever a company can interact with a regulatory regime we see potential for the regulator to require a director's residential address to administer their functions.

These purposes are likely to be much wider than criminal law enforcement. For example, WorkSafe or the Labour Inspectorate may need to find a director when they administer companies' regulatory obligations under the Health and Safety at Work Act 2015 or Employment Relations Act 2000.

8

**Are there other factors which you think should be included in considering approaches to directors' residential addresses in historic documents?**

We have no further comments to make.

9

**Do you agree with our preferred approach to historic documents on the companies register?**

Directors' residential addresses are recorded in historical company documents on the Register. MBIE's options for removing this historical information are limited because these documents are highly resource-intensive for the Companies Office to alter.

We have no concerns with MBIE's preferred approach from a privacy perspective. When directors provided the historical information they could expect it would be made publicly available.

We note the suppression mechanism under section 108 of the Domestic Violence Act would continue to apply for directors with protection orders to have their information suppressed without charge.

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**Have you encountered situations where you consider that members of the public have abused this provision? If so, please provide details.**

This question refers to section 215 of the Companies Act, which provides that a company must keep information available for public inspection including directors' residential addresses. We are not aware of any situations where members of the public have abused this provision.

We recommend MBIE applies the same first principles analysis to companies' physical public records under section 215 as it has done for the Register. Our comments as to access by interested third parties at questions 3 to 5 are also applicable here. We do not understand the policy reason for separate access rights under section 215 and note they could pre-date easy online access to the Register.

11

**Do you agree that shareholders' residential addresses should be treated the same way as directors' residential addresses (ie replaced with an address for service)?**

MBIE does not intend to introduce a unique identifier for shareholders.

We agree with MBIE's conclusion that publishing shareholders' residential addresses is nevertheless unnecessary. Shareholders do not have comparable duties and liabilities to directors. Therefore an address for service seems sufficient.

12

**Are there circumstances where third parties might have a legitimate interest in the residential address of a shareholder?**

There is a public interest in being able to identify who owns a company. As to whether this requires access to shareholders' residential addresses, our comments at questions 3 – 8 regarding media, regulatory and other interested parties' access to directors' residential addresses are also relevant to any purposes MBIE identifies for shareholders.

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**Do you think any changes need to be made to the residential address requirements for officers of other types of entities?**

MBIE refers in the discussion document to registers administered by the Companies Office, including those for incorporated societies, industrial and provident societies, building societies and friendly societies.

We suggest that as a general approach to personal information on these registers, including residential addresses, MBIE should identify the purpose for collecting the information and for making it publicly available on a register.

MBIE (or the Companies Office) should only collect information necessary to achieve the purpose of the particular regime. It should then only publish information if it is necessary to achieve the purposes for collection.

If an address for service is sufficient given a person's functions under a regulatory regime, MBIE should consider amending any requirement or policy of publishing residential addresses.