



16 August 2018

Markets Group
Consumer and Corporations Policy
The Treasury
Langton Crescent
PARKES ACT 2600
Via email: regmod@treasury.gov.au

Dear Sir or Madam

Modernising Business Registers Program

Chartered Accountants Australia and New Zealand welcomes the opportunity to provide a submission to the Treasury on the discussion document – *Modernising Business Registers Program*. We have focused our feedback on the key areas and questions where we consider we can add the most value to the consultation. Appendix A provides our detailed submission and Appendix B provides more information about Chartered Accountants Australia and New Zealand.

Key points

- We understand the basis for including flexibility in the administrative options for the operations of the register, especially during the transition. However, we are concerned that including features such as the Registrar having the flexibility to decide what information to collect and make public may not appropriately balance the regulatory burden and risks associated with public disclosure.
- We favour a single point of digital registration that provides real time and simultaneous updates of various government registers/databases. We would like the database of publically available information to be easily searchable by a range of key criteria.
- In our opinion, companies and directors should be able to access their own information for free to help maintain its integrity and accuracy.
- We support the introduction of a Director Identification Number (DIN) and through this the removal of publically available director's personal information such as private address, place and date of birth.

Should you have any queries concerning the matters discussed above or wish to discuss them in further detail, please contact Karen McWilliams via email at [REDACTED] or phone [REDACTED].

Yours sincerely,

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Advocacy & Professional Standing
Chartered Accountants Australia and
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Appendix A

1. Proposals for law change

1. What flexibility would you like to see introduced into the relevant legislation?

We understand the basis for including flexibility in the administrative options for the operations of the register, especially during the transition. For example, we can see benefits in allowing the appointment of one or more Commonwealth body for the Registrar functions, particularly as a transition arrangement. However, we are concerned that including features such as the Registrar having the flexibility to decide what information to collect and make public may not appropriately balance the regulatory burden and risks associated with public disclosure. We consider it very important that there should be appropriate mechanisms in place to ensure the information request has an appropriate basis and is necessary.

We strongly support the digitalisation of documents and application forms etc through the new registers. For example, we note that ABNs are applied for entirely online. We also encourage enabling ATO/ASIC to use electronic communication, for example via an online 'inbox' for companies and directors in a similar way to how "MyGov" operates. We recommend Treasury consider changes to the relevant legislation to enable more flexibility for the use of modern technology and processes.

The company is currently responsible for changes to director information. With introduction of a DIN, we consider it may be appropriate for the director to be responsible for updating their own personal information and therefore being liable for any associated late fines. We also recommend consideration be given to enabling both the Company and Director to notify appointments and resignations. When one party records the appointment or resignation through the register, the other party could then confirm the change. This would also enable the director to provide consent to the appointment.

Our preference is for a fewer number of registers to reduce the duplication of data and cost to business. Whilst we understand this is outside the initial scope, we consider it important that the new register is designed with the flexibility to enable the inclusion of ACNC entities and also incorporated associations, cooperatives and mutual, currently on state registers, in the future. This flexibility is especially important with the introduction of DINs. We also consider it preferable for the design to include the ability to add attributes to the new register in the future. We note that professional registers are also outside the scope of this project, however the register design could incorporate the ability for them to be brought in at a later stage.

2. Enhanced Registry Services

2. What modern services should be provided for Australia's business registers?

We favour a single point of digital registration that provides real time and simultaneous updates of various government registers/databases. To reduce compliance costs, it would be useful if information provided for one register could automatically prepopulate other registers/entities so only additional, specific information is required to be provided. The provision of a list of subsidiaries or connected entities that can be selected could assist large businesses to update the information that is particular to that entry.

It would also be useful if the register incorporated links to relevant websites to assist people understanding key definitions or requirements throughout the process. For example, the way the ATO has used these in electronic tax returns.

3. What services should be provided to allow direct connection from business systems to the registers?

We support an online portal with an integrated approach and a user centred account view. We also consider any such portal should enable automated payments.

4. What interactions with the Registers should be considered to improve the quality of the registry data?

There is an expectation from Register users that information shared with one arm of government is shared with other agencies, but this is not consistently the case. We strongly support the reuse of government data including the cross checking of entries and the identification/ flagging of exceptions which need to be resolved/ followed up.

We note the suggestion in the roundtable presentation to include business locations and organisational units, not just the legal entity in registers. Whilst we understand that such information may be useful to some government agencies, we consider it critical to balance this with the cost to business of collecting and updating this information. Without the automated upload and update of such data, the reporting burden for large, multi-location organisations would be significant. Linking this information to other registers, including those maintained by states, could potentially reduce some of the compliance burden.

5. What interactions should be considered to ensure the registry data remains up to date?

In order for the registry data to be up to date, we consider it critical for company officers and agents to be able to access their own information for free. Further, as noted earlier, the ability to make a single change to multiple register entries would be beneficial.

For our members, the actual mechanics of how the new register will operate is an important issue in terms of the role accountants might play in the future collection and maintenance of data. Accountants are generally involved in the establishment of entities and typically handle the on-going accounting and tax affairs of the entity and those in the ownership structure. We consider that accountants, governed by strong ethical principles have a leading role to play in the new registry arrangements. In modernising the way Australia does business, the role of trusted intermediaries should be factored into the design of the new systems.

For registered company auditors (RCA), it would be useful if the database could be searched so that a list could be produced of entities for which the RCA is appointed or has resigned. It would also be useful if ASIC automatically sent notification of such appointments/resignations to the affected RCA as they need to rely on the associated client to lodge such documents and may not know when such events occur.

6. How do you consider registration, annual review and renewal processes could be improved?

We support the improvement of notification processes so that regulated entities are better informed of their obligations and legislative changes that apply to them. For example, ASIC could use the data base to issue automatic reminders regarding when renewals or filings are due. This would be of particular assistance to smaller businesses which already endure high compliance costs and often inadvertently overlook such requirements.

We recommend the new register allow a variety of methods for payment of registry related fees as expected in the modern online business environment. We also encourage the government to take this opportunity to reduce red tape through the alignment of definitions and time periods.

7. How do you consider search functions within the Registers could be improved? What do you think are the benefits from increased transparency of beneficial ownership information?

We consider having the data readily available and usable is essential. We would like the database of publically available information to be easily searchable by a range of key criteria. In particular, we consider the inability to conduct searches in a timely and cost effective manner to identify and intervene with rogue operators, such as phoenix operations, has a real cost to the Australian economy. The costs of not reducing phoenix operations should be taken into the cost benefit analysis of this project.

We also support the introduction of a subscription service for users of updates/changes to various entities or items.

3. Funding Registry Infrastructure

8. What types of API users (e.g. registrants, intermediaries, data consumers) could the Charging Framework appropriately apply to?

We consider that data that is public should be available at no cost. Industry is already providing substantial funding to Government agencies via the Charging Framework. The specific industry charges being made by ASIC relate to: “ongoing regulatory activities and user-initiated service costs. Ongoing regulatory activities, such as the cost of regulating financial advisers, would be recovered via a levy. User-initiated service costs, such as licencing, would be recovered via fees-for-service.”

The registers that are being maintained by ASIC provide information about Australian companies, business names, Australian Financial Services (AFS) Licensees, Australian Credit Licensees and other professionals registered with ASIC. The information that fills these registers is extracted from the documents that companies and licensees pay to register or provide for free and for which the companies and licensees are levied substantial amounts.

Given the substantial funding that ASIC receives for the provision of data, the potential to reduce costs through more effective use of technology and the public benefits associated with the publication of the data, we don’t consider it to be reasonable to ask consumers to pay for the information again. We note also that such an approach would be consistent with that of the ACNC which provides data for free.

9. What fee structures should be considered if the Charging Framework was applied? For example, should data users be charged a “per transaction” fee or an “annual subscription fee”.

As noted above, we consider that the access and search functions should be free.

Should the Charging Framework be applied, we consider that no fee should apply for a company, director or registered company auditor to access their own information and update it. This will help ensure accuracy and integrity of data. For other third party users, both fee structures are likely to be appropriate, depending on the level of use. For example, a small number of transaction/searches per day, week or month should be free. High volume users would be subject to a charge, especially as they may be using the data for profit or gain. We also note, as currently applicable, certain groups may apply for fee exemption, such as currently granted to journalists. We consider academic researchers could also be applicable in this category.

10. What access rules should be placed on API users to facilitate innovative use of registry data?

To ensure compliance with the Privacy Act, no access to personal data should be allowed by API users. We also encourage the Government to consider how they will ensure the accuracy of the data accessible by an API and what disclaimers may be needed in this instance.

To minimise compliance costs, it would be advantageous if the software required to update the proposed business registry was the same (or at least compatible with) software needed to deal with the ATO and the Australian Stock Exchange (ASX). In that respect, it would be beneficial for the group implementing the modernised business registers to explore the extent to which standard business reporting and XBRL could be used.

4. Director Identification Numbers (DIN)

We support the introduction of a Director Identification Number (DIN). A DIN would make it easier for stakeholders to identify the directors of a company and to identify other directorships an individual may have.

We also consider the introduction of a DIN provides an opportunity to add appointers of nominee directors to the public register. As well as identifying the identity of the appointer, transparency of nominee directorships helps determine 'control' for reporting purposes or 'beneficial ownership' for AML/CTF purposes.

11. What level of identity verification should be required to obtain a DIN? Is it appropriate to use a digital identity to verify the identity of the company director? If not digital, what other identity verification means should be used and why?

We consider that identity verification processes would ensure the accuracy and credibility of the information central to the success of a DIN. Individuals are becoming accustomed to verifying their identity through the 100 point check. However, there are some practical considerations around the expiry date of a passport or driver licence and the implications this may have on a Din which may or may not expire.

We note that the new GovPass Digital Identify platform could also provide a new solution. However, we recommend that a partial online approach is also permitted. Options for directors based overseas also need to be considered.

12. Ensuring that all directors consent to their role as a company director will be an important part of forming a company and maintaining its registration. What is the most appropriate and efficient manner of gaining a director's consent before issuing a DIN?

As the roundtable presentation notes, the DIN would be a unique identifier for each person who is a director or office holder and they would keep that number for life. We recommend that applying for a DIN should primarily be the responsibility of the individual director. The issue of a DIN would be based on the application by the director and the identity verification process. To achieve some of the policy objectives, it is critical that part of this process would also need to verify that the individual has not already been issued with a DIN.

We consider the consent of a DIN holder to be appointed to a director role with a company to be a separate process to the issue of the DIN. We recommend that director appointments and resignations require dual reporting/confirmation by both the Company and the director. When one party records the appointment or resignation through the register, the other party would then be notified and required to confirm the change. This would enable the director to provide consent to the appointment. We don't anticipate this replacing the existing consent requirements for a company in their normal course of business.

We note that the application process for a DIN should not unduly increase the time taken to register a new company. For example, consideration should be given as to whether all directors would need a DIN when registering a new company, or just one. Additionally, if it is a separate process and a director/company officer would have their number for life, we consider it likely that some individuals may choose to apply for a DIN in advance of any director appointment. We also don't support the introduction of an application fee for a DIN.

13. Should the law allow authorised agents to apply for a DIN on behalf of their client? If so, how does this fit in the consent framework?

As noted above, we recommend that applying for a DIN should primarily be the responsibility of the individual director. However, we do consider that there may be certain circumstances, such as for non-resident directors, when a trusted agent should be allowed to apply for a DIN. Further, we also consider ongoing management of the DIN account by authorised agents could be permitted if the director chooses.

14. What DIN related data should be made publicly and privately available (that is, only available to regulators)? Does the provision of a DIN remove the need to make director and other company officer address data publicly available? What privacy and security concerns are there around the public availability of the DIN?

We consider that the introduction of a DIN is an opportune time to remove the residential addresses, date of birth and place of birth for directors and company officers from the public register. We note that the current inclusion of this information on the public register increases the risk of identity theft and may even lead to a personal security threat of a director. A business address, rather than a personal residential address, may be more appropriate to record on the public register. We also consider it important to take into account that most communication currently is via electronic means and correspondence via postal mail has significantly reduced as the primary means of communication between parties. We support this information remaining on the private register so that it can be accessed by regulators in relation to the director's official duties if required.

We note that New Zealand has also commenced consultations on the introduction of a DIN and recently sought feedback on the removal of director's residential addresses from the public register. As part of that consultation, submissions were asked to consider how the removal might apply to historical documents attached to a company's record. We recommend Treasury give similar consideration to how historical data might be handled and appropriately balance specific safety or security concerns with the administrative cost of redacting information from documents.

15. Other matters

We are aware of an existing problem with ASIC's registers being out of date for entities subject to the Corporations Act 2001, who are also registered charities with the Australian Charities and Not-for-profit Commission (ACNC). This issue has arisen because those entities are not required to update their information with ASIC but there is no mechanism by which ASIC updates the register with information from the ACNC register.

It is understood that there is a flag on the ASIC register for each company limited by guarantee that is also a charity, to indicate that the information displayed may not be current and that they should refer to the ACNC website. However, if someone was searching the directors' register for example, the user may not get a complete and up to date summary of all directorships and may not be notified of this fact. The current information mismatch causes issues for registered charities when banks and other third parties search ASIC's registers and find outdated information which may result in the refusal of funding. This causes additional time and cost to be incurred by the charities and is also a risk to the public interest if people make business decisions based on outdated information on the ASIC register.

We strongly recommend that this gap be addressed in the modernisation of the ASIC registries. We are also concerned that this could undermine a key policy objective of the DIN, which is to 'help address phoenixing activity and increase trust among market participants.'

Appendix B

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand is a professional body comprised of over 120,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation professional accountants across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.