

21 December 2018

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By email: [regmod@treasury.gov.au](mailto:regmod@treasury.gov.au)

Dear Matthew

## Modernising Business Registers Program Review of Registry Fees

Chartered Accountants Australia and New Zealand (CAANZ) welcomes the opportunity to comment on the consultation paper “Modernising Business Registers Program Review of Registry Fees” (the consultation paper).

CAANZ is a strong supporter of the modernising business registers program (the program). The program is an integral piece of economic infrastructure that can reduce compliance costs for both business and governments whilst simultaneously improving information symmetry (or to put it in lay terms, increase transparency). This initiative also helps businesses verify the credentials of other businesses, and assists governments enforce various laws.

To maximise the benefits from undertaking this project it is essential that the information contained in the business registers is reliable and that the information is available for use at no or little cost. CAANZ supports proposals to:

- Simplify late fees. That said, improved timing and quality of communication regarding the need to lodge and pay so that late fees don't arise in the first place would be preferred.
- Remove fees for digital interaction.

Imposing an infrastructure fee for users of an Application Programming Interface (API) could limit Australia reaping the benefits of this program by discouraging innovative uses of publicly available data to facilitate business transactions and reduce business compliance costs in complying with government requirements (for example anti money laundering and modern slavery legislation).

Such a fee would also be one-sided, with many businesses compelled to provide data to government agencies for no compensation.

It is also expected that users of APIs will provide services that are not provided by the government. Accordingly, the open data standards rather than the charging framework should be the frame of reference.

If you wish to discuss our comments please contact [Susan Franks](mailto:susan.franks@charteredaccountantsanz.com) on 0401 997 342 or via email at [susan.franks@charteredaccountantsanz.com](mailto:susan.franks@charteredaccountantsanz.com)

Susan and I take this opportunity to wish you a happy and safe Christmas, and all the best for 2019.

Yours sincerely



**Michael Croker**  
**Tax Leader Australia**  
**Chartered Accountants Australia and New Zealand**

## Submission

It is noted that the consultation paper:

- Deals with the imposition of fees including:
  - registration and annual review fees,
  - late lodgment and late payment fees,
  - review, and search fees.

The consultation paper also considers an infrastructure fee. It does not extend to regulatory costs under the ASIC Industry Funding Model (IFM) or possible fees for director identification numbers or an Australian Business Number.

- States that “the government has not made a decision on the structure or quantum of fees generated by registry information and use. Recommendations from this review will be considered as part of the detailed business case being considered by Government in 2019. Any changes to the current fee regime will consider the state of the ASIC mainframe and will be delivered over the longer term as part of the Modernising Business Registers Program.”

It seems clear to CA ANZ that the government has yet to reveal the “full picture” on its plans for charging fees to business. Nor has it outlined an over-arching principle for when a user pays approach will apply.

Nor has the government identified how cost-savings associated with enhanced technology, improved data collection and intra-government data sharing practices (“hard-wired government”) are to be shared with citizens and businesses in an economy which it seeks to digitally enable.

We therefore caution against the adoption of a piecemeal approach to the charging of fees.

## Evaluation criteria

***Do you agree that the principles of making fees simpler, easier to understand and more equitable are the best guide to review registry fees? Should any other principles be considered?***

Making fees simpler, easier to understand and more equitable is appropriate. However, it is not sufficient as those criteria only capture direct impacts to businesses and do not capture external benefits of making sure that accurate current data is available to society or business more broadly.

The benefits of the MBR require government, consumers and businesses having access to *accurate* and *current* data. To ensure these criteria are met:

- Fees and penalties associated with a failure to provide data should be significant and structured in a manner to encourage compliance with data requirements.

- Actually updating data should be free and as seamless as possible to encourage the contribution of accurate and timely data.
- Updating processes should be built into the work that trusted professionals such as accountants and lawyers regularly undertake for their clients (i.e. the requirement to update should be reflected in every day practice, such as restructuring a company or dealing with a deceased estate).
- Search fees should be minimised to maximise the benefits of having accurate and timely data available.

## Reforming fees to better account for entity size

***How could the registration and annual review system be reformed to make it simpler and more equitable? Do you support the introduction of differentiated rates of annual review fees between small and large businesses? If yes, what definitions of small business do you support and how should the notification of small business status occur?***

The consultation paper discusses the idea that small companies should pay less than large companies on the basis that larger entities have better capacity to pay and the potential to benefit more from correct information.

The fees themselves are not significant<sup>1</sup> and there is already a difference between private and public listed companies which is an approximate proxy for a difference between small and big business. Adding a further category of “small” business creates another layer of complexity for a sector already struggling with relatively high compliance costs.

CA ANZ and many others have long advocated for a streamlined definition of small business. The goal remains distant but at the very least, attempts should be made not to further exacerbate the number of small business definitions and measurement thresholds.

## Simplifying late fees

***How could the late fee system be reformed to incentivise compliance and make the system simpler and more equitable?***

***Do you support the introduction of interest on late payments rather than the late payment fee? If yes, what interest rate should be charged and when should it be applied? Do you support the lowering late payment fees but increasing late lodgment fees, or eliminating late review fees? If yes, by how much should the fees change?***

### Incentives

As noted earlier, we strongly recommend that data updates be embedded into every day

<sup>1</sup> The annual review fee is \$263 for a proprietary company and \$1,224 for a public company – and comprises 60% of total fees collected by ASIC in 2017-18. The registration fee is \$488 for most companies and comprises 13% of fees collected by ASIC in 2017/8.

professional practice.

We also urge government to think of data updating as a whole of government function (as distinct from each government agency doing its own thing, thinking only of its specific data needs). This “tell us once” approach is often spoken about in the context of a hard-wired government (e.g. by the Digital Transformation Agency), but we have yet to see beneficial changes embedded into agency systems. For example, there is no reason in principle why the annual income tax form should not be a conduit for MBR data updates on matters hitherto within the domain of ASIC.

### Late fees

Late fees constituted 13% of ASIC registry fees for 2017/18. If an amount is paid/notified within one month of its due date of payment or lodgment then \$79 is payable. Amounts paid/notified after that period result in a fee of \$329.

The consultation paper indicates that consideration is being given to:

- Providing a notification system with the MBR system to reduce the incidence of late payment/notifications;
- Replacing late payment fees with an interest charge similar to that used by the ATO;
- Increase penalty fees for late lodgment of annual review information (to keep the register up to date) and to lower fees for late payments regarding the annual review process.

Our members have told us that a high level of late fees is often an indicator of poor communication or the fact that, for some business operators, the interaction with their accountants occurs only once a year.

CA ANZ has done substantial work with the ATO on ways to move away from punitive approaches, especially for isolated or minor taxpayer mistakes.

We therefore support the use of so-called “nudge techniques” such as providing electronic reminders from the MBR. The ATO has had considerable success in improving compliance by sending SMS messages to taxpayers reminding them of upcoming obligations (be they payments or lodgments). CAANZ recommends that the MBR program also consider implementing a communications methodology similar to that used by the ATO. This would be of particular assistance to smaller businesses.

CAANZ also supports the proposal to replace late payments fees with an interest charge similar to that used by the ATO to encourage earlier payment of overdue amounts. There are caveats however:

- CAs have long-standing concerns about the punishing rate of interest charged in the tax system (the Shortfall Interest Charge and the General Interest Charge).
- Users should not be clobbered for first time or honest errors (i.e. a first warning mechanism should apply).
- The good record of generally compliant MBR users should also be considered. We have even raised with the ATO a points system like that applicable to road user licences.

The regulator should recognise hardship cases, natural disasters etc, and remit interest where appropriate.

CAANZ also notes that Treasury currently has a consultation paper out entitled “Improving black economy enforcement and offences”. This paper seeks views on whether a third tier of administrative penalty that targets taxpayers who are repeat offenders should be introduced. It would be worthwhile considering whether a similar regime should be associated with MBR obligations.

Again, integrated penalty processes for late lodgment or payments which are consistent across agencies would particularly assist small businesses and those who advise them.

## Limiting or removing search fees

### ***How could search fees be reformed to make data more accessible, the system simpler and more equitable?***

Search fees were 7% of ASIC fee revenue in 2017-18.

Over 95% of searches do not incur a fee and 86% of searches occur through an information broker. Where fees are charged the cost ranges from \$9 to \$43.

From discussions with Treasury it is understood that under the proposed MBR there will be several different forms of information held:

- Digital records that are verified that are generated by interacting going forward with the new system.
- Existing digital records that won't be verified further that can be transferred across to the new system.
- PDF documents that are in the existing systems that won't be verified further that can be transferred across to the new system.
- Paper or microfiche documents in the existing system that won't be verified further and cannot be transferred across to the new system.

CA ANZ's stance is that publicly available data in digital format should be accessible at no cost for the following reasons:

1. The data that is contained in the existing and proposed system is provided by businesses at substantial but unquantified cost. The government does not pay for this data. Rather, it receives it because of imposing legal obligations on businesses.
2. The data is collected by government as it provides broader societal benefits. For example, the data helps protect consumers and small businesses. It is essential for insolvency practitioners to undertake their duties in the interests of creditors and to help detect phoenix operators.
3. It is consistent with [ASIC's role](#) to “receive, process and store, efficiently and quickly, information that is given to us [and] make information about companies and other bodies available to the public as soon as practicable.

4. The cost of accessing the digital data through digital means is minimal.
5. The storage and database costs are fundamental economic infrastructure costs which should be charged through consolidated revenue not user charges.
6. Such an approach would be consistent with that of the ACNC which provides data for free and the approaches undertaken in [New Zealand](#) and the [United Kingdom](#). It is also consistent with the Government's own [public data policy](#) and [open data policy](#).

## Introducing an Infrastructure fee

***Should an infrastructure fee be introduced if it is payable by users of an API or comparably technology?***

***Should funds raised from an infrastructure fee be set aside to cover the costs of upgrading the registry and/or a testing environment?***

***Is the Document Verification Service charging model appropriate, or is there an alternative model that should be considered?***

The consultation paper notes on page 5 that “a modernised business registry system will provide the backbone for transforming the way business interacts with Government, making it simpler and faster to start and run a business. It will provide opportunities to foster open data and allow more innovative uses of business data.” Imposing an infrastructure fee is inconsistent with this aim.

The idea of an infrastructure fee has been canvassed in previous consultations. The July 2018 consultation paper entitled “Modernising Business Registers Program” (the July paper) notes that the Government has a charging framework and it states that:

*“The Charging Framework provides that where an individual or organisation creates demand for a government activity, they should generally be charged for it, unless the Government has decided to fund the activity.”*

Rather than framing the question as to how the government can recoup costs of maintaining an integral piece of infrastructure, the question could be framed as how the government can minimise costs of providing useful data in a user-friendly manner.

Allowing third parties access to MBR data and to package/tailor that data so that end users easily benefit from that information would be supporting innovation and ensuring that the data is being effectively used to assist in the smoother running of the economy<sup>2</sup>. The ATO has already recognized this by agreeing to what we believe to be hundreds of API relationships, subject to applicants meeting digital framework integrity requirements<sup>3</sup>.

<sup>2</sup> Note that economics assumes that information is easily available.

<sup>3</sup> Refer: <https://softwaredevelopers.ato.gov.au/Usingourservices>

End users would not be paying third parties for information that they can get directly from the MBR if they were not receiving additional benefits (even if it is as simple as ease of access<sup>4</sup>) that the government is not providing. By allowing third parties access to the MBR the government is making complying with regulation easier and obtaining better data.

For these reasons, CAANZ is not supportive of infrastructure fees, particularly if levied on a once-off ad hoc basis.

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<sup>4</sup> This may also extend to understand beneficial ownership of customers and supply chains in the future.



## Appendix A

### Chartered Accountants Australia and New Zealand

CA ANZ is made up of over 120,000 diverse, talented and financially astute professionals who utilise their skills every day to make a difference for businesses the world over.

Members of CA ANZ are known for professional integrity, principled judgment and financial discipline, and a forward-looking approach to business.

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

We are represented on the Board 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.