



7 September 2017

Mr Tom Dickson
Manager, Digital Policy
Treasury
Langton Place
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By email: regmod@treasury.gov.au

Dear Sir

Modernising Business Registers

Thank you for the opportunity given to Chartered Accountants Australia and New Zealand (**Chartered Accountants**) to provide a submission regarding the Discussion Paper entitled "Modernising Business Registry Services".

Executive summary

Modernising the Government's business registers is an important initiative which has the potential to reap significant administrative savings for business, consumers and government. It can also level the playing field for businesses who are doing the right thing by making it easier and more efficient to enforce laws regarding phoenix operators, money laundering and terrorism funding, and existing Federal and State or Territory taxation and other laws. From a social policy perspective, this proposal can help clarify who owns key Australian assets (e.g. infrastructure, agricultural land, mining rights and water) and associate relationships. At a broader level, such information will inform many important research tasks, such as who is ultimately making political donations and who is benefiting from obtaining government procurement contracts¹.

Our [submission](#) earlier this year regarding the proposal to create a beneficial ownership register noted that for the modernisation to be successful there needs to be an understanding of why the business registers exist, and how the information contained in the business registers is used and by whom. There also needs to be consideration of integrity of the information, privacy and cyber security.

¹ It is also noted that this project will assist ASIC meet its requirements under the Australian Securities and Investments Commission Act 2001 to administer the law effectively and with minimal procedural requirements, receive, process and store efficiently and quickly information given to ASIC; make information about companies and other bodies available to the public as soon as practical; and promote informed participation by investors and consumers in the financial system.

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Chartered Accountants supports the Discussion Paper's exploration of these issues and we look forward to further discussions on more detailed proposals as the consultation process progresses.

We favour a single point of digital registration that provides real time and simultaneous updates of various government registers/databases. It is important that the data that is entered is verified. Accordingly, Chartered Accountants also supports the use of director identification numbers and more rigorous identity verification procedures.

Having the data readily available and usable is essential. Chartered Accountants would like the database of information which is currently publicly available to be easily searchable by a range of key criteria. The access and search functions should be free.

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.

Although it appears to be outside of scope, this project also offers the opportunity for the government to reduce red tape through the alignment of definitions and time periods – something which Chartered Accountants has long advocated.

Reducing duplication

The Interim Report of the Black Economy Taskforce states that there are over 250 different business registers² across government with business related information. This report also notes that the multiplicity of registers results in higher costs to business in having to update multiple registers for the same event. The lack of this "Tell us once" feature is estimated to have resulted in over 3.5 million director records being mismatched between the Australian Business Number registry and the ASIC registry. Such mismatched and poor data not only creates inefficiencies for government agencies and private sector stakeholders, it also creates opportunities for unscrupulous persons to avoid their obligations, resulting in an uneven playing field.

Ideally, the number of registers should be reduced by considering the extent of current duplication. However, we acknowledge that this is a huge task and there is a high risk that nothing would be achieved from such a project due to the large number of stakeholders with potentially conflicting views. It is understood that a more targeted approach is being adopted in this consultation³ that aligns with the government's digital service standard which encourages smaller scale service improvements. Thus around 32 business registers that are currently administered by ASIC and the Australian Business Registrar (ABR) are within scope.

Chartered Accountants is pleased that the Government is intending to modernise the ASIC and Australian Business Number (ABN) registers and is considering making a significant

² Page 18 https://consult.treasury.gov.au/tax-framework-division/black-economy-taskforce/supporting_documents/BE_IR.pdf It is not stated at what level of government these are at.

³ The Consultation Paper is focusing on the Companies Register and Business Names Register (operated by ASIC) and the Australian Business Number Register (ABR) hosted within the Australian Taxation Office. Consideration is also being given to the additional 29 smaller ASIC registers that could benefit from modernisation.

investment in the digital transformation of the regulation of entities, with new authentication procedures, enhanced cyber security safeguards and data collection functions. As noted in our submission regarding the proposed beneficial ownership register, a piecemeal approach to reforming these business registers is likely to attract criticism from the business sector as year by year it is confronted with additional compliance costs as the functionality of the new register gradually improves. Hence the combined consultation approach is welcomed.

Need for oversight

Whilst the modernisation of the ASIC and ABN registers can be seen as an independent project, it is important not to lose sight of the fact that this is just the first step in a whole of government approach to business modernisation and data sharing within government. As such this project needs Cabinet-level ministerial oversight and responsibility. A cabinet level decision is also required as to which government agency should lead and co-ordinate (together with the Digital Transformation Agency) the business register modernisation project. The relevant Minister would have a key role to play in communicating to the business sector and the community more generally the “big picture” of how systems are being modernised and the advantages of doing so.

It is unclear to us whether a new or existing Government organisation would need to establish and maintain a central business registry. Much depends on whether any existing agency has the expertise and/or technological capacity and/or appropriate culture to undertake the task of integrating the current vast and disparate information sets. Whilst there are existing communication procedures between companies and ASIC, in the future it is likely that other non-corporate types of business entity will be incorporated into this project. Accordingly, maintaining the status quo is not necessarily an appropriate assumption.

It is noted that a risk of centralisation is that it creates a single point of potential failure. Whether an existing agency or new agency is ultimately appointed to regulate a centralised register, it will need to be appropriately resourced. A back-up plan should also be developed for addressing the significant disruption to business which can be created by IT systems outages, such as those experienced by the ATO during late 2016 and early 2017. In this respect, the technology underpinning the central register should be compatible with, not dependent on, other agencies so that a failure in one part of the administrative system does not affect the entire system.

Integrating registries

It would be fair to say that most people who deal with government expect that the information that they have provided to one arm of government is also shared with other agencies. Currently however, this is the exception rather than the rule.

Reducing the number of times that the same information needs to be entered into different registers would be a great start. In this context, we note that the Department of Industry, Innovation and Science is undertaking a ‘[National Business Simplification Initiative](#)’ (NBSI). As part of this initiative, the Department is liaising with State government to make it easier for businesses to apply for multiple registrations⁴. Rather than centralising the various business registers, the NBSI provides links to other business registers and enables the user to give permission for data to be shared with that other register. Whilst we see this as a

⁴ Refer 17 November 2016 statement at <http://minister.industry.gov.au/sites/prod.minister.industry.gov.au/files/National%20Business%20Simplification%20Initiative%20-%20Agreed%20Statement%20from%20Ministers.pdf> The work is centred on New South Wales at the moment but Queensland is expected to be a close follower.

useful short term initiative, Treasury's current project has the prospect of providing a longer term solution.

We envisage the creation of a centralised entry point to the business register that asks for commonly used information (name, address, phone number, director details etc.). This information would be entered only once and then automatically update all other linked registers.

To reduce compliance costs, it would also be useful if information provided for one register would automatically prepopulate other registers so only additional, specific information is required to be provided. The way that the ATO pre-fills individual income tax returns is an example of how this could be achieved.

There should also be a list of subsidiary registers that could be selected to assist businesses to update the information that is particular to that register (e.g. the names of individuals appointed as advisers on the Financial Advisers Register).

It would also be useful if the register incorporated links to assist people through the process. For example, the words 'Financial Advisers Register' (**FAR**) would link to a web site that explains who does or does not need to register. Once in the FAR there would be links explaining the legal obligation of Australian Financial Service licensees including limited licensees to update and maintain on the FAR details of all persons who provide personal advice to retail clients on relevant financial products. The way that the ATO has streamlined electronic tax returns is an example of how this could be achieved

Benefits - Data linking

Linking data between various government entities can assist both government and citizens alike.

ASIC and the ACNC

Chartered Accountants is aware of a current 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 a charity that indicates the information displayed may not be current and that they should refer to the ACNC website. However, this flag would not appear if someone was searching the directors' register for example (i.e. the user would not get a complete summary of all directorships, including those for Not-For-Profit charities).

Chartered Accountants is of the opinion that there should be some linking with respect to company and director information, or details removed entirely so that one has to go to the ACNC website to get these details.

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.

Chartered Accountants strongly recommends that this gap be addressed in the modernisation of the ASIC registries.

Ultimate beneficial ownership register

Earlier this year, Treasury issued a discussion paper regarding the creation of a beneficial ownership register (**BOR**).

Chartered Accountants supports, on public policy grounds, the creation of a BOR as part of a modernised whole of government business registry as it will assist in the administration of tax and other laws. It could also provide Australian policy makers and regulators greater insights into who owns strategic assets in Australia and who is bidding for government contracts.

The effectiveness of a BOR is dependent on a number of factors, which include amongst other things, the inclusion of non-corporate entities such as trusts and partnerships, and the verification of data (see below for further details). In formulating the design of the business registry, the potential impact of a much wider BOR needs to be taken into consideration. In doing so, the benefits of having a BOR should also be included in the cost/benefit analysis of the business register.

We are aware from a presentation by Inland Revenue in New Zealand that the tax administration software currently being installed by Fast Enterprises INC (USA)⁵ includes associate-tracking functionality applicable to a range of entities, including trusts. We would assume that AUSTRAC probably uses similar technology. It may be worth talking to your counterparts in New Zealand and AUSTRAC about the technology that they use.

Anti-money laundering and counter terrorism funding

The Attorney General's Department released a consultation paper earlier this year entitled "Accountants: a model for regulation under Australia's anti-money laundering and counter terrorism financing regime". This paper proposes extending the anti-money and counter terrorism financing regime (**AML/CTF**) to accountants.

As a professional body, we are committed to acting in the public interest and contributing to a robust system to prevent criminals from using Australia for illegal activities. We support, in principle, the extension of the AML/CTF Act to cover the accounting profession as it is in the public interest. However, our support is contingent on the regime being pragmatic and proportional. Over half of accounting practices are sole practitioners, so it is critically important that the regulatory impact is light, especially in relation to the 'know your client' requirements. Careful design of the business register which enables quick and accurate searching across a range of criteria and the ability to create beneficial ownership maps and/or associate links could assist in reducing the potential costs of accountants (and other professionals, e.g. lawyers) being subject to AML/CTF.

Benefit - Assisting business and regulated industries

Utilising the information in the data base and linking it to digital communications would allow ASIC to proactively assist business. 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.

The large amount of revenue generated by ASIC from imposing fines is a good indication that the current communication systems are inadequate and that more timely information could be provided at a reduced cost for business if a more proactive approach was taken.

⁵ https://www.fastenterprises.com/wp-content/uploads/2015/12/NZ_NBR-BusinessTransformation.pdf

This would generate a saving in administration for government, a cost saving for business and better information for all.

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.

Data availability - Better search engines

Most of the data that is currently contained in the business registers that are being considered is publicly available, albeit for a small fee at times. At this point in time we do not envisage any change in the public/private status of data, though this may change as other policies unfold.

What does need to change is how this public data is made available to government, business and consumers. The data needs to be electronic and searchable. There are many valid reasons for this, ranging from commercial (e.g. background checks), enforcement activity to transparency.

In particular, the inability to conduct searches in a timely and cost effective manner to identify and intervene with rogue operators has a real cost to the Australian economy. A very conservative [estimate](#) of the cost of phoenix operators to the Australian economy in 2012 indicates that it is approximately \$1.8 to \$3.2 billion per annum⁶. The study noted that this estimate underestimates the impact of phoenix operations by:

-) taking capped compensation rather than actual compensation into account; and
-) excluding the:
 -) cost of unpaid superannuation benefits⁷,
 -) impact of unemployment,
 -) costs to government of regulation and enforcement action, and
 -) impact on business of unfair competition.

Since 2012, there has been a surge in phoenix activity.⁸

The costs of not reducing phoenix operations should be taken into the cost benefit analysis of this project.

Public data should be free

The data that is public should be available at no cost.

⁶ June 2012, Fair Work Ombudsman “Phoenix activity: sizing the problem and matching solutions” by PWC

⁷ The ATO’s Annual Reports for the periods 2009-10 to 2013-14 indicate that this unpaid superannuation benefits increased from \$82.2 million in 2011 to \$256.8 million in 2014.

⁸ – see the consultation paper “Reforms to address the misuse of the Fair Entitlements Guarantee Scheme” which indicates that phoenix operations have increased This report noted that:

-) “costs of the FEG scheme have been increasing due to the adoption of sharp corporate practices by select employers and parties associated with them, resulting in cost shifting to the scheme and through it, to taxpayers.”
-) “In the 2007-08 financial year, the cost of total assistance paid under the FEG scheme and its predecessor schemes was \$60.8 million, however by the 2015-16 financial year, the annual cost had risen to \$284.1 million.

Industry is already providing substantial funding to ASIC, expected to be at least \$240 million per annum⁹. These industry charges are as a consequence of the government implementing its Charging Framework which requires agencies to charge the non-government sector for a specific government activity such as regulation¹⁰.

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.”¹¹

It is noted that ‘as costs associated with ASIC’s registry business are not proposed to be recovered through the industry funding model¹²’ some may argue that ASIC could charge users of the registers. This however, ignores the fact that fees are also payable upon lodgement of documents with ASIC¹³. For the 2015/16 year, ASIC raised \$768 million from fees and a further \$108 million in fines¹⁴. These are not insignificant amounts.

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 provide for free and for which the companies and licensees are levied substantial amounts. In an economic sense, this information overcomes information asymmetry and in itself is a public good.

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, it does not appear reasonable to ask consumers to pay for the information again. We note also that such an approach would be consistent with that of the ACNC¹⁵ which provides data for free.

Data verification - Director Identification Number

An underlying premise of the discussion paper is that the data contained in the registers is correct.

This premise is questionable. A number of Parliamentary inquiries into phoenix operators and insolvency regarding the construction and building industry have highlighted the inadequacy of the data and data matching in the ASIC registries¹⁶.

⁹ It is estimated that industry levies will amount to \$240M. See page 7 of https://consult.treasury.gov.au/financial-system-division/asic-industry-funding/supporting_documents/ASIC_Industry_Funding_Model_proposals_paper.pdf

¹⁰ Page 4 https://consult.treasury.gov.au/financial-system-division/asic-industry-funding/supporting_documents/ASIC_Industry_Funding_Model_proposals_paper.pdf

¹¹ Page 9-10 https://consult.treasury.gov.au/financial-system-division/asic-industry-funding/supporting_documents/ASIC_Industry_Funding_Model_proposals_paper.pdf

¹² Page 8 https://consult.treasury.gov.au/financial-system-division/asic-industry-funding/supporting_documents/ASIC_Industry_Funding_Model_proposals_paper.pdf

¹³ See list of fees at <http://download.asic.gov.au/media/4306402/fee-indexation-2017-info-30-fees-for-commonly-lodged-documents.pdf>

¹⁴ See page 138 of ASIC 2015-16 annual report at <http://download.asic.gov.au/media/4058656/asic-annual-report-2015-2016-section-4.pdf>

¹⁵ https://www.acnc.gov.au/ACNC/FindCharity/ACNC/OnlineProcessors/Online_register/DownloadCharityData.aspx?noleft=1

¹⁶ For example: “Evidence before the committee suggested that it was very simple for individuals to register several companies in multiple names. Mr Frank Nadinic acknowledged registering between 32–33 companies, under ‘Frank’ Nadinic, ‘Frane’ Nadinic and Frank ‘Nadimic’. In particular, when registering ‘Royal Como Pty Ltd’ in

Chartered Accountants supports 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. Against this backdrop of support, we have the following comments:

-) Identity verification processes would need to be the cornerstone of a DIN as it would protect against phoenix operations.
-) Associate relationships should also be identified
-) To reduce compliance costs, directors' records should be able to be updated in one central location each time there is a change in details.
-) Introducing a DIN is an opportune time to consider removing directors' residential addresses from the register. We note that the current inclusion of a director's residential address 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.
-) The introduction of a DIN also 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 help determine 'control' for reporting purposes or 'beneficial ownership' for AML/CTF purposes. On this basis we recommend such information also be required on the public register.

We note that New Zealand is in the process of consulting about implementing a DIN¹⁷. We also note that the Productivity Commission¹⁸ recommended the introduction of a DIN in 2015 and that the current government¹⁹ has noted this recommendation and stated that it "will give this proposal further consideration as part of its ongoing work on insolvency reforms."

The benefits of a DIN include:

-) Providing an accurate way to distinguish between directors with similar names and identify which companies someone is a director for.
-) Making it easier for creditors and others doing business with a company to track a director.
-) Helping government agencies identify and locate directors with obligations under their relevant legislation and inform proactive enforcement activities.
-) Helping increase the accuracy of the companies register, for example, by assisting ASIC to identify people who are disqualified from being a director and helping other agencies identify cases for referral to ASIC for investigation.
-) Making it quicker for directors of multiple companies to update their details on the companies register as they would only have to update one record.
-) Improving identity verification processes and reducing the possibility of someone using a fake identity.
-) Identifying persons new to the director role so that suitable educational products can be sent to them in a bid to help them understand their responsibilities and duties.

August 1995 he provided ASIC with all 3 names." – para 12.31 of the Senate Economics Committee report into its Inquiry into Insolvency in the Building and Construction Industry.

¹⁷ <http://www.mbie.govt.nz/info-services/business/business-law/insolvency-law-working-group/report-no-2-voidable-transactions-ponzi-schemes-other-corporate-insolvency-matters/consultation-on-whether-to-introduce-a-director-identification-number.pdf>

¹⁸ <http://www.pc.gov.au/inquiries/completed/business/report/business.pdf> Recommendation 15.6

¹⁹ <http://treasury.gov.au/PublicationsAndMedia/Publications/2017/Gov-response-to-Productivity-Commission-Inquiry>

It is also noted that recommendation 5.34 of the Senate Economics Committee inquiry into the insolvency in the building and construction industry “recommends that ASIC, in consultation with ARITA, work out a method whereby external administrators can indicate clearly in their statutory reports whether they suspect phoenix activity has occurred. For example, to serve as a red flag to ASIC, include a box in the reporting form that external administrators would tick if they suspected phoenix activity.”

The role of intermediaries

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 regarded as highly accurate in the eyes of the regulators.

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. Chartered Accountants strongly believes that accountants, governed by strong ethical principles and with appropriate accreditation (if considered necessary) have a leading role to play in new registry arrangements. In modernising the way Australia does business the role of trusted intermediaries should be factored into the design of new systems.

Digitalisation needs legislative change

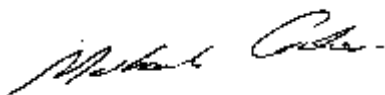
It is noted that the response to question 15 of the frequently asked questions section of the Discussion Paper notes that: “currently some areas of legislation are worded in an outdated way that, for example, requires hard copy documents to be used even where new technological solutions can provide a better experience for the registry users. [and that] the Government may bring forward some proposed changes to relevant legislation to enable more flexibility to allow modern technology and processes to be considered”. Chartered Accountants strongly supports the digitalisation of documents, application forms etc. It is noted that ABNs are applied for entirely online²⁰.

Appendix A contains more information about Chartered Accountants Australia and New Zealand.

If you wish to discuss our comments please contact:

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Yours sincerely



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²⁰ <https://abr.gov.au/For-Business.-Super-funds---Charities/Applying-for-an-ABN/>

Appendix A: 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 accounting professionals 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.