

25 October 2018

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



Dear Sir or Madam

## Modernising Business Registers and Director Identification Numbers legislation

Chartered Accountants Australia and New Zealand welcomes the opportunity to provide a submission to the Treasury on the draft *Modernising Business Registers and Director Identification Numbers* legislation. Our submission is focused on the areas of the legislation and explanatory memorandum where we have feedback. Appendix A provides our detailed submission and Appendix B provides more information about Chartered Accountants Australia and New Zealand.

### Key points

- We have long advocated for the modernisation of Australia's business registers. We commend the government on proposing a modern registry regime that is flexible, technological neutral and governance neutral.
- We consider it important for there to be adequate consultation of disallowable instruments relating to the data standards and disclosure frameworks for business registries. We suggest that consultation guidance be given in the explanatory memorandum.
- We are concerned that the ability for the registrar to cancel the Director Identification Number (DIN) if the applicant doesn't become an eligible officer within 12 months is at conflict with the intention that a DIN is allocated for life. As the future use of DINs, particularly by the private sector, is unknown, we are concerned that there is a risk of possible misuse. We recommend that alternative approaches are considered such as discretionary extensions to the application period or identifying DINs as inactive.

We look forward to participating in future consultations on data standards and disclosure frameworks when they are released. Should you have any queries concerning the matters discussed in our submission or wish to discuss them in further detail, please contact Karen McWilliams via email at [REDACTED] or phone [REDACTED] or Susan Franks via email at [REDACTED]

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Simon Grant'.

**Simon Grant FCA**  
**Group Executive**  
**Advocacy & Professional Standing**  
**Chartered Accountants Australia and**  
**New Zealand**

A handwritten signature in black ink, appearing to read 'Karen McWilliams'.

**Karen McWilliams FCA**  
**Business Reform Leader**  
**Advocacy & Professional Standing**  
**Chartered Accountants Australia and**  
**New Zealand**

# Appendix A

## Modernising business registers

We have long advocated for the modernisation of Australia's business registers. We favour a single point of registration that provides real time and simultaneous updates of various government registers and databases, to reduce compliance costs for business and government. We commend the government on proposing a modern registry regime that is flexible, technological neutral and governance neutral.

### 1. Multiple registrars

We understand that transitioning from multiple registers to a single register will take time and a great amount of effort. As such we support the ability for there to be different registrars for different functions of the register as a transitional measure. However, the medium to long term goal should be for a single register and registrar.

### 2. Consultation and disallowable instruments

We also understand that using disallowable instruments is quicker and more flexible than requiring legislative change. As such, these could assist in making the administration of the register more efficient and effective. We note that the explanatory memorandum reiterates several times that legislative instruments are subject to parliamentary review.<sup>1</sup> It however is largely silent on how consultation will occur in relation to legislative instruments. That said, paragraph 1.62 of the explanatory memorandum states that the Minister can provide directions<sup>2</sup> regarding the consultation processes that are to be followed prior to making data standards or the disclosure framework in addition to those required by the Legislation Act 2003.

Under the Legislation Act 2003 (C'th), a failure to consult does not affect the validity or enforceability of a legislative instrument<sup>3</sup> but the explanatory statement will need to describe what consultation there was, or the reasons for no consultation.<sup>4</sup> The Legislation Act 2003 also requires the rule maker, before issuing a legislative instrument, to be satisfied that any consultation that is considered appropriate and reasonably practical by the rule maker to be undertaken.<sup>5</sup> However, we note that there are also exceptions to this requirement – namely matters of a 'minor or machinery nature' which do not substantially alter existing arrangements and matters required as a matter of urgency. We consider it important for there to be adequate consultation of disallowable instruments relating to the data standards and disclosure frameworks for business registries. We suggest that consultation guidance be given in the explanatory memorandum.

We note that during the transition period, there will be opportunities for existing registry information to be reviewed to ensure that the data requirement is still necessary and appropriate to implement the legislative intent and balance the regulatory burden that it creates. As noted in our earlier submissions,

<sup>1</sup>"Legislative instruments and their explanatory statements must be tabled in both Houses of the Parliament within six sitting days after the date of registration of the instrument on the Federal Register of Legislation. Once tabled, the instruments will be subject to the same level of parliamentary scrutiny as regulations (including consideration by the Senate Standing Committee on Regulations and Ordinances), and notice of a motion to disallow the instruments may be given in either House of the Parliament within 15 sitting days after the date the instruments are tabled."

<sup>2</sup> Which are also disallowable instruments and as such reviewable by Parliament.

<sup>3</sup> Section 19 Legislation Act 2003

<sup>4</sup> Section 26(1A) Legislation Act 2003

<sup>5</sup> Section 17 Legislation Act 2003

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.

### 3. Access to information

We anticipate that data standards will be written to handle the correction of information held by the registrar. We note that the legislation and explanatory memorandum are silent regarding whether or not a person has the ability to access information held by the registrar about them to enable such changes to occur. We suggest that to provide comfort to people and entities whose information is being collected, that this issue be specifically addressed in the explanatory memorandum.

#### Director identification numbers

We strongly support the implementation of a director identification number (DIN). The explanatory memorandum discusses how DINs can benefit the administration of business laws from the perspective of government entities. It is highly likely that the private sector will also discover the benefits of DIN.

### 4. Applying for a DIN before being appointed a director

We note that the draft legislation enables individuals who intend to become directors within 12 months to apply for a DIN. This is then cancelled by the Registrar if they do not become a director within 12 months of being allocated a DIN. The potential future use of DINs, particularly by the private sector and wider community, is unknown and the ability to apply for a DIN before appointment is likely to influence this future use.

We note that Treasury has recently released a [consultation paper](#) about Australian Business Numbers (ABNs). In this paper, it notes that ABNs were introduced “to provide a unique identifier for businesses to use when dealing with government, and to support the introduction and administration of the Goods and Services Tax. However, the value and meaning of an ABN within the community has expanded over time, with the ABN now considered a key business credential.” The consultation paper also notes that “free and easy access to ABNs is facilitating black economy behaviour in some circumstances by lending a false perception of legitimacy to fraudulent operations.” As a consequence, the consultation paper is largely focused on tightening the operation of the ABN system.

We are concerned that making a DIN available in advance of a directorship may result in the misuse of DINs and create concerns similar to those now being experienced by the ABN system. Further, from our engagement with Government agencies as part of the consultation process, we understand that there is clear intent that a DIN is allocated for life. We consider that the automatic cancellation of the DIN if no appointment is made within 12 months to be contrary to this intent. We also consider the 12 month period to be arbitrary.

We understand from Paragraph 2.57 of the explanatory memorandum that this mechanism is to enable “prospective directors to apply for a DIN prior to their appointment where convenient or necessary (for example, because they may need to travel shortly after their appointment).” We consider that a lower risk approach would instead be to allow a person to apply for the Registrar’s discretion to have additional time to apply for a DIN due to exceptional circumstances

Alternatively, should it be decided to retain the provision for individuals to apply for a DIN before appointment as a director, then we recommend careful consideration be given as to the evidence required to support the application and that rather than cancelling the DIN if an appointment is not made, that instead the DIN be made inactive.

## 5. Nomenclature

The legislation already includes provisions for the application of a DIN to be extended to other company office holders, e.g. company secretaries, as determined by the Commonwealth Registrar. To avoid any potential confusion arising from the use of term Director Identification Number or DIN, we recommend the explanatory memorandum and wider communication clearly refers to application of DINs to directors and other eligible persons to avoid any potential future confusion that may arise with the nomenclature.

## 6. ACNC register

We note that the ACNC register is out of scope for this initial modernisation of business registers. However, we consider it important for DINs allocated to directors to also be included in the Australian Charities and Not-for-profit Commission (ACNC) register.

## 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.