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Dear Mr Sedgwick

BUSINESS REGISTER MODERNISATION AND DIRECTOR IDENTIFICATION NUMBERS

MEAA welcome the opportunity to provide comment on proposed legislation to introduce new Director Identification Numbers and streamline business registry services.

The reforms will see over 30 ASIC registers and the ATO's Australian Business Registrar within the Australian Taxation Office (ATO) form a single register, managed by the ATO. ASIC will continue to administer all of its regulatory functions under the current ASIC laws.¹

The draft legislation broadly outlines the scope of information to be collected by the regulators. The detail of what information may be collected will be set out in **data standards**. The Registrar will make data standards covering:

- (a) *what information may be collected for the purposes of the performance of the Registrar's functions and the exercise of the Registrar's powers under this Act or the Transitional Act;*
- (b) *how such information may be collected;*
- (c) *the manner and form in which such information is given to the Registrar;*
- (d) *when information is to be given to the Registrar;*
- (e) *how information held by the Registrar is to be authenticated, verified or validated;*
- (f) *how information held by the Registrar is to be stored;*
- (g) *correction of information held by the Registrar;*
- (h) *the manner and form of communication between the Registrar and persons who give information to the Registrar or seek to access information held by the Registrar;*
- (i) *integrating or linking information held by the Registrar.*

The draft legislation also creates a **disclosure framework**, which will regulate how information collected under the data standards can be disclosed, if at all. The relevant clauses state:

- (1) *The Registrar may, by legislative instrument, make a disclosure framework relating to disclosing protected information.*
- (2) *Without limiting subsection (1), the disclosure framework may provide for any of the following:*
 - (a) *circumstances in which information must not be disclosed without the consent of the person to whom it relates;*
 - (b) *circumstances in which de-identified information may be disclosed;*
 - (c) *circumstances in which information may be disclosed to the general public;*

¹ See: <https://treasury.gov.au/consultation/c2018-t330649/>

- (d) *circumstances in which confidentiality agreements are required for the disclosure of information;*
- (e) *imposing conditions on disclosure of information.*

The proposed legislation also states that:

The disclosure framework must not provide for disclosure of protected information unless the Registrar is satisfied that the benefits of the disclosure would outweigh the risks of the disclosure (taking into account any mitigation of those risks in accordance with the disclosure framework).

in connection with particular functions or powers of the Registrar.

Director Identification Numbers (DINs)

MEAA supports the introduction of Director Identification Numbers (DINs) as a measure that will assist in preventing and prosecuting phoenix activity and improve the integrity of the existing registry database. At present, it is common for the same person to have more than one record, making positive identification difficult for registry users.

However, DINs are not a substitute for information capable of being matched against other information (including land registry records, court records and other public sources) to obtain a positive identification of an individual.

Regrettably, the proposed new laws' will lead to a reduction in the level of registry information currently available to the public. MEAA point to paragraph 2.6 of the Exposure Draft Explanatory Materials, which states:

*'... the new regime will improve data integrity and security, including by allowing directors to be identified by a number rather than by other more personally identifiable information such as their name and address'.*²

MEAA strongly oppose this step. Any reduction in the level of available information will have implications for coverage of business activities and business operators who have attracted the attention of regulators such as ASIC and the ATO. Company records do not exist in a vacuum and must be capable of being accurately related to the world outside of the registry to be of any practical use.

Journalists, investigators, investors, insolvency professionals and others rely on these records to perform their duties and any reduction in the material available has the capacity to damage the integrity and transparency of Australia's financial and political systems.

Data Standards and Disclosure Framework

Both the data standards and the disclosure rules are yet to be developed. Their precise terms will be provided through forthcoming subordinate legislation (i.e. at the administrative level) rather than as a matter for conventional parliamentary determination.

This provides an excessive level of discretion to the Registrar and the agencies that will assist in deciding what information should be made public and which shall not.

² See page 26 of Materials. *Emphasis added.*

The Registrar will have considerable scope to determine and limit the level of information available under the new rules. For example, the draft legislation provides that *'[T]he disclosure framework must not provide for disclosure of protected information unless the Registrar is satisfied that the benefits of the disclosure would outweigh the risk.'*

The definition of protected information in the Bills³ provides absolutely no sense of the type of information that will be 'protected' and prima facie, withheld from the public. We are also none the wiser about how the Registrar will satisfy him or herself that information should be made public or not.

It is hard to reconcile the proposed legislation's objectives with the intentions set out in Treasury's briefing paper from July 2018 that one of the Government's ambitions through this reform process is to 'improve the quality, trustworthiness and accessibility of business data'.⁴

MEAA believe that it is essential to mandate minimum levels of disclosure in the proposed legislation. This will avoid the ongoing risk that information levels will be cut in subordinate legislation.

We therefore seek a commitment that all information currently publicly available from registers continues to be collected and made publicly available. In the case of material on the registries maintained by the Australian Securities and Investments Commission, this includes the full name, residential address and date of birth of company directors. (We note that mechanisms already exist for directors who have a genuine reason to keep their residential address confidential to ASIC to do so.)

Consideration should also be given to increasing the categories of information made publicly available. For example, in comparable nearby jurisdictions (Singapore and Hong Kong) the identity or passport numbers of directors are a matter of public record.

The legislation resembles one step forward with respect to introducing DINs, but several steps back when it comes to publicly available information.

We would be pleased to meet with you to discuss our concerns.

Yours sincerely



Paul Murphy
MEAA Chief Executive

³ Protected information is defined as:

- (a) *obtained by a person in the course of the person's official employment; and*
- (b) *disclosed to the person or another person, or obtained by the person or another person:*
 - (i) *under, or in relation to, this Act or the Transitional Act; or*
 - (ii) *under another law of the Commonwealth;*

⁴ Modernising Business Registers Program, Treasury, July 2018, pg 5