

15 August 2018

Consumer and Corporations Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: regmod@treasury.gov.au

Dear Sir/Madam

MODERNISING BUSINESS REGISTERS PROGRAM

New Horizons Enterprises Limited (**New Horizons**) is pleased to provide the following feedback on the Federal Government's consultation paper regarding the Modernising Business Registers Program (the **Program**).

New Horizons is a well-established, not-for-profit organisation with 50 years' experience helping people enhance their wellbeing. New Horizons accesses both the Australian Business Register (**ABR**) as well as the business registers administered by the Australian Securities and Investments Commission (**ASIC**) in order to conduct due diligence on its service providers prior to on-boarding.

RECENT EVENTS LEADING TO THIS FEEDBACK

We summarise below our recent experience with using the ASIC company register and our interactions with ASIC in relation to the re-registration of one particular company.

The company in question is [REDACTED], which was deregistered on 23 July 2017 for non-payment of ASIC fees.

Throughout 2016 and part way through 2017, the Former Company provided maintenance services to New Horizons, however, recently through an internal investigation, it was discovered that there were some anomalies with the work which was invoiced.

This investigation highlighted that the Former Company was deregistered. However, a company with the same name was registered with a new ACN [REDACTED] only 6 months after the deregistration of the Former Company (the **New Company**).

According to the company extracts obtained via ASIC, the New Company is owned and operated by the same person who was the director and shareholder of the Former Company.

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Through our investigation, we questioned the owner, who informed New Horizons that ASIC had advised him to register a new company rather than re-instate the deregistered company, because it was easier.

When we contacted ASIC and described the above scenario, ASIC advised that:

- many companies are deregistered owing to non-payment of their annual company fees
- it is easier to register a new company (even if it has the same name/director/shareholder of a deregistered company), rather than to reinstate a deregistered company
- it does not conduct a search of the de-registered companies' database to determine whether the new company registration really is a re-registration of a deregistered company.

New Horizons is not able to recover against a deregistered company and is not legally able to bring an action against the New Company. This we believe is an unintended consequence of the current legislation.

While there is the option of applying to the courts for reinstatement of the Former Company, this option appears inherently unfair given New Horizons is a non-for-profit organisation, and that such action would divert funding away from those in need of our help.

If ASIC had reinstated the Former Company, then this would allow creditors like New Horizons to have the ability to recover costs, without the need to first to go a court to reinstate the Former Company.

FEEDBACK IN RESPECT OF THE PROGRAM

What legislative changes are required to allow for the modernising of business registers?

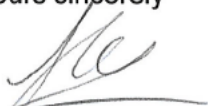
Currently, if a person is aggrieved by the deregistration of a company, that person must apply to the Court for its reinstatement. Only when the Court so orders, is ASIC empowered under Chapter 5A of the *Corporations Act 2001* to reinstate a deregistered company.

Non-for-profit organisations should not have to resort to Court applications, which may be costly. Given our recent experience, we urge the legislation be expanded to enable ASIC or the relevant Registrar the power to reinstate deregistered companies on application from a person aggrieved by the deregistration. Particularly in situations where the deregistration occurred for non-payment of ASIC fees.

ASIC or the relevant Registrar should also conduct a search of the de-registered companies' database to determine whether a new company registration is really a re-registration of a deregistered company. Particularly in situations where the new company is of the same name and has the same director and shareholder as a deregistered company.

If you have any further questions, please do not hesitate to contact me on [REDACTED].

Yours sincerely



Jean Louie

Compliance and Policy Manager

