



The Freedom Partnership
End Modern Slavery

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Submission from the Synod of Victoria and Tasmania, Uniting Church in Australia and The Salvation Army Australia on *Commonwealth Registers Bill 2018*

26 October 2018

The Synod of Victoria and Tasmania, Uniting Church in Australia and The Salvation Army welcome this opportunity to make a submission on the *Commonwealth Registers Bill 2018* and the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2018* exposure drafts.

The Synod has significant experience of people being able to set up front companies in Australia for the purposes of shifting proceeds of crime from overseas into Australia, money laundering, tax evasion, illegal underpayment of employees, fraud and concealment of beneficial ownership. These activities cause real and serious harm to people. People can register companies using fictitious names, false addresses, false and multiple dates of birth and false birth places almost with impunity. There is no easy way to search the ASIC databases to verify the identity of people or the accuracy of the corporate registry information. For example, we did a scan of the ASIC database on the name "James Bond" and believe that, in addition to a number of real people with that name, one James Bond may have been a fictitious person, but it was impossible for us to determine if that was the case. There is a great need to modernise Australia's business registers so that the general community and businesses can have confidence that the information contained within the registers is accurate. Accurate information in the registers is important so that businesses that are reporting entities for the *Anti-Money Laundering Counter Terrorism Financing Act 2006* find it easier to carry out the required due diligence when dealing with entities on the registers. Further the registers need to be searchable and readily accessible at a reasonable cost.

In addition to the work the Synod does investigating harmful activities carried out by businesses and individuals, the submitters engage in numerous business transactions, some of significant financial size (such as property developments around churches, housing, community service agencies, aged care facilities) and need to conduct due diligence on those we are entering into business relationships with.

The submitters support the bringing together of the government business registers, to reduce duplication and administrative burden on businesses. However, this should also be an opportunity to carry out reforms to ensure the integrity of the information contained in the registers.

It is of concern to the submitters that while the Bills will allow the Minister to empower the registrar to request the collection of additional information, but that such collections can only proceed on a voluntary basis and there will be no penalties for non-compliance. This would seem to be of great benefit to criminals using a corporate vehicle as a front to conceal their identities or using front people to conceal that they are the ultimate beneficial owners of the corporate entity.

The submitters note that section 40-5 of the *Australian Charities and Not-for Profits Commission Act 2012* specifies that the register for Australian charities and not-for-profits must contain:

- (i) the entity's name;*
- (ii) the entity's contact details (including its address for service);*
- (iii) the entity's ABN;*
- (iv) the type of entity as which it is registered or has been registered;*
- (v) each subtype of entity (if any) as which it is registered or has been registered;*
- (vi) the date of effect of each such registration;*
- (vii) the entity's governing rules;*
- (d) information statements given by registered entities under Division 60 (except to the extent (if any) that information in an information statement is classified, in the approved form mentioned in section 60-5, as "not for publication");*
- (e) financial reports, and any audit or review reports, given by registered entities under Division 60;*
- (f) the details of the following matters (including a summary of why the matter arose, details regarding any response by the relevant registered entity and the resolution (if any) of the matter):*
 - (i) each warning issued to a registered entity by the Commissioner under Division 80;*
 - (ii) each direction issued to a registered entity by the Commissioner under Division 85;*
 - (iii) each undertaking given by a registered entity and accepted by the Commissioner under Division 90;*
 - (iv) each injunction (including interim injunctions) made under Division 95;*
 - (v) each suspension or removal made under Division 100;*

The submitters support the Bills specifying an equivalent level of disclosure for businesses listed in the registry. The Bills should specify the minimum level of information on the register that will be made public, rather than leaving this entirely to regulations. The Bills should then allow the registrar to be able to require the provision of more information than the minimum outlined in the Bills.

We support allowing information held by the registrar in court cases, but again this points to the vital importance that the information in the register is accurate.

The submitters support the introduction of a Director Identification Number (DIN) to greatly improve on the registration of company directors. The Synod has had direct experience of well-known people being listed in the existing ASIC registers under multiple dates of birth. In some cases we have been unable to establish if certain directors are the same person, with names, dates of birth and places of birth being similar but not the same. The current situation can assist people using companies for criminal or unethical activities conceal their identity or conceal links to other companies they are a director in.

The submitters support there being civil and criminal penalties for directors that fail to apply for a DIN within the required timeframe. We also support the ability for infringement notices to be issued for such conduct, as well as civil and criminal penalties for deliberately providing a false DIN to a

government body or another business, providing false information to the registrar or intentionally applying for multiple DINs.

The submitters support that existing company directors should have to obtain a DIN within 15 months of the law coming into effect. The period for this should not be longer.

The submitters are concerned that the Bills leaves too much to regulation and fail to outline key functions the register should serve. For example, the Bills should enshrine that the register should be made more easily searchable. It should be possible to search on a person and find out how many companies they are a director in and how many they are a beneficial owner in. This is important as it enables people to confirm who they are dealing with and flags suspicious or concerning behaviours. The UK Government had previously revealed that 6,150 people acted as directors of more than 20 UK registered companies, with some people being directors in over 1,000 companies, clearly indicating some directors were acting as front people for the ultimate beneficial owners. Given there has been no similar analysis of the ASIC corporate register, we have no idea how large this problem is in Australia and there is no easy way to easily search the ASIC database to determine if this problem exists. Further, a research report by World-Check had previously shown that almost 4,000 people who appear on various international watch lists were registered as directors of UK companies. This included 154 people allegedly involved in financial crime, 13 individuals wanted by Interpol for alleged terrorist activities and 37 accused of involvement in the drugs trade.

While the government should not be allowing people who are wanted criminals to register as directors and beneficial owners of companies, it should also be easy for people entering into business relationships to search the business registers to determine if there is any suspicious registering and deregistering activity by the people they are entering into business with as part of their due diligence. This will allow reputable businesses to better avoid entering into business relationships with people where there are higher risks of unethical or illegal activity taking place, or having in place appropriate safeguards in the business relationship.

The *Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2018* should specify a level of identity verification required to ensure the person obtaining the DIN is who they say they are, living at the address they say is their place of residence and their date of birth and place of birth is their real date of birth and place of birth. It should not be possible for someone to be able to 'steal' or borrow identity documents from another person and use their identity documents to register as a director. As long as these objectives can be achieved, then the submitters are flexible in the requirements to ensure this is achieved. For example, it might be possible for a person to go to a post office to verify their identity to register a company, in much the same way a person can verify their identity to obtain a passport at a post office.

The Synod would support amendments so that the registrar would be able to require a person to provide their tax file number to verify their identity. However, it would seem that requiring someone to provide their passport could also achieve the same outcome. Such requirements go beyond the existing Bill.

The Bill should also require a director to disclose if they are acting in the role as an agent for someone else, to reveal those people acting as professional directors of large numbers of businesses to conceal the identity of the real directors of the businesses. There should be a penalty for not revealing that a person is acting as an agent for another person in a director role.

The submitters oppose authorised agents being able to apply for a DIN on behalf of their clients. In the Synod's experience too many agents, such as corporate service providers and accountants, fail to

adequately verify the identity of the people they are acting on behalf of, or in more extreme cases collude to conceal the real identity of the person. In the same way an agent is not able to obtain a passport on behalf of a person, it should not be permissible for an agent to obtain a DIN for another person.

The submitters support that a person has a defence against offences in the Bill if they were appointed as a director of a company without their knowledge. However, it would seem important that the registrar has responsibility to confirm that people have consented to be a director of a company when the company is registered and through any updating of the list of company directors. This seems reasonable and, by comparison, Australia Post checks with people when a request to redirect mail is made so that a third party is unable to redirect a person's mail without their consent.

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