

26 October 2018

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

Email: regmod@treasury.gov.au

Dear Sir/Madam

**Commonwealth Registers Bill 2018 and Treasury Laws Amendment
(Registries Modernisation and other Measures) Bill 2018**

Governance Institute of Australia (Governance Institute) is the only independent professional association with a sole focus on whole-of-organisation governance. Our education, support and networking opportunities for directors, company secretaries, governance professionals and risk managers are unrivalled.

Our members have primary responsibility for developing and implementing governance and risk frameworks in public listed, unlisted and private companies. They are frequently those with primary responsibility for dealing and communicating with ASIC and interacting with business registries. Our members have a thorough working knowledge of the *Corporations Act 2001* (the Corporations Act). We have drawn on their experience in our submission.

Governance Institute is a member of the ASIC Business Advisory Committee.

Governance Institute provided a submission in response to the Modernising Business Registry Services Discussion Paper on 15 September 2017 and participated in the one-on-one legislation discussion with the MBR project team on 15 October 2018 and the DIN accelerated co-design session on 16 October 2018.

Governance Institute welcomes the opportunity to comment on the *Commonwealth Registers Bill 2018* and the *Treasury Laws Amendment (Registries Modernisation and other Measures) Bill 2018* (the draft bills).

Key recommendations

Governance Institute makes the following recommendations in response to the MBR and DIN project:

Operation of DIN

- extend the DIN to company secretaries
- extend the time period in which a new director or company secretary has to apply for a DIN from the current period of 28 days to a period of 60 days
- implement the DIN scheme at the same time as the MBR project

Operation of Register

- continue consultations with the ACNC to improve the linkages between the ASIC and ACNC registers and work towards including the ACNC register in the list of those administered by the Commonwealth Registrar
- continue consultation with key stakeholder groups on the content of the Data Standards and Disclosure Framework and the implementation of the MBR project and the DIN scheme
- ensure as part of the Disclosure Framework that the home address, place and date of birth of directors and company secretaries are not included in the public part of the Register.

We provide more detailed comment on the draft bills below.

Extend the DIN scheme to company secretaries

In our previous submission on the MBR and DIN project Governance Institute outlined the reasons behind its longstanding support for the introduction of a DIN, which includes company secretaries as well as directors.

We note that the draft bill does not include company secretaries in the DIN but provides instead for the DIN requirement to apply to an 'eligible officer' defined as '.....any other kind of officer of the registered body who is prescribed by the regulations'. This provision would enable the DIN to be extended to any such officer of the body corporate by way of regulation. We assume however that any such extension would take place after the bill came into effect and the DIN regime introduced.

Governance Institute strongly recommends that the bill be amended to include company secretaries in the definition of 'eligible officer' rather than adding company secretaries by regulation.

The introduction of the DIN alongside the MBR represents a major change to both the way that company details are viewed by users, and how they interact with the Registry. Failure to include company secretaries in the DIN regime will mean that there is a 'missing piece of the puzzle' when it comes to company registers. A director of the company will be identified by way of a DIN, which evidences that the director's identity has been verified. Under the current bill, the company secretary will not have an identity number nor be able to show that their identity has been verified. This will be confusing for those searching company records for the details of the office holders of the company and will raise questions amongst members of the community as to why one set of office holders has a DIN while the other set does not.

Our members report that, in addition to being the company secretary of a group of companies, they are often also a director of subsidiary companies in a group. Under the bill, this will create an anomaly on the Register. As director, they will be recorded with a DIN, and as a company secretary their name will presumably be recorded without a DIN.

Company secretaries are frequently those with primary responsibility for dealing and communicating with ASIC and interacting with business registries. Governance Institute considers that from the point of view of administrative efficacy it makes sense for company secretaries to have their identities verified and to be given a DIN.

Extend the time period in which a new director or company secretary has to apply for a DIN from the current period of 28 days to a period of 60 days

We note that the bill provides that a new director must apply for a DIN within 28 days of appointment. Failure to comply with this requirement is a strict liability offence, which attracts criminal and civil penalties. Breaches of this provision will also be subject to the infringement notice regime. While the explanatory materials indicates that the regulator will most likely use the infringement notice regime for dealing with minor breaches, this will be of little comfort to

those who forget to apply or overlook the requirement and are faced with significant criminal and civil penalties.

We agree with the Government that because the obligation to apply for a DIN involves strict timeframes and applies to a large number of people, minor breaches may be expected to occur with some frequency. The requirement to apply for a DIN is a new obligation that will take time for people to become familiar with, particularly as by definition they will be taking on the role of director for the very first time. The time for new directors to apply for a DIN is particularly short when compared to the 15 month period given for existing directors to apply.

We understand from our discussions with Government that the verification process will be one that the new director will need to undertake personally – they will not be able to delegate that task to their accountant or agent.

Governance Institute therefore recommends that the time period for new directors (and company secretaries if the DIN requirement is extended to them) to apply for a DIN be extended from the proposed 28 day period to 60 days to take into account the challenges involved when imposing new obligations on individuals which attract significant penalties.

Implement the DIN at the same time as the MBR project

We understand from our discussions with Government that if the DIN project is further advanced than the MBR project, there is a possibility that the DIN regime will be implemented before the new Registry.

Governance Institute strongly recommends that the DIN regime be implemented at the same time as the MBR project. To implement the DIN regime first would be ‘the worst of both worlds’. Directors (and possibly company secretaries) would be subject to additional requirements to verify their identity but would not receive any benefits from an updated register system. In particular, their full personal details would still be publicly available on the ASIC register, even though they had undertaken identity verification and been allocated a DIN

Continue consultations with the ACNC to improve the linkages between the ASIC and ACNC registers and work towards including the ACNC register in the list of those administered by the Commonwealth Registrar

We note that the MBR project team has communicated with the ACNC and is looking to work with them to overcome the problems currently faced by users of the ACNC and ASIC registers and to improve the interface between the two registers.

Governance Institute reiterates the issues that our members experience with the lack of interaction between the ACNC and ASIC registers. Currently, the details of the company secretary of a charitable company limited by guarantee, do not appear on the ACNC register, while the directors’ details appear on the ACNC register and not on the ASIC register. This creates confusion for users. It also creates significant difficulty for company secretaries who are not responsible persons as they do not appear on the ACNC register and are unable to prove to third parties accessing the ACNC register that they are a company secretary of the charity. The public does not understand that the ASIC register for charitable companies has been superseded by the ACNC register and that the director details on the ASIC register may be out of date.

We understand that the ACNC register is not currently included in the MBR project. Governance Institute strongly urges the Government to include the ACNC register in the MBR project as soon as possible and in the meantime to liaise closely with the ACNC to improve the linkages between these registers. It is important to include the charitable sector in initiatives designed to reduce complexity for business in managing their legal and regulatory obligations and bring

together registry services, particularly given that in the majority of cases charities are time and resource poor.

Continue consultation with key stakeholder groups on the content of the Data Standards and Disclosure Framework and the implementation of the MBR project and the DIN

Governance Institute welcomes the replacement of prescriptive requirements with the requirements of the proposed Data Standards and Disclosure Framework. We note the flexibility that the proposed data standards can provide. Our members also support the flexibility offered by the 'tell us once' approach to the collection of information, minimising the number of interactions clients have with the Registry.

We encourage the Government to ensure that the Data Standards enable users to provide information to the Registry in electronic form. The ability to lodge documents electronically greatly assists users to comply with the law in a modern, cost and time efficient way.

Clearly, much of the detail of how the Registry will operate in practice will be contained in the Data Standards and Disclosure Framework. We encourage Government to consult widely on the content of the Data Standards and Disclosure Framework. Governance Institute's members welcome the offer extended by the MBR project team to meet with them to discuss in greater detail the interactions which take place between our members and the ASIC registry. This will enable Government to gain an understanding of the pain points that currently exist in dealing with the ASIC registry. Our members are also keen to meet with the DIN team to provide feedback on the practical aspects of the implementation of the DIN. We consider that this engagement would be very valuable from both our perspective and that of the Government and will improve the outcome.

Ensure as part of the Disclosure Framework that the home address, place and date of birth of directors and company secretaries are not included in the public part of the register

The exposure draft explanatory materials state that the new DIN 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. In our previous submission, we outlined our support for the inclusion of company secretaries in the DIN regime due to our concerns about the publication of personal data and information confidentiality and security. We reiterate our concerns about the security of our members' personal information. Each director and company secretary is currently required by section 205B of the Corporations Act to provide the following personal details to ASIC which are then made publicly available on the ASIC register:

- given names and family names
- all former given names and family names
- date of birth
- place of birth
- residential address

We recommend that the Disclosure Framework should provide that personal details not be made publicly available on the Register.

Governance Institute looks forward to being involved in further deliberations on the MBR and DIN projects.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Meegan George', with a long horizontal flourish extending to the right.

Meegan George
Acting Chief Executive