

15 September 2017

Mr Tom Dickson
Manager
Digital Policy
Financial System Division
The Treasury
Langton Crescent
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Dear Mr Dickson

Modernising Business Registry Services

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 regulators such as the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA). In listed companies, they have primary responsibility for dealing with the Australian Securities Exchange (ASX) and interpreting and implementing the Listing Rules. 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 welcomes the opportunity to comment on the *Modernising Business Registry Services Discussion Paper* (Discussion Paper). We also thank Treasury for accepting this Submission after the due date. The original timeframe for consultation would not have allowed sufficient time for our policy committees to give proper consideration to this Submission.

Our members support the Principles for modernised business registry services set out in the Discussion Paper, particularly, the Government's commitment to reducing complexity for business in managing their legal and regulatory obligations and bringing together registry services where possible. Our members consider if possible, businesses should have a 'single point of entry' to these Registers. We have concerns about the proposed public release of some data by default which are set out below.

We have not responded to each of the detailed questions set out in the Discussion Paper but have confined our comments to the following consultation questions.

Do you see other opportunities to reduce duplication of business registers and associated services across government?

One issue that our members have raised with us is that company secretaries experience difficulties with the back office operations of ASIC, particularly the payment of annual renewal fees. If a company uses an incorrect reference number in their company renewal form or pays an incorrect amount it is very difficult to have those funds applied towards the correct company

account and even more difficult to obtain a refund of fees paid in error. The renewal date for companies in groups generally fall on the same day so that the parent company and all its subsidiaries need to be rolled over on the same date. It is also not possible to make block payments for all companies in a group so that payment for each company in the group must be made separately, company by company. For example, if a parent company has nine subsidiaries there will need to be ten separate direct deposits.

Our members would also be interested to understand whether there will be any arrangements to improve the linkages between the Australian Charities and Not-for-profits Commission (ACNC) register and the ASIC registers. Their experience is that this can be problematic. For example, the details of company secretaries are not publicly available on the ACNC register unless they are also a 'responsible person', so that many banks and other bodies search the ASIC register to obtain details of directors and officers. They also report that documents lodged with the ACNC do not always appear on the ASIC register. Although they are not necessarily large in size, ACNC registered charities are an important part of the national economy, both as employers and deliverers of services. This sector should be included in initiatives designed to reduce complexity for business in managing their legal and regulatory obligations and bringing together registry services, particularly given that in the vast majority of cases charities are time and resource poor.

Our members report difficulty when transferring registration of incorporated associations to companies registered with ASIC. These entities have an existing Australian Business Number (ABN) which is normally carried over to the company but sometimes the Australian Company Number (ACN) issued by ASIC does not align with the existing ABN and ability in section 1344 of the Corporations Act to use the ABN is not available. While a new ABN that aligns with the ACN can be requested, this may require resubmitting a full registration as a charity to the ACNC.

Do you have a view on the steps Government could take to make registry data more open and accessible? For example, do you have a view on the format of data, frequency of data released, platforms for release, or pricing?

Our members consider there is room for improvement in the area of lodgement of forms with ASIC. There are currently three methods of lodgement: over the counter lodgement for time critical documents such as prospectuses and scheme documents, online for many forms and mail for the remaining forms. While it would make sense to retain over the counter lodgement for time critical documents we consider it would be more appropriate to use online lodgement for all other ASIC forms. In addition, it would be helpful to be able to obtain a full extract of companies' particulars free of charge.

Is there business data that would be useful to collect in a modernised registry service, but currently not being collected or published? Do you have concerns about the publication of certain data?

Information confidentiality and security is paramount. Do you have a view on how security should be maintained, and/or how users can be empowered to manage permissions relating to their data held in registers?

Our main concerns under these questions relate to the publication of data and information confidentiality and security.

Our members have previously raised concerns with both Treasury and ASIC – see the **attached** Submission to Treasury, *Public display of personal information of officeholders*, 6 January 2015 and Submission to ASIC, *Potential risk of identity theft for directors and officers in relation to information about them on ASIC's register of officeholders*, 23 July 2014 - about the risks posed

to directors and officers as a result of information that can be readily used for identity theft or for assaults on personal security.

Governance Institute strongly supports the requirement that officeholders provide personal information to the regulator. This information allows the regulator to take action should the officeholder be in breach of their duties. We also strongly support the public policy that other persons may need to accurately identify and locate individuals who are officeholders of companies in connection with the protection and enforcement of their personal rights and liabilities.

However, the advent of technology on a global scale has fundamentally altered the capacity to access any personal information held about an individual on a database. How an organisation collects, uses, discloses and otherwise handles personal information is subject to the *Privacy Act 1988* and an organisation must secure the private information it holds. Generally, only authorised personnel are permitted to access the personal details of individuals. While we recognise that the information held on the ASIC register fulfils a different role than that held on other individuals on many other databases, the security of personal information remains relevant.

Under sections 117 and 205B of the Corporations Act the ASIC register currently contains the following personal information about each officeholder:

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

Identity theft is feasible if an individual intent on crime has access to the date of birth, residential address and place of birth of another individual. For this reason, all officeholders on the ASIC register are at a heightened risk of identity theft and identity fraud. When associated with identity fraud, identity theft can result in victims experiencing serious negative consequences, including financial loss, inconvenience and in some extreme cases, severe trauma. Governance Institute is of the view that our regulatory framework should not expose directors and company secretaries to these risks.

We also note there is an issue relating to the personal security of senior officers of companies. The companies with which they are involved may provide some level of security to high profile CEOs and their families. The effectiveness of these protections is significantly undermined when their residential address is a matter of public record. As interest in the environmental and social impacts of companies continues to increase, a wide range of individuals can become interested in prosecuting 'causes' by confronting directors and officers at their homes, as has happened in the United Kingdom.

In the event of concerns regarding personal safety, it is currently possible for officeholders to obtain a 'silent enrolment' from the Australian Electoral Commission which can be used by an officeholder to seek withholding of publication of their residential address by ASIC, with the address of the company nominated instead on the public register. In these situations, ASIC retains access to the residential address of the officeholder, which is entirely proper. We also note that it can take up to eight weeks or longer from the appointment of an officeholder to having the suppression of their address activated by ASIC and therefore the personal information remains public for up to two months.

A further concern is that any legacy system will hold the information of any officeholder whose personal details have been registered over many years and in relation to multiple companies. In a world where electronic information remains traceable and accessible, even if no longer posted or displayed, such information remains 'live', available and therefore readily accessible,

irrespective of an individual's changed status – see our **attached** Submission to Treasury, *Public display of personal information of officeholders* dated 6 January 2015.

Governance Institute considers that open publication of birthdates, residential addresses and birth places serves no useful purpose other than for persons with criminal intent. In a world of increasingly faceless transactions, birthdates have unfortunately become by default the first form of identity check by banks, telecommunications companies and other institutions to ascertain that they are communicating with an authorised person. To make the personal information of the business community's most influential officeholders readily available exposes these people to various risks and is a magnet for cyber-criminals.

Governance Institute believes that while it is appropriate that ASIC request and retain the personal details of all officeholders on a database subject to strict controls in relation to access, such details should not be available on the public register.

Governance Institute is pleased to see the recent announcement of a Director Identity Number in the context of the package of reforms to address illegal phoenix activity. Governance Institute has previously written to both Treasury and the Productivity Commission about this proposal – see the **attached** Submission to Treasury *Public display of personal information of officeholders*, 6 January 2015 and Submission to the Productivity Commission, *Business Set-up, Transfer and Closure: Draft Report* 2 July 2015. A DIN will enable those searching public registers for legitimate business purposes to easily and quickly confirm the identity of officeholders. It would also protect honest directors and officers from the risk of identity theft and assaults on personal security provided the risks posed by the availability of personal information on the ASIC registers, referred to above are also addressed.

We would be happy to meet with you to discuss our Submission.

Yours sincerely,



Steven Burrell
Chief Executive

Attachments

- **Submission to Treasury, *Legislation Amendment (Spring Repeal Day) Bill 2015*, 24 September 2015**
- **Submission to ASIC, *Potential risk of identity theft for directors and officers in relation to information about them on ASIC's register of officeholders*, 23 July 2014**
- **Submission to Treasury, *Public display of personal information of officeholders*, 6 January 2015**
- **Submission to the Productivity Commission, *Business Set-up, Transfer and Closure: Draft Report* 2 July 2015**