



INSTITUTE OF
PUBLIC
ACCOUNTANTS®

**Submission:
Modernising
Business Registers
and Director
Identification
Numbers**

October 2018

Introduction

The Institute of Public Accountants (IPA) welcomes the opportunity to offer our '**Modernising Business Registers and Director Identification Numbers**' submission and looks forward to working with the Treasury's Consumer and Corporations Policy Division inquiry.

The IPA is one of the three professional accounting bodies in Australia, with more than 36,000 members and students across 80 countries. The IPA prides itself in not only representing the interests of accountants but also small business and their advisors.

The IPA's submission has been developed in partnership with Deakin University through the dedicated IPA Deakin SME Research Centre

We look forward to discussing further in more detail the IPA's recommendations. Please address any further enquires to Tony Greco, General Manager Technical Policy via tony.greco@publicaccountants.org.au

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

Dear Mr Sedgwick,

Modernising Business Registers and Director Identification Numbers

Modernising Business Registers

The Institute of Public Accountants (IPA) in partnership with the IPA-Deakin SME Research Centre, is pleased to submit the following perspectives on the draft legislation and the accompanying explanatory memoranda relating to the program for the modernising of business registers.

The IPA applauds the government for continuing with the processes of modernising business registers, an essential source of critical information and indeed an important mechanism for ensuring corporate compliance. IPA members use the registry services on a frequent basis; not only to ensure that their respective practices are being conducted appropriately, but also to ensure that their clients and their businesses are meeting lodgement requirements and deadlines in an appropriate fashion. It is further pleasing to see that the approach envisaged by the overall project to improve the accessibility of records has reached the stage of draft legislation.

The IPA is in broad agreement with the principles outlined in the explanatory memorandum and set down in the draft legislation. We hope the legislation that covers the changes to business registers and director identity numbers is given smooth passage through the Federal Parliament so the introduction of these changes is accelerated and the benefits are able to flow through to accountants, their clients and the broader community as soon as practicable. IPA submissions have previously noted that information technology has advanced to a stage where a single register is able to be implemented by a national department, regulator or authority so that it becomes easier for individuals and entities to interact with the system irrespective of the purpose for their engagement. IPA members have raised concerns over problems they continually faced in accessing and using multiple registers. Their concerns have highlighted inefficiencies in current systems, particularly in circumstances where private businesses and individuals are required to enter the same details to access information stored in and across a number of different registers and systems. Feedback from IPA members indicates that they would prefer a single simple web-based interface for the lodgement, maintenance and search of information that is publicly accessible via government registers.

University access for research purposes

It is noted that the explanatory memorandum refers to the ability of the ‘Registrar’ to include Universities (in the context of the Registrar’s ‘disclosure framework’), as a class or group of organisations that may be granted access to information for research purposes. The explanatory memorandum further notes that a University could become a ‘trusted user’ of registers subject to vetting of University IT systems, processes and relevant staff. Universities and other similar organisations, would also need to establish a ‘social benefit’ in the use of information, before access is granted. We agree with this aspect of the proposed law which is line the ‘principled approach’ to the release of government data as recommended by the Productivity Commissions (2016)¹, and the intent of the recommendation “to capture the benefits of big data while managing all risks of disclosure”². While we agree with the principle in this approach as well as the intent within the EM in respect of ‘granting access to information’ to qualifying research institutions such as Universities, there may be merit in considering a further clarification of the term ‘social benefit’, or at least some guidelines as to what constitutes a ‘social benefit’. That said however, we are also cognisant that a strict definition of ‘social benefit’ may lead to definitional exploitation. In this sense, the provision of general guidelines on what is meant by the term ‘social benefit’ together with the latitude afforded to registrar to make a determination, could be a preferred option.

Notwithstanding the above, we are pleased with the governments ‘access’ initiatives which we believe will greatly benefit the work of Universities and no doubt a host of other research bodies. We note in particular, that access to raw and reliable data, is invaluable to researchers and can provide a significant body of evidence from which important conclusions and implications can be drawn, for example relating to government operations and the impact of various laws. Research may also provide an insight into the extent of compliance by various kinds of entities with the laws and standards by which they are regulated.

Perhaps a good example of a specific category of research with social benefits, that required access to registers maintained by the Australian Securities and Investments Commission, is the work that has been undertaken by the team of researchers at the IPA-Deakin SME Research Centre. The primary aim of the research was to investigate the level of compliance with Australia’s corporate law and the accounting standards framework by entities that prepare financial statements for lodgement with the corporate regulator and state-based registrars. This research was undertaken under the auspices of the Australian Accounting Standards Board³ and has led to a series of publications⁴ related to the variable levels of compliance in the financial statements of incorporated associations and entities that are

¹ Productivity Commission (2016), Data Availability and Use. <https://www.pc.gov.au/inquiries/completed/data-access/thedraft/data-access-overview-draft.pdf>, Accessed, 24th October, 2018

² Ibid

³ Carey, P., Potter, B., and G. Tanewski (2014) Application of the reporting entity concept and lodgement of special purpose financial statements, Australian Accounting Standards Board, Commonwealth of Australia, Melbourne, Vic. ISSN 2203-6512

⁴ Carey, P; Potter, B. and G Tanewski. (2014) Application of the Reporting Entity Concept in Australia. ABACUS. 50(4): 460–489.

registered under the Corporations Act. Easier access to the raw data in financial statements for Universities and their researchers would result in more published research that provides insights to the government, regulators and statutory authorities on areas of non-compliance that need further attention. Moreover, such research is of great public interest and benefit because it potentially enables:

- A. A greater understanding of the operation of certain laws, regulations and standards and the like,
- B. Regulators to monitor the effectiveness of their compliance processes,
- C. Accounting professionals and organisations to consider the appropriateness of implementing strategies designed to improve the level of compliance with reporting or other legal requirements, and
- D. Australia to contribute in a constructive manner to the development of global regulatory regimes through organisations such as the International Federation of Accountants (IFAC) and its subsidiary boards as well as the International Accounting Standards Board (IASB).

We believe it is essential that qualifying research institutions and their researchers are able to have easy access to relevant information that they require to explore issues that are of importance to the Australian market and beyond. The initiative to allow qualifying Universities and academics access to primary source information, is strongly supported by the IPA, and is also a very timely initiative.

Free access to information

The IPA has, in previous submissions, sought to emphasise the principle that in exchange for providing government with important information relating to the entity, entities and their members are generally afforded a range of legal protections through the use of an incorporated entity structure, often referred to as the ‘corporate veil’. Information provided to the regulator – and subsequently to the public; should be recognised as being a transaction cost, that is, for example, the cost of establishing a company or association. Information about the entity, the individuals conducting the affairs of the entity, and the structure of the entity, should, we argue, be freely available in the public domain. There appears to be no substantive justification for non-availability of basic company/entity information on a gratis basis.

We note that, for some stakeholders, such as suppliers and creditors for example, the cost of accessing publicly available information from ASIC can be prohibitive and thus vital information about the entity and its operations can often be largely unknown for these stakeholders. The lack of critical information such as, for instance, the names of directors, or the address of the entity for service of legal documents (most important for example, in circumstances where legal action is being taken against an entity), can create considerable uncertainty and thus an unwanted risk for creditors, traders and others dealing with the entity. We have previously argued that in the interest of the public, basic company information should be freely available. Moreover, in line with the National Business

Simplification Initiative (2016)⁵, the new regime for collecting information on a ‘tell it once’⁶ basis which effectively integrates 35 existing registers, as well as allowing access to information electronically, will be supported by central IT platform. In turn, this means that regulators will no longer need to undertake laborious scanning and other manual procedures for a bulk of the records they receive, or indeed any other manual requirements in relation to the public accessing publicly available information on registers. Along with these measures which are intended “to provide more user-friendly and streamlined registry services” and thus “reduce the time that businesses spend complying with regulations and interacting with government”⁷, comes with, we argue, a whole host of costs savings for ASIC, lending further justification for a registry which allows free access to publicly available information.

It continues to be the Institute’s position that the government must consider an alternative model for access to company information. Adoption of an access model based on that used in the United States by the Securities and Exchange Commission (SEC) is supported by the IPA. The SEC provides free access to the financial statements of SEC registrants and the resultant free access is consistent with the general philosophy of regulators making available information to the public on a timely basis to minimise information asymmetry in the marketplace. Financial reporting exists in its present form because there is a public interest in monitoring the operations of entities that have been permitted to use the corporate veil. Consideration should be given to the elimination of fees for access to the data given the minimal cost of the technology to provide the information.

Directors DIN

Director Identification Numbers

The IPA supports the Director Identification Number regime as outlined in the explanatory memorandum. As indicated in our previous submission, the DIN provides some assurance that a person listed as a director of an entity is actually a ‘real person’ who has consented to be a director of an entity. It is well documented that a tactic used by phoenix operators is the appointment of individuals to the role of a director without that person’s knowledge. The proposed law appears to deal adequately with these matters. It is also noted that a 28-day deadline for newly appointed directors to obtain a director identification number is reasonable, as is a 15 month period for existing directors. The extended timeframe is sufficient (perhaps overly so), to ensure that persons who are already appointed as directors, are able to fulfil the requirements in establishing their identity.

It is also pleasing to note that the new laws will provide authorities with the ability to require ‘other’ individuals involved with the entity to obtain a DIN, presumably including *de facto* and shadow directors who are often associated with Phoenix companies. This is an approach that the IPA fully supports because it provides the regulatory authorities with the ability to ensure

⁵ National Business Simplification Initiative 2016,

<https://archive.industry.gov.au/smallbusiness/Pages/National-Business-Simplification-Initiative.aspx>, accessed 24th October 2018

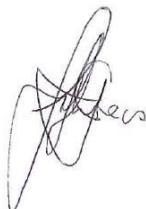
⁶ Commonwealth Registers Bill, 2018, Explanatory Memorandum, Treasury Laws Amendment (Registries Modernisations and Other Measures) Bill 2018, p10

⁷ Commonwealth Registers Bill, 2018, Explanatory Memorandum, Treasury Laws Amendment (Registries Modernisations and Other Measures) Bill 2018, p3

that most, if not all persons relevant to the running of a business, are properly identified. However, if the intent here is to invoke the new DIN provisions via the definition of an 'officer' (which includes directors including *de facto* and shadow directors), there may be a potential weakness of the new regime as explained in the explanatory memorandum. The IPA nonetheless acknowledges that the new provisions cannot capture, at least directly in the law, individuals that potentially fall within the definitions of *de facto* and shadow directors, but questions whether there might be merit in considering alternative mechanisms for compliance – perhaps for example, a provision requiring legally appointed existing directors, to disclose annually whether they are or have become aware that other persons (not legally appointed) are acting in the capacity of a director. Moreover, to disclose annually, whether during the year, directors have acted (and are accustomed to acting) under the instruction of another person in relation to the management of the affairs of the company. A carefully crafted provision as in the example above, would greatly assist the corporate regulator as well liquidation practitioners, in uncovering persons endeavouring to escape their obligations as directors under the law.

While the IPA is broadly supportive of all of the measures contained within the package put forward for consultation, we understand that there may be other matters of policy or drafting detail that Treasury may wish to raise with us. Please feel free to contact us directly should you require further clarification on any of the issues raised or other questions related to our submission.

Yours sincerely



Tony Greco
General Manager Technical Policy
E: tony.greco@publicaccountants.org.au

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Contact

IPA Head Office

Level 6, 555 Lonsdale Street
Melbourne Victoria 3000
Australia

Tel : 61 3 8665 3100
Fax: 61 3 8665 3130
Email : headoffice@publicaccountants.org.au
Website: www.publicaccountants.org.au/

IPA Divisional Offices are located in the following cities:

Melbourne
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