



### **Veda and its role in corporate due diligence**

Veda started in 1967 as the Credit Reference Association of Australia, a mutual initially for retail stores issuing store cards (Farmers, Grace Bros) and subsequently large banks. At that time there were multiple bureaus servicing different industry sectors and different geographic regions, all relying on file cards.

Over time, Veda grew to become Australia's leading holder of consumer and commercial credit reporting information. Veda holds more credit, identity, ownership and control data than any other organisation in Australia or New Zealand, with information on 2.5 million companies and 1.7 million active business names.

Veda has now evolved into a data analytics company, innovating on-line services to meet identity, risk, due diligence and fraud concerns. The Veda group includes prequalified service providers of financial assessments to various government agencies. We specialise in assessing the financial viability and capacity entities in the construction sector prior to the award of contracts and have been conducting financial viability checks for the NSW Government for over 14 years.

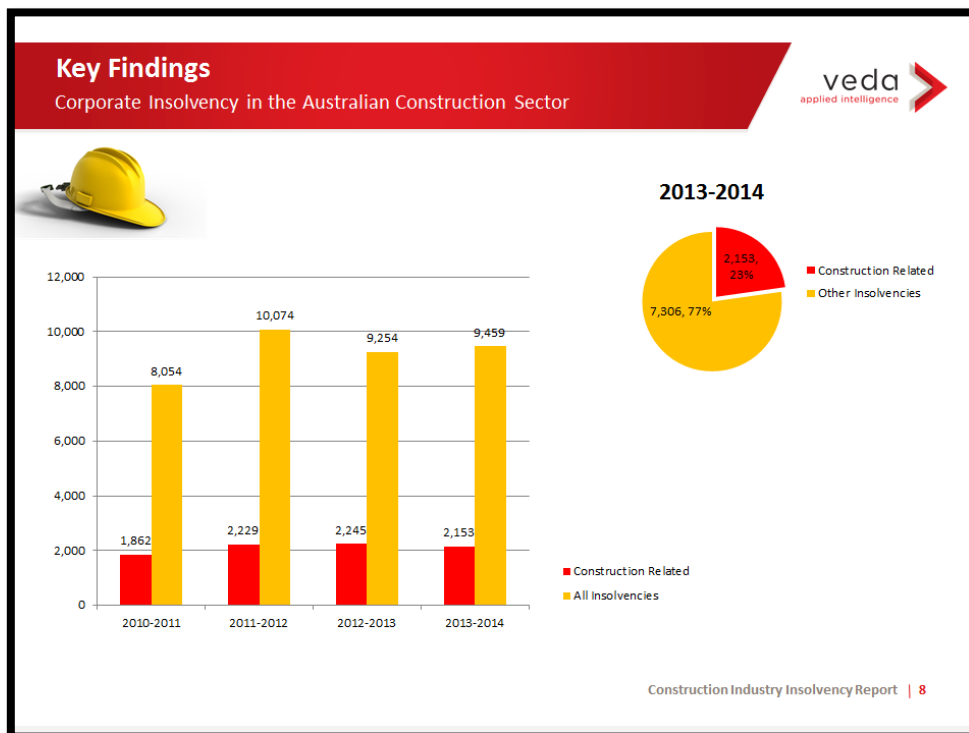
Our submission concentrates on weaknesses in the federal regulatory framework that impede the capacity to pierce the corporate veil, including the construction industry, which is over-represented in corporate insolvency. We encourage the Committee to consider recent key findings of the Financial Action Task Force, who evaluated aspect of Australia's corporate governance and highlighted weaknesses and gaps in critical information.

**We seek the Committee's support for two specific recommendations** that would significantly strengthen the ability to detect phoenix companies and reduce corporate bad-behaviour:

- (i) Introduce requirements to verify information provided to Commonwealth and state business registers when setting up corporate structures; and
- (ii) Creation of a beneficial owners register.

### **Construction is overrepresented in insolvencies**

The construction sector in Australia has consistently been overrepresented when it comes to corporate insolvency. The graphs below show that according to published ASIC data - *Series 3 Table 3.1.1 - Initial external administrators' reports—Region by industry (1 July 2013–30 June 2014)*, the construction sector has accounted for over 22% of all initial reports lodged by external administrators.



Veda notes as a provider of due diligence services that while construction related insolvencies are over represented as a percentage of all insolvencies, the incidence of insolvencies directly affecting government projects is quite rare. This reflects the capacity of Government to impose a well-established regime of financial viability checks at prequalification and tender assessment stages. However, this intense level of scrutiny may not be practical or affordable and in the broader industry, where a financial check is often considered a last minute formality and is therefore requested as the final step in the process when award of the contract is imminent. In these circumstances, the constraints on availability of information become more apparent.

### Piercing the corporate veil - global Lessons for the Australian context

*“Concerning beneficial owners of legal persons and legal arrangements, the existing measures and mechanisms are not sufficient to ensure that accurate and up-to-date information on beneficial owners is available in a timely manner. It is not clear that information held on legal persons and legal arrangements is accurate and up-to-date.”*

*FATF evaluation of Australia April 2015*

In Australia, the ability to conduct due diligence – and avoid doing business with a risky entity is hampered by:

- i. A lack of verification conducted on information provided on entities when setting up corporate structures and
- ii. The absence of a beneficial owners register.

These two problems have been highlighted in an April 2015 report by the Financial Action Task Force (FATF) who evaluated Australia's anti money laundering and counter terrorism financing regime<sup>1</sup>. Chapter seven of the Evaluation key findings include:

***“Australia has not conducted a formal risk assessment on TF risks associated with legal persons and arrangements. The majority of legal persons are registered with ASIC (federal) while others with State or Territory authorities. While the information seems to be largely available to competent authorities and to the public, very limited verification is conducted on the registration information. Hence, there is no certainty that information maintained on legal persons is accurate or up-to-date. The same conclusion applies to the Australian Business Register maintained by the ATO.***

***In most cases, registration is carried out by a third party (i.e. lawyers, accountants or trust and company service providers) not subject to AML/CTF obligations.***

***Trustees are not required to maintain adequate, accurate and current information on the settlor, trustee, protector, beneficiaries, etc. of a trust. Nor are they explicitly required to disclose their status.***

***Information on the beneficial owner of legal persons and legal arrangements is not maintained and accessible to competent authorities in a timely manner.***

***Some information on shareholders is available (on first rank shareholders only, but does not extend to the beneficial owner as defined by the FATF), which may themselves be other legal persons. Public company share registries are required to collect information on whether shares are held beneficially or not. Information on proprietary companies is collected through the Australian Business Register. Law enforcement agencies advised that access to companies' registers was not timely due to obstacles posed by lawyers.”***

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<sup>1</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Australia-2015.pdf>

These findings are now with the Attorney General's Department and Austrac as part of a scheduled review of anti-money laundering and counter terrorism financing legislation and guidelines.

Regarding a beneficial owners register, the introduction of such a mechanism would enable the ability to distinguish between the legal owner and the actual beneficial or controlling owner. Such a register, coupled with a requirement for companies to hold information on their beneficial owners, will reveal who owns and controls an entity, making money laundering, tax evasion and the creation of phoenix entities more difficult.

Such a move would be entirely consistent with trends internationally.

In 2011 the World Bank – UN Office for Drugs and Crime Stolen Asset Recovery published *Barriers to Asset Recovery*<sup>2</sup> which highlighted the need for greater transparency, recommending entities require a declaration of beneficial ownership from corporate account holders.

At the G8 Summit in June 2013, the United Kingdom committed to introduce new rules on who owns and controls UK companies. The subsequent discussion paper<sup>3</sup> proposed the introduction of a new central register of beneficial ownership, requiring companies to collect, hold and disclose who owns and controls them. Their proposed definition of "beneficial owner" is any individual with an interest of more than 25 per cent of the shares or voting rights of the company; or who otherwise exercises control over the way the company is run.

The review process is also considering:

- whether to make the beneficial ownership register public. At a minimum the information should be accessible to specified law enforcement and tax authorities;
- whether to require the trustee(s) of express trusts to be disclosed as a beneficial owner of a company; and whether it would be appropriate for the beneficiary(ies) of the trust to be disclosed as beneficial owner(s) in certain circumstances;
- whether to prohibit the use of new bearer shares<sup>4</sup> to prevent the potential for misuse;

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<sup>2</sup> <http://issuu.com/world.bank.publications/docs/9780821386606/1?e=1107022/2691008>

<sup>3</sup> Transparency and Trust <https://www.gov.uk/government/consultations/company-ownership-transparency-and-trust-discussion-paper>

<sup>4</sup> Bearer shares are notionally recorded as belonging to an individual but are in fact owned by another

- whether to provide a set period of time for holders of existing bearer shares to convert them into ordinary registered shares;
- whether to reform the use of nominee directors and in particular to increase transparency around their use. One option being considered is for the nominee to have an obligation to disclose the identity of the person on whose behalf they have been appointed; and
- whether to prohibit or restrict corporate or nominee directors.

Veda notes the UK Prime Minister David Cameron, wrote to British territories known as tax shelters, demanding they begin to make beneficial ownership information about the companies in their borders more readily available to law enforcement agencies<sup>5</sup>. With jurisdictions such as the Cayman Islands producing Discussion Papers on beneficial ownership registers, Australia is lagging well-behind in public discussion.

Most recently the European parliament overwhelmingly voted in support for the creation of an EU-wide public ultimate beneficial ownership (UBO) register. The proposal reportedly requires each EU country to develop a register, listing ultimate beneficial owners in a range of legal arrangements, including companies, foundations, holdings and trusts. Companies

Any similar consideration in Australia should consider how to maximise the skills and expertise of private sector organisations when creating a new register. Ultimately, an efficiently designed service can greatly diminish the impact of any perceived increase in regulation. We note currently no Government register offers any service level agreements and even where “best endeavour” targets are offered, there is no recompense or penalty for failure to achieve that target.

The importance of the beneficial owners register requires a higher level of reliability and accuracy beyond that currently offered by Government-run registers. Creating, implementing and maintaining databases is the bread-and-butter business of information economy companies. For a Commonwealth agency, such a task may only come along once in a generation. The skills and expertise are not readily found in an agency; for example, the 2011 Personal Property Security Register (PPSR) was project managed by the Attorney-General’s department, an agency that, at that time, had no other responsibility for a publicly accessed register.

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<sup>5</sup> Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Anguilla, Montserrat, the Turks and Caicos Islands, Jersey, Guernsey and the Isle of Man <https://www.gov.uk/government/news/g8-pm-writes-to-crown-dependency-leaders>