

6 March 2019

Mr Mark Fitt
Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: Economics.Sen@aph.gov.au

Dear Mark

**Senate Economics Legislation Committee
Inquiry into Commonwealth Registers Bill 2019 (and related 4 bills)**

The Australian Institute of Credit Management (AICM) represents the interests of over 2,500 credit professionals responsible for maximising the cash flow and minimising the bad debt risk of companies in a vast array of industries.

Our members support businesses of all sizes through the provision of credit, with a significant portion of our membership providing unsecured trade credit. The RBA estimated the value of outstanding trade credit in March 2013 alone was \$80bn¹.

Trade credit enables businesses to fund their growth, general trading and manage cashflow without additional costs associated with other forms of credit and finance. Efficient access to accurate and up-to-date information is essential for trade credit providers to maintain this vital source of finance for the economy.

AICM has provided submissions and taken part in consultation on the Treasury's Modernising Business Registers Program (MBR) and related matters such as illegal phoenix activity with these being of significant interest to our members due to the impact on their ability to fulfil their roles.

Below is a summary of these matters with further detail contained in annexures:

Modernising Business Registers

Our members role in supporting businesses with the provision of trade credit relies heavily on their ability to assess credit worthiness efficiently, accurately and complete.

Credit professionals seek to provide credit within the risk parameters of their business. When data is not efficiently available, complete or accurate credit assessments cannot be completed with confidence leading to a negative bias and risk adverse approach which results in restricted/reduced credit terms and amounts.

¹ <https://www.rba.gov.au/publications/bulletin/2013/sep/5.html>

The impacts of current problems with efficiency, completeness and accuracy related to the provision of trade credit include:

- Small businesses required to provide additional security such as guarantees from directors/owners or a being offered “cash/payment on delivery” terms.
- Larger businesses required to provide additional financial information or offered lower credit limits and terms restricting businesses ability to grow and operate efficiently.
- The broader economy is impacted by the economic loss due to inefficiencies, additional costs of alternative financing, increased risk and growth opportunities reduced.

The AICM supports the intent of the related bills to create a central and modern register and provide the following comments and recommendations:

- Improving the availability and integrity of data will allow better credit assessments and empower credit providers to support growth and disrupt illegal phoenix operators.
- AICM Recommends - Reducing or eliminating cost for accessing data due to the broader economic benefits including strengthening credit providers ability to disrupt dodgy directors and illegal phoenix activity.
- The AICM is not aware of the publication of analysis into the costs and benefits of the intended registrar and recommends they are vigorously and transparently considered.
- Reliance on data standards and disclosure frameworks rather than detail in legislation is a concern to the AICM considering the data and access is so vital to our members and the broader economy.

We provide additional detail on the above points and additional in annexures.

Director Identification Numbers

DINs will rectify a significant gap in the accuracy of the information that credit professionals rely on to assess risk and make fully informed credit decisions.

For too long credit professionals have been exposed to unnecessary risk as a result of poor director validation. Most notably the risk relates to illegal phoenix activity with trade credit providers bearing a significant proportion of the \$2.9 billion and \$5.1 billion cost to Australian economy². Errors in director identification also routinely lead to incomplete credit decisions due to information such as a director related entity not being identified.

The AICM strongly supports the intent of the related bills to create a Director Identification Number and provide the following comments and recommendations:

- AICM recommends - Legislation should encompass further detail currently left to data standards and administrative instruments specifically core elements such as identity verification and continuity of current data on registers.
- AICM recommends - Legislating the requirement for identity verification and including a physical step in the process that cannot be delegated to a third party.
- AICM Recommends – the 28 day time frame to apply for a DIN is reduced or eliminated to avoid manipulation by dodgy directors and to improve governance around director appointments.
- The AICM supports inclusion of an educational requirement as part of DIN application to ensure director roles, responsibilities and liabilities are explicitly understood and accepted.

² <https://www.ato.gov.au/General/The-fight-against-tax-crime/Our-focus/Illegal-phoenix-activity/The-economic-impact-of-potential-illegal-phoenix-activity/>



We provide additional detail on the above points in comments and prior submissions included in annexures.

As a significant stakeholder in registries information the AICM and its members appreciate the opportunity to contribute to these initiatives to ensure they achieve the intended outcomes.

Should you have any queries arising from our submission I can be contacted on [REDACTED]
[REDACTED]

Yours sincerely

[REDACTED]

Nick Pilavidis
Chief Executive Officer
Australian Institute of Credit Management

Annexure A

Modernisation of Business Registers

Improving the availability and integrity of data will allow better credit assessments and empower credit providers to support growth and disrupt illegal phoenix operators.

Credit professionals can play a key role in disrupting dodgy directors and illegal phoenix activity.

By improving access to data, credit professionals will be able to identify phoenix activity and aid in the disruption by reporting the activity and withholding credit from the new entities, in addition to avoiding financial losses of their own.

Through the services of Credit Bureaus (such as illion and Equifax) our members are well served in terms of efficiency, however many of our members and small businesses will benefit by improved efficiencies accessing information directly from government registers. The greatest issue to availability of data for credit providers are cost barriers.

AICM Recommends - Reducing or eliminating cost for accessing data due to the broader economic benefits including strengthening credit providers ability to disrupt dodgy directors and illegal phoenix activity.

The costs for assessing credit risk in Australia, currently limits credit professional's ability to assess credit risk in comparison to other jurisdictions for example:

- In the USA it is common practice for our trade credit equivalents to obtain at least 2 credit reports from different bureaus due to the comparatively low cost of reports. In Australia our members will only obtain one report and limit the amount of information obtained based on levels of credit exposure.
- In the UK and New Zealand company registry information is free of charge.

By removing the cost barrier to accessing basic company information the benefits to the broader economy are likely to exceed the costs to government. Benefits include:

- Entity validation, ensuring the correct entity is reflected in contracts and invoices would be significantly improved, especially for small businesses.
- Increases corporate transparency.
- Improve the efficiency of the Australian business environment.
- Allows for better risk mitigation.
- Reduction in the minimum cost of data will lead to additional and multiple data sources being obtained.
- Assist innovation and development of data and risk solutions.

Accuracy and completeness is a significant issue for our members. For example, the lack of integrity of director identification exposes our members to significant risk by creating uncertainty. Further, this

prevents assessment of all relevant risks as director related entities are often not linked. These situations lead to:

- A negative bias being assumed with restricted credit terms being extended. This is most common where additional sources of information are limited e.g. company financials.
- In efficiencies for the credit provider and customer. Often additional enquiries, security and information is requested of customers.

Consideration of the appropriate registrar

Due to ASIC's role in regulation and the likely efficiencies of combined regulatory and registry functions, we question the proposal to remove registry powers from ASIC without clear benefits.

A specific concern is inefficiencies and duplications that may result for the regulated populations as a result of the removal of the registry function from ASIC and ensuring the ability to incorporate other registers is not compromised.

While we question the removal of registry functions from ASIC we believe efficiencies could be obtained by centralising all complimentary registers such as those considered in this proposal and others such as the Personal Property Securities Register.

A central government body with the sole responsibility of acting as registrar for all registers would also provide significant benefits to businesses of all sizes by providing a single touch point. Small businesses and other unsophisticated credit providers would benefit significantly from this approach, for example:

- Awareness of the registries and available information is a current challenge and a one-stop-shop would address this issue significantly.
- A search for one specific purpose, such as ABN verification, could also return additional search options such as PPSR information.

To date the AICM is not aware that this analysis has been conducted as to the best option for the future registrar and recommends that it is considered in a thorough and transparent way.

Reliance on data standards and disclosure frameworks rather than detail in legislation is a concern to the AICM considering the data and access is so vital to our members and the broader economy.

While we understand the flexibility and efficiencies in defining certain elements in data standards and administrative instruments and that extensive consultation is being conducted to develop these with industry our concern is that the less onerous processes may result in unintended consequences or specific users interests not being considered. A specific concern relate is ensuring director identity details remain accessible due the importance of these to the credit assessment process and later recovery and enforcement actions.

Annexure B

Director Identification Numbers

AICM recommends - Legislation should encompass further detail currently left to data standards and administrative instruments specifically core elements such as identity verification and continuity of current data on registers.

To ensure a very high level of verification/identification is established and maintained we feel the legislation should detail the minimum requirements.

While we support the ability of the registrar to determine appropriate data standards, the minimum standard for director verification should not be subject to variation. We strongly recommend that the legislation details a minimum standard including:

- A 100-point style identification process drawing on identity verification from multiple government and non-government sources.
- Preventing the application process from being delegated so there is no possibility that an individual obtains a DIN without their knowledge.
- A physical step in the process, such as lodging the application in person.

The current information on directors is vital to informed credit decisions therefore the legislation should require that the current information including directors (and previous directors) full name, address, date of birth and place of birth and must be provided in perpetuity. In making this recommendation we consider that the benefits of obtaining a corporate vehicle creates a requirement for credit providers to have access to this information and to be able to verify the identities of the controllers of the entity.

The director details are specifically relevant to credit professionals when;

- providing credit as director signatures are often required for execution of credit agreements, contracts or guarantees. It is essential to verify that the correct person has executed the document. This is only completed effectively by comparing details on the government register to verification documents provided at the time of execution.
- serving of notices and enforcing liabilities. Directors generally don't keep all suppliers up to date with their contact details therefore, government register information is important to ensure documents are provided to directors when required. This becomes even more important when obligations of the company are not being met and may result in liability to the directors, without these details being accessible on the government register both the director and the supplier could be impacted.

AICM recommends - Legislating the requirement for identity verification and including a physical step in the process that cannot be delegated to a third party.

We emphasise the importance of preventing directors from delegating the application process to a third party. Any capacity to delegate the process will prevent the measure achieving its goals, specifically the below issues will continue:

- Directors being appointed without full knowledge/understanding. If a director is only required to action a minor part of the application, it remains possible for individuals to accept directorships without their knowledge or full understanding.
- Directors not understanding the importance of their role. A thorough application and verification process that cannot be delegated makes it clear that obtaining a directorship is not a matter to be taken lightly as opposed to the current situation which makes applying for a library card seem more significant.
- No understanding of director duties or potential liabilities. By undertaking the application personally, the process could ensure individuals have seen and acknowledged their obligations and responsibilities as a director.

The importance of the verification process should not be compromised in anyway including if this precludes the use of some technology. “Verification” not “Simplification” should be the priority of the DIN.

AICM Recommends – the 28 day time frame to apply for a DIN is reduced or eliminated to avoid manipulation by dodgy directors and to improve governance around director appointments.

In addition to our comments of earlier submissions the AICM supports comments of other bodies such as ARITA that the 28 day time frame to obtain a DIN may be manipulated by phoenix operators appointing dummy directors and exploiting this window of opportunity to siphon assets to the new company.

We disagree with the need to allow 28 days to apply for a DIN as very few directorships would be appointed without a high level of prior knowledge/expectation.

Requiring prospective directors to obtain a DIN prior to appointment could maximise the value of the DIN by assisting companies to fully consider all appointments. For example, the appointing board/company could check that the director has been correctly identified, is not currently disqualified (or previously disqualified), if they have other current directorships and other factors that may influence the applicant’s ability to discharge their governance obligations.

Additionally, during the 28 days credit providers will be making credit decisions on incorrect and incomplete information. This could be significant in cases where directorship changes are linked to ownership changes.

Finally, allowing 28 days to apply for a DIN may also impinge on the company’s obligation to advise ASIC of new appointments when a director obtains their DIN towards the end of their 28 day period, leaving the company with little or no time to notify within their allowed 28 days.

The AICM supports – inclusion of an educational requirement as part of DIN application to ensure director roles, responsibilities and liabilities are explicitly understood and accepted.

In addition to the comments made in our earlier submission to Treasury, the AICM supports calls of others such as Australian Restructuring Insolvency and Turnaround Association and Australian Institute of Company Directors for the DIN application process to include an educational requirement to ensure new directors understand the roles, responsibilities and liabilities are explicitly understood and accepted.

Ensuring directors are aware of their responsibilities when taking on an appointment will provide many benefits including:

- Disrupting the activities of phoenix advisors such as appointment of dummy directors who are mislead into believing there are no duties or responsibilities associated with appointment.
- Ensuring directors are financially literate and aware of all director duties under the Corporations Act.
- Ensuring directors are aware of other potential personal liabilities depending such as work health and safety, environmental and other liabilities dependant on their industry.
- Incidence of Insolvent trading may be reduced through awareness of director liabilities and opportunities such as Safe Harbour. Insolvent trading has been identified in 69% of external administrations during 2017-18³.

The AICM advocates for a scalable approach that allows all directors to comply with minimum time commitment (e.g. a less than 2 hour online training) and emphasises the need for deeper and continual education especially as company size and complexity increases.

³ ASIC REPORT 596: Insolvency statistics: External administrators' reports (July 2017 to June 2018)
Australian Institute of Credit Management