

7 March 2019

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

By Upload and email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Mr Fitt

**Commonwealth Registers Bill 2019 and Treasury Laws Amendment  
(Registries Modernisation and other Measures) Bill 2019**

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 MBR Business Advisory Group and the Director Identification Number co-design reference group.

Governance Institute has provided the following submissions on the MBR Project and the issue of the Director Identification Number (DIN):

- [Submission in response to the Modernising Business Registry Services Discussion Paper dated 15 September 2017](#)
- [Submission in response to the exposure draft of the Commonwealth Registers Bill 2018 and the Treasury Laws Amendment \(Registries Modernisation and other Measures\) Bill 2018 bills dated 26 October 2018.](#)

Governance Institute welcomes the opportunity to comment on the *Commonwealth Registers Bill 2019* and the *Treasury Laws Amendment (Registries Modernisation and other Measures) Bill 2019* (the draft bills).

**Key recommendations**

Governance Institute makes the following recommendations in response to the draft bills:

**Operation of DIN**

- extend the DIN to company secretaries
- extend the time period for a new officeholder to apply for a DIN from the current period of 28 days to 60 days. Alternatively, extend the transition period, so that a new

officeholder has 28 days in which to apply for a DIN, until there is an increased awareness amongst office holders of the DIN requirements

- extend the period of time in which an application for a DIN must be made for a new officeholder of companies in the not-for-profit and charitable sector
- extend the expiry period for a DIN from 12 months to 3 years
- ensure there is no charge to officeholders for a DIN.

### **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 officeholders 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**

Governance Institute has outlined the reasons for its longstanding support for the introduction of a DIN, which includes company secretaries as well as directors in our previous submissions.

We note that the draft bills do not include company secretaries in the DIN but provide 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 by regulation. We assume it is intended that this extension would take place after the bill comes into effect and the DIN regime introduced.

**Governance Institute strongly recommends** amending the bill to include company secretaries in the definition of 'eligible officer' rather than adding company secretaries by regulation. Alternatively, Governance Institute recommends introduction of the relevant regulations at the same time as the bill to ensure that company secretaries are part of the DIN regime from the outset. This will ensure that all officeholders of a company are subject to the same requirements,

The introduction of the DIN with the MBR represents a major change to both the way that company details are available to users, and how they interact with the Registry. Failure to include company secretaries in the DIN regime means there will be a 'missing piece of the puzzle' when it comes to company registers. A company director will be identified by a DIN, which evidences that their identity has been verified. Under the bills in their current form, the company secretary of the same company will not have an identity number or be able to show that their identity has been verified. This will be confusing for those searching company records for officeholders' details and will raise questions amongst members of the community about why one set of office holders has a DIN while the other set does not. They are likely to draw an adverse inference from the absence of a DIN for the company secretary.

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. Many proprietary companies have a sole director who is also the company secretary. 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 at the same time as directors.

**Extend the period in which to apply for a DIN to 60 days or alternatively extend the transition period to enable a new officeholder 28 days in which to apply for a DIN**

The exposure draft allowed a new director a period of 28 days in which to apply for a DIN. We recommended in our submission on the exposure draft dated 26 October 2018 that this period be extended to 60 days. Our members considered this time period was unrealistic taking into account the challenges involved when imposing new obligations on individuals, particularly given they attract significant penalties. We repeat our view that a period of 60 days is a more realistic timeframe in which to expect new officeholders to apply for a DIN, at least during the initial phase of the implementation of the new regime.

We note that the bills now provide that a new director must apply for a DIN before becoming a director with a transitional arrangement applying for the first 12 months which will allow them 28 days in which to apply after their appointment.

**Governance Institute recommends** that the Government reconsider this timeframe. The 12 month transition period will pass quickly and, if not extended, require new officeholders to have applied for a DIN before appointment. This is a significant change to current practice and imposes obligations on officeholders which have serious consequences. We support the implementation of the DIN regime and consider it will be effective in addressing phoenixing. However, we consider more time will be required to educate members of the public on the requirement to apply for a DIN before they can be appointed as an officeholder. We reiterate our original recommendation that a new officeholder have a period of 60 days in which to apply for a DIN. If this recommendation is not accepted, we urge the Government to extend the transition period beyond 12 months.

The exposure draft required existing directors to apply for a DIN within 15 months from the commencement of the Act. We note that the draft bills provide for the time period to be determined by way of legislative instrument rather than being included in the bill itself. We understand the intent of the change is to allow existing directors a period of 15 months in which to apply for a DIN, but with the flexibility to extend this period if it appears that directors need additional time in which to comply. Governance Institute considers that providing flexible timeframes is a sensible approach and encourages Government to closely monitor the DIN application process and extend the time period if necessary.

As a member of the DIN co-design reference group, we look forward to engaging closely with the Government on the practical aspects of the implementation of the DIN. We consider that the timeframe within which new and existing officeholders must apply for a DIN to be a critical part of its operation.

**Extend the period of time in which an application for a DIN must be made for officeholders of companies in the not-for-profit and charitable sector**

The draft bills allow the registrar to extend the period of time in which an application for a DIN must be made for certain classes of persons. The extension may be made by legislative instrument and provides the registrar with discretion to extend the period for compliance where warranted. By way of example, the Explanatory Memorandum notes that the power could be applied for the benefit of directors residing in remote areas should that affect their ability to apply for a DIN prior to appointment.

Governance Institute considers that the implementation of the requirements of the DIN regime will be burdensome for the not-for-profit and charitable sector. It is not uncommon for officeholders of companies limited by guarantee to be elected from the floor of the AGM, in

which case, the incoming officeholder may not have already applied for a DIN. Governance Institute recommends that in order to limit the compliance burden on companies limited by guarantee, the Government consider making a legislative instrument which extends the period of time in which an application for a DIN must be made for officeholders of companies in the not-for-profit and charitable sector. We also encourage an education campaign, possibly in conjunction with the ACNC, for this sector given that many officeholders are time-poor volunteers.

### **Extend the expiry period for a DIN from 12 months to 3 years**

It is proposed that once the DIN regime is implemented, the Government will require new directors to have applied for a DIN before their appointment as a director of a company. If this is the case, potential directors will need to have an 'active' DIN. Governance Institute considers that a 12 month expiry period is too short. Directors are often appointed annually. A director who misses out on an appointment one year, may then be required to reapply for a DIN before the next AGM to ensure that they can comply with the requirement. Governance Institute considers that three years is a more appropriate period of time before a DIN expires.

### **Ensure that officeholders are not charged for a DIN**

Governance Institute considers that as this is a mandatory requirement imposed by Government, officeholders should not be charged a fee to apply for, or maintain 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 from our conversations with the MBR project team that the ACNC register is not within the scope of the project.

Governance Institute reiterates the issues that our members experience with the lack of interaction between the ACNC and ASIC registers. On one hand, the details of the company secretary of a charitable company limited by guarantee, do not appear on the ACNC register. On the other hand directors' details appear on the ACNC register but may not appear 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 directors' details on the ASIC register may be out of date.

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 particularly 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 DIN implementation. We consider that this engagement would be very valuable from both our members' 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 officeholders are not included in the public part of the register**

Our members are officeholders of companies and are currently required to provide personal identity information to ASIC in accordance with section 205B(3) of the Corporations Act. This personal identification information is currently publicly available on the ASIC register.

We note that section 205B(3) of the Corporations Act is repealed by the bills and that the Corporations Act will no longer prescribe the information which must be given to the Registrar. It is envisaged these requirements will be in the Data Standards and the availability of the information will be determined by the Disclosure Framework.

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 officeholders readily available exposes these people to various risks and is a magnet for cyber-criminals. Governance Institute considers that our regulatory framework should not expose directors and company secretaries to these risks.

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

We recognise that there is the issue of legacy data. Existing records of officeholders' personal information are embedded in a vast number of documents filed with ASIC and available on the public register which will still be publicly available as it would be impractical for such information to be removed. We recommend that Australia adopt an approach similar to that adopted by the UK when it moved away from the public display of residential addresses, by removing data from public display only upon application. The Government may wish to consider charging an appropriate fee to cover the administrative costs of removing historical information from the public record. This fee could be graduated based on the number of years covered.

To ensure that third parties can enforce their rights against company officers and serve documents on officeholders, the DIN regime will need to require each officeholder to provide an address for service. This address will need to be publicly available on the register. The address for service can be chosen by the officeholder but does not need to be their residential address. In most instances, the company's registered address will be selected as the address for service.

The advantages that a DIN provides for an officeholder's privacy and security intersects neatly with the advantages of using the DIN to deter and penalise illegal phoenix activity with the DIN acting as a unique identifier for each director and company secretary providing traceability of their relationships across companies. Governance Institute recommends that the Disclosure Framework provides that personal details such as home address, place and date of birth are not publicly available on the Register. We consider that the provision of a DIN removes the need to make address and date and place of birth data publicly available. A DIN will enable those searching public registers for legitimate business purposes to easily and quickly confirm the identity of officeholders. Provided the risks posed by the availability of historical personal information on the ASIC registers are also addressed, the DIN will also protect honest directors and officers from the risk of identity theft and assaults on personal security.

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 read 'M Motto', with a stylized, cursive script.

Megan Motto  
CEO  
Governance Institute of Australia