

17 August 2018

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

via email: regmod@treasury.gov.au

Dear Sir/Madam

Modernising Business Registers Program

Thank you for the opportunity to provide a submission to the Treasury consultation on Modernising Business Registers (**Consultation paper**).

The Australian Institute of Company Directors (**AICD**) is committed to excellence in governance. We make a positive impact on society and the economy through governance education, director development and advocacy. Our membership of more than 43,000 includes directors and senior leaders from business, government and the not-for-profit sectors.

The AICD is supportive of the objectives of the Modernising Business Register program (**the Program**) which intends to create a whole-of-government platform to support businesses and companies to be established and regulated. Critical to this will be a practical, efficient system of Director Identification Numbers (**DINs**). This exercise is also a prime opportunity to address privacy and security concerns regarding public access to directors' personal information.

The following submission benefits from the results of surveys of directors undertaken by the AICD in August 2018.

1. Executive summary

In summary, the AICD:

- Supports the introduction of DINs to assist in the deterrence of illegal phoenix activity (see **Section 2**).
- Strongly recommends that the Government should prioritise the removal of personal director information from the public register simultaneously with the introduction of DINs due to identity theft, security and safety concerns (see **Section 3**).

- Does not support law reform that will transfer to a Registrar the flexibility to decide what information to collect, record and be publicly displayed in respect of information on directors (see **Section 4**).
- Supports a simple on-line digital application process for DINs and provides some initial high level suggestions to assist with the implementation of DINs (see **Section 5**).

2. Directors' identification numbers

The AICD supports the introduction of DINs. The effective implementation of DINs will make it easier for regulators and other stakeholders to track the corporate history of individual directors and further support targeted anti-phoenixing measures, while offering an opportunity to address security and privacy concerns at the same time (see Section 3).

Whilst the vast majority of Australia's 2.5 million directors govern their companies with integrity and accountability, fraudulent phoenix activity by a small number of people hurt the economy, employees and creditors. The tracking of individual directors through DINs is an important element of the anti-phoenixing reforms.

We note that as with any electronic identification system, information confidentiality and security issues will be of paramount importance in implementing the DIN regime. We would anticipate some important principles being established in implementing a DIN – such as integrity, efficiency, simple, privacy or similar – and that any proposed regime is evaluated against such principles as part of a more specific consultation process on DINs.

3. Directors' personal information

The AICD strongly recommends that the Government needs to prioritise the removal of directors' personal data, such as date of birth, place of birth and residential address due to concerns regarding identity theft and personal safety issues, as has been done in the United Kingdom and New Zealand. This should be done in conjunction with the introduction of the DIN, as the DIN which will be a robust form of identity verification in itself, will reduce the need for other verification mechanisms (such as the residential address and date of birth). Specifically the concerns of directors include:

- The use of data for fraudulent purposes – such as the use in identity theft, scams or the like. Recent estimates by the Attorney General's Department indicate that identity crime costs Australia upwards of \$1.6 billion each year, with the majority (around \$900 million) lost by individuals through credit card fraud, identity theft and scams.
- Security or safety concerns for directors whose companies are high profile or engaged in activities which some people morally object to (such as those involved with mining or lawful gambling). The objection to their companies' activities could be personally directed at them or their families, as a result of the publication of their residential address.

- Further security or safety concerns could exist in relation to directors in their personal or familial capacities or where restraining orders are involved.

We note that Australian directors are far more exposed than their international counterparts in terms of the degree of public accessibility of personal information. Included below is a table detailing the data that is currently publicly available on directors in Australia, New Zealand and the United Kingdom (neither of these overseas jurisdictions have introduced DINs at this stage, although New Zealand are currently consulting on the implementation of a DIN).

Details on public display	Australia	New Zealand	United Kingdom
Name and former name	Y	Y	Y
Date of birth	Y	N (Note 1)	N (Note 1,3)
Place of birth	Y	N	N
Month and year of birth	N	N	Y (Note 2)
Residential address	Y (Note 5)	Y (Note 4)	N (Note 1,3)
Service/ correspondence address	N	N	Y
Nationality	N	N	Y

Note 1 – this information is collected by the regulator but is not publicly displayed.

Note 2 – In October 2015 the UK replaced the publication of the full date of birth with the month and year of birth due to concerns that a full date of birth is a key piece of information that could potentially be used in identity fraud.

Note 3 - The full date of birth and the residential address is only made available to limited bodies, e.g law enforcement agencies, tax authorities and credit reference agencies.

Note 4 – The Ministry of Business, Innovation and Employment in New Zealand is currently exploring the implementation of a DIN and on 19 June 2018 published a discussion document on the Publication of Directors' Residential Address on the Companies Register. The preferred option in this paper will give all directors the right to provide an address for service on the Companies Register rather than their residential address.

Note 5 – A company director can apply to ASIC to have their residential address suppressed on the public database, and in its place use an alternative address. This can be undertaken in cases of personal safety through a 'silent enrolment' from the Australian Electoral Office.

The AICD recommends that legislation is included to explicitly outline the information that can be publicly displayed by the Registrar and that such information is limited to name, former names and a service/correspondence address. If birth date information is considered necessary, it should be limited to that required in the UK, and therefore only detail the month and year of birth.

AICD recognises that there is a case for access to personal information (such as a residential address) of company directors in circumstances where there is a public interest justification. Examples could include access by lawyers for legal notices or relevant legal research, or access for journalists for public interest journalism where it can be demonstrated that repeated unsuccessful efforts have been made to contact the director at their address for service and/or via the company. We recommend that such access could be allowed for in relevant circumstances, such as an application to the Registrar for defined or public interest purposes.

4. Proposals for law reform

The AICD does not support law reform which will transfer to a Registrar the flexibility to decide what information to collect, record and be publicly displayed in respect of information on directors. We consider that where a liability obligation is attached to the provision of such information it needs to be clearly articulated in law and not be subject to the discretion of a Registrar. We consider this as a matter of good policy that such an important issue – what personal director information is made available to the public – should not be subject to the unfettered discretion of a public official.

Currently, it is a company's obligation, under section 205B of the *Corporations Act 2001*, to lodge a notice of the personal details (and any change in personal details) of a director, or alternate director or secretary with ASIC. Section 205C of the *Corporations Act 2001*, then requires directors, alternative directors and secretaries to give the company any information it needs to comply with their obligation within seven days after their initial appointment or a change in their personal details. A failure to comply is an offence of strict liability, with a penalty attached of 10 penalty units, or imprisonment for 3 months, or both.

We consider that with the implementation of DINs, some law reform to accommodate the DIN will be required. Regarding the need for a director to obtain a DIN, the AICD recommends that a DIN could be considered as part of the eligibility requirements to become a director (with appropriate transition requirements) within section 201B of the *Corporations Act 2001*.

Further, we consider that the provision of a DIN removes the need to lodge a notice of personal details of a director, or alternate director or secretary as required by section 205B of the *Corporations Act 2001*. We anticipate the personal information of the director, alternate director or officer will already be held by ASIC under a DIN register or similar. Therefore the company notification requirement on appointments and resignations of relevant directors and officers should be limited to the provision of a DIN.

5. Implementation of Director Identification Numbers

It will be important to make the implementation of DINs as simple and streamlined as possible, with a reasonable transition time for application of the DIN. In August 2018 we carried out a survey of our members which provided high level indicators regarding implementation preferences, as follows:

- Support for a 100 point identity verification check on application for a DIN, similar to that used by banks when opening new bank accounts.
- Support for a simple online process DIN application process.
- Support for a complete digital identity solution, in contrast to needing to visit an office or shopfront. However, a partial digital solution which may involve the need to visit an office or shop front was indicated as a further option.
- The use of authorised agents to apply for a DIN and/or register an online 'consent' on behalf of a client was not popular.
- Directors would prefer to pay no fee when applying for a DIN and maintaining the DIN registration, although a nominal fee may be open to consideration.
- DIN application should be relevant for a specific directorship, in contrast to being able to apply for a DIN in advance of obtaining a director role.
- A preference was expressed for retaining notification to the regulator of director appointments and resignations with the company, keeping the existing consent process between a director and a company. However, some suggestions were made that a director should authorise the amendments made by the company. We suggest this could be done using an on-line verification process.

The AICD would be pleased to arrange a focused discussion with directors around some of the practical implementation steps.

6. Next steps

The implementation of DINs is a significant undertaking by the Government which needs careful consultation with those impacted and should be undertaken in tandem with other linked reforms being introduced.

We would expect more detailed proposals to be issued for public consultation along with plans for detailed user testing in respect of proposed models. The AICD wishes to participate further in any consultations, given the impact on our membership will be significant.

We hope our comments will be of assistance to you. If you would like to discuss any aspect of this submission including more details on the surveys undertaken, please contact Kerry Hicks, Senior Policy Adviser, on (02) 8248 6635 or khicks@aicd.com.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Louise', with a long horizontal stroke extending to the right.

LOUISE PETSCHLER
General Manager, Advocacy