

25 January 2022

Data Economy Unit
Consumer Data Right Division
Treasury
Langton Cres, Parkes ACT 2600

By email: regmod@treasury.gov.au

Dear Sir/Madam,

Modernising Registry Fees (December 2021)

CPA Australia represents the diverse interests of more than 168,000 members, working in over 100 countries and regions supported by 19 offices around the world. We make this submission on behalf of our members and in the broader public interest.

We make this submission in response to Treasury's December 2021 **Modernising Registry Fees Discussion Paper (the Discussion Paper)**. In previous submissions¹ on registry fees, we recommended the removal of registry search fees, the creation of a 'report once' approach and the adoption of an information access model like that of the United States, United Kingdom and New Zealand. In addition to these established views, we make the following comments.

While the scope of the Discussion Paper is restricted to fees associated with the Australian Securities and Investments Commission's (ASIC) business registers (excluding registration, review and renewal fees), we believe that future fee structures should be designed with the new Australian Business Registry Services (ABRS) in mind. This means that a whole-of-registers approach should be taken when determining pricing and information accessibility to ensure a coherent, efficient, and consistent experience for ABRS users.

We recommend:

- the removal of fees to access digital information on the registers for both retail and wholesale users.
- use of Director IDs as a publicly available identifier to replace the publication of directors' personal information
- no imposition of infrastructure fees, particularly given the fact that wholesale users provide significant benefits to the Government and ABRS through their products, including system integrity, improved compliance and enhanced transparency
- changes to late fees to improve alignment across regulatory regimes and better tailor these fees according to company size and type
- removal of lifecycle fees
- Treasury and the ABRS engage with their overseas counterparts to better understand their approaches and their suitability for Australia. This will ensure that the ABRS is world-leading and designed to support economic growth into the future.

Detailed comments in response to the Discussion Paper questions are included in the Appendix.

If you have any queries about this submission, contact Elinor Kasapidis, Senior Manager Tax Policy on 0466 675 194 or elinor.kasapidis@cpaustralia.com.au.

¹ CPA Australia, 2017. **Submission to Treasury, Discussion Paper: Modernising Business Registry Services, 5 September**
CPA Australia 2018: **Submission to the Treasury: Modernising Business Registers Program, 17 August**
CPA Australia, 2018. **Submission to Treasury, Consultation Paper - Modernising Business Registers Program Review of Registry Fees, 21 December**
CPA Australia, 2019. **Submission to Treasury, Exposure Draft - Treasury Laws Amendment (ASIC Cost Recovery and Fees) Regulations 2019, 7 February**

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G Pflugrath', written in a cursive style.

Dr Gary Pflugrath
Executive General Manager,
Policy and Advocacy

Responses to discussion paper questions

Search fees

Most searches conducted on ASIC's registers are free, with fees charged on certain search products. Both retail and wholesale users are both currently charged search fees.

1 Are you supportive of a further reduction or removal of digital retail search fees?

Yes. We support a removal of search fees for both retail and wholesale users.

Conceptually, the term 'search fees' reflects the old approach of charging a fee for 'searching' for information on microfiche and paper-based registers which is no longer the case. Users now access digitised information held in online public databases with software performing the filtering and document identification tasks that were historically performed by ASIC staff. In a digital registry with minimal manual intervention, the concept of paying a fee to access information held on the register is antiquated. As such, the approach should be focused on maximising public access to information on companies and minimising barriers such as fees.

Therefore, fees should be removed for online searches and all information should be available online. The New Zealand **Companies Office** provides information at no-cost, as does **Companies House** in the United Kingdom (**UK**) and the **Securities and Exchange Commission** in the United States (**US**).

A 2019 **report**² on the user benefits of Companies House data found that, "the introduction of subscription charges would reduce economic welfare and that the reduction would be expected to increase with the size of the charge". The report also observed a significant increase³ in the total number of searches and requests with the introduction of the no-cost Companies House service.

This indicates that search fees are a barrier to obtaining company information and that the removal of search fees will improve the operation of our economy and will enhance access to information, enabling businesses to make more informed decisions about with whom they trade. It is our view that the current legislated fee structure is not fit for an efficient, digital economy and that the removal of search fees will lead to greater use of the information by business, intermediaries, and public entities.

Many CPA Australia members perform statutory functions (e.g., insolvency practitioners) or support compliance with regulations (e.g., public practitioners). Insolvency practitioners have been known to incur non-recoverable fees for ASIC searches in the amount of tens of thousands of dollars, while public practitioners regularly pass on these costs to consumers. Should retail search fees be retained, consideration should be given to removing fees for those performing a statutory or regulatory compliance role. These could include insolvency practitioners, tax agents and financial advisers.

We recognise that the removing search fees will impact the revenue of the ABRS. Alternative revenue should be sourced from within the registry environment (e.g., a small increase in registration, review and renewal fees) and must not be considered under ASIC's **cost recovery implementation statement**.

The Discussion Paper raises the issue that "some stakeholders have expressed that further reductions to or removal of search fees may make personally identifiable data more readily available". However, to retain search fees across the Registry on the basis of risks related to a small number of specific pieces of information is not reasonable. It is also our view that a person intent on obtaining personal details from the Registry will not be deterred by search fees.

Instead, CPA Australia has previously submitted⁴ that the director identification number (director ID) regime could form an alternative and safer means for the public to validate directors' identities. We support the use of Director IDs as a publicly available identifier to replace the publication of directors' residential addresses and dates of birth. Access to addresses and birthdates could then be restricted to defined classes of persons and entities.

1.1 Do you have any concerns about retaining fees on a limited range of searches?

We recognise that non-automated data retrieval is a cost incurred by the ABRS, however the fees should be reasonable and as low as possible (e.g., the \$3 service charge for mail requests). In the longer-term, the ABRS should explore options to deliver certified copies digitally at no cost.

² UK Government, 2019. Valuing the User Benefits of Companies House Data Policy Summary, BEIS Research Paper Number 2019/015, Department for Business, Energy & Industrial Strategy and Companies House

³ The total number of searches and requests for Companies House data increased from 300 million in 2014-15 to 2.2 billion in 2017-18, coinciding with the introduction of the Companies House Service. Ibid, p.7-8.

⁴ CPA Australia, 2021. Submission to Treasury, **Modernising Business Registers (MBR) Program – Data Standard and Disclosure Framework**, 1 April

Infrastructure fees

An infrastructure fee on APIs would fairly charge users for a publicly funded specialised service which they use to generate private profit.

2. Which types of users (or use-cases) should be charged an infrastructure fee? Are there any users (or use-cases) that should be exempt?

We do not support an infrastructure fee and do not agree with the premise that the Government has an entitlement to charge profit-making enterprises (i.e., wholesale users) a higher amount for the use of published information than other entity types (i.e., retail users). As far as we are aware, registries in the US, UK and New Zealand do not charge wholesale user fees.

Wholesale users provide significant benefits to the Government, ABRS and the economy through their products, including system integrity, improved compliance and enhanced transparency. Any consideration of an infrastructure fee needs to factor in the benefits of products provided by wholesale users and the cost to the Government and economy if they were not available. This includes reduced access to information, integrity risks and lower levels of compliance.

Ultimately, it is the many users of this registry information delivered through commercial products who will incur the costs, not the wholesale product owners. Therefore, the goal should be to reduce, as much as possible, the transfer of business-as-usual costs for Government onto those who engage with the system.

Infrastructure related to compliance should not be subject to fees, which is in line with the ATO's approach to working with digital software providers in the interests of maximising voluntary compliance and enhancing system integrity.

The operating costs of maintaining specific infrastructure related to the retrieval and dissemination of information through commercial products should, as much as possible, be absorbed by the ABRS as part of their overall expenditure.

Given that the ABRS vision includes "[making] business information more trusted and valuable"⁵, wholesale users transform data and tailor the search experience in a way that improves access to and trust in the information obtained by customers beyond that which can be delivered by government entities. The value added by such businesses is not the dissemination of primary information itself, but rather the integration and analysis of large, complex data and information sets to provide a customised view of a company that supports decision-making by analysts, creditors and customers. Providing access to wholesale users for no fee also encourages new entrants and competition by removing barriers to entry.

Where amounts contemplated under the infrastructure fee proposals are found to be small in comparison to the total cost of maintaining the registers or could be accommodated by a small increase in registration, review and renewal fees⁶, an assessment should also be made as to whether it is efficient or effective to proceed with such a fee.

3. If a connection fee is to be introduced, which is preferable: a larger one-off onboarding fee, or a smaller ongoing subscription fee?

Further details on costs of onboarding compared to subscription fee structures should be provided. Caution should be taken not to construct a fee around the existing market participants and their capacity to pay, but rather the fee design should lead to increased public consumption of registry data and encourage market innovation while minimising costs for the end consumer.

4. If a usage charge is to be introduced how should it be set (e.g. per company, attribute, unit of measurement (e.g. by API call))?

Greater detail on the proposed fee model is required to justify or comment on both the subscription/onboarding fees and usage charges.

Search fees comprised 6.0 per cent (\approx \$65 million) of registry revenue in 2020-21⁷ and information brokers accounted for 86 per cent of search fees in 2018⁸. We caution the Government not to impede reform of the registries because of concerns about the loss of a revenue stream, but rather focus on the net benefit arising from the availability of information to the public and the efficiencies created by the establishment of the ABRS.

⁵ ABRS, 2021. Our vision, [About us](#), QC 13

⁶ Companies are required to register and maintain their company information as part of their statutory obligations which are intended, in part, to ensure that accurate information is publicly available to support the functioning of the Australian economy. As such, the costs associated with maintenance of the public registers (including APIs) should arguably form part of their fee base.

⁷ Treasury, 2021. Appendix B - Current fee schedule, [Modernising Registry Fees Exploring opportunities to improve fee structures for the Australian Business Registry Services](#), p.10, December

⁸ Treasury, 2018. Summary of Registry fee environment key fees, [Modernising Business Registers Review of Registry Fees Consultation Paper](#), p.11, November

Late fees

ASIC charges late fees when documents are not lodged, or fees are not paid, within the prescribed timeframe.

5. Would you support a simplified late fee regime, comprised of a fee for late provision of information and a fee for late payment?

We support the proposal to consolidate the late lodgment and late review fees into a single “late provision of information” fee, while keeping late payment separate.

6. If so, how should this be designed to ensure the information held on the registers is current and accurate?

Late fees comprised 11.5 per cent (≈\$124 million) of registry revenue in 2020-21⁹, remaining largely unchanged from the \$118 million collected in 2017-18¹⁰. This indicates that compliance with lodgment and payment dates is an ongoing issue and the ABRS should do further work on understanding the composition and behaviours underlying these figures to improve on-time performance.

As a primary tool used to incentivise on-time behaviours, late fees should be a deterrent and be set at rates that impose a real cost on non-compliant entities, with the Registrar given the discretion to remit or reduce fees in certain circumstances.

For the late provision of information fee, the current two-tier structure is limited and requires the information to be provided before the fee is imposed. For notifications more than one month late, the capped fee of \$344 means there is no further disincentive for lodging late. The fee amounts are also not scaled by company type, meaning a small proprietary company is charged the same amount as a public company for the late provision of information. The use of a legislated CPI-indexed fee amounts instead of a more universal measure such as penalty units creates a dissonance in the late fee/penalty environment across the ATO, ABR and ABRS/ASIC.

An alternative approach is reflected in the Australian tax system which uses failure to lodge (FTL) penalties that accumulate over time. The FTL penalty is calculated at the rate of one penalty unit for each period of 28 days (or part thereof) that the return or statement is overdue, up to a maximum of five penalty units for small business, with multiples applied to larger entities. The Commissioner of Taxation generally does not apply penalties for isolated cases of late lodgment and he also has the discretion to remit penalties¹¹. To encourage timely provision of information, consideration could be given to replacing or complementing the late fee regime with a penalty regime. While requiring a shift in mindset from a late ‘fee’ to ‘penalty’ approach, this would bring the tax, ABN and ASIC registry systems into greater alignment, tailor the value of penalties according to size of company and extent of lateness, and shift from CPI-indexed cost-setting to the use of penalty units prescribed by the *Crimes Act 1914*.

In relation to the late payment fees, again there is no scaling of the charges which results in an outstanding review fee for a proprietary company of \$276 incurring a \$344 fee if paid more than one month late – more than doubling the cost and being equivalent to an interest charge of 124 per cent. While we acknowledge the need for the ABRS to receive fees in a timely manner, small business is particularly vulnerable to cash flow and on time payment challenges and we question whether such a punitive late payment fee structure is appropriate. While the introduction of a general interest charge is not contemplated in this Discussion Paper, an alternative fee-setting approach should be considered that brings late payment fees more into line with commercial late payment penalties and more commensurate with the value of the amounts owed.

To address currency and accuracy issues more broadly, the ABRS should:

- establish on-time lodgment and payment performance metrics, like those used by the ATO¹². This will encourage a focus on reducing the incidence of late lodgments and payments resulting in improved currency and accuracy of ABRS information.
- establish a process with ASIC to promptly initiate the deregistration of companies under [section 601AB](#) of the *Corporations Act 2001* including for non-payment of review fees and non-response to or non-lodgment of documents.

⁹ Op cit., Treasury, 2021.

¹⁰ Op cit., Treasury, 2018.

¹¹ ATO, 2021. Calculating FTL penalty, [Failure to lodge on time penalty](#)

¹² ATO, 2021. Table 2.1 Performance results 2018-19 to 2020-21, [Commissioner of Taxation Annual Report 2020-21](#), p.36, October

Lifecycle fees

Lifecycle fees encompass fees incurred through the operation of a company (excluding review fees).

7. Are there any lifecycle fees that you believe are inefficient or counterproductive and should be specifically removed? Are there any that should be retained?

In a digital registry with minimal manual intervention, the concept of paying a fee to update or change information held on the register is antiquated. The Discussion Paper suggests an approach where the ABRS needs to charge for each transaction that changes the register, rather than being the custodian of a secure database which is managed by companies themselves.

Ideally, registration, review and renewal fees would be the only fees charged and be set at a rate at which the ABRS can operate the registers efficiently. Each lifecycle fee should be evaluated as to its basis for existing, the level of use, the cost to the ABRS of executing the changes on the register and the way in which the amount has been determined. We note that lifecycle fees generate only 1.1 per cent (\approx \$12 million) of registry revenue so their abolition would have minimal impact on the ABRS while reducing administrative cost burdens on business.

If lifecycle fees are maintained as a concept in the ABRS, fees related to deregistration, wind-ups or external administration should be removed as they are a disincentive to properly deregister. Moreover, they decrease funds available to creditors. Charging for an application to use an alternative address, given the previously highlighted safety and privacy issues for directors, should also be removed. Basic changes such as changing the company name or status and transferring registration should also not incur a fee, given they are fundamental pieces of information needed by the registry.

8. Are you supportive of a rationalisation of lifecycle fees into tiered cost levels? If this change were adopted how many tiers should there be?

If lifecycle fees are rationalised, costs could be tiered using factors such as company size and type, and the complexity of the change requested. We question whether the effort to change and maintain lifecycle fees is justified given the minimal revenue generated and the lower costs of operating a consolidated digital register.