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Mark Fitt
Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: economics.sen@aph.gov.au

Dear Mr Fitt

Subject: Corporations Amendment (Modernisation of Members Registration) Bill 2017

On behalf of our members and in the broader public interest, CPA Australia welcomes the opportunity to provide this submission in response to the draft legislation seeking to modernise the required contents for member registers under the *Corporations Act 2001* (“*the Act*”).

In the interests of transparency, we note Senator Xenophon’s second reading speech (15 July) notes that the ‘rationale’ for the amendment has resulted from circumstances involving a request made for a copy of the CPA Australia register of members.

Section 168(1) of *the Act* requires CPA Australia to maintain a register of members. Under s169(1) of *the Act*, the register of members must contain the following information about each member:

- (a) the member’s name and address; and
- (b) the date on which the entry of the member’s name in the register is made.

Section 173 (3) of *the Act* enables any person to make application for a copy of the register. CPA Australia received an application from one of its members requesting a copy of the register of members pursuant to section 173 (3) of *the Act*.

The register was provided by CPA Australia with the information in its register in accordance with *the Act*.

CPA Australia is broadly supportive of proposals for modernisation of *the Act*, however the proposed amendment contains some defects and gaps. We make the following comments.

General comments

We suggest that the Bill may better meet its objective by using a phrase broader than ‘email address’ so that *the Act* may more easily apply to new communication technologies as they emerge. For example, section 600G(5) of *the Act* uses the phrase ‘*electronic address, or by other electronic means*’.

Including the electronic address of members in the register of members clarifies that the use of electronic addresses of members is subject to the same protections and obligations under *the Act* as are afforded to the use of member details currently included in a members’ register (name and address).

Including the electronic address of members in the register of members would provide certainty that such information is subject to the application of section 177 of *the Act* (this section sets out how the information contained in a register can and cannot be used and the potential consequences for a breach of this section).

Further, extending paragraph 169(1)(a) to include electronic addresses also provides certainty that a person seeking the electronic addresses of members by virtue of a request under subsection 173(3) must do so for a purpose that is not a prescribed purpose under Regulation 2C.1.03 of the *Corporations Regulations 2001*.

Specific comments

The proposed amendment to section 169(1) is expressed in absolute terms and applies regardless of whether a company or registered scheme actually holds each member’s email addresses. That is, if a member doesn’t have an email address, and not all members will have email, how can the company comply with the section?

Further, if passed, the Bill would not alter related provisions of *the Act* which require the provision of member details. For example, why should a company not be required to provide a proposed member's name, email address and address on registration under section 117(2)(c) of *the Act*?

The Committee may wish to consider providing transitional arrangements to give those public companies that do not have the electronic addresses of members' time to collect that information.

Further, the Committee may wish to consider whether the Bill or Explanatory Memorandum needs to be expanded to explain how the proposed amendment may apply where a member does not provide an electronic address.

The Explanatory Memorandum only addresses by reference the fact that the 'Bill is compatible with human rights issues,' noting of course that the references here are bound by Section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011. Nevertheless, neither the Explanatory Memorandum nor the Senator's Second Reading Speech addresses privacy concerns once a copy of the register is received.

Privacy concerns, regardless of whether a person is caught by the privacy legislation, are relevant. There are no provisions in *the Act* that address how long a copy of the register may be retained, whether a member has any rights to ask their details not be provided (opt-out), continued use of the copy of the register and when the copy of the register should be destroyed and how.

The Committee may wish to consider whether a member has a right not to allow their information to be provided from a search of the register (see section 59 of the Associations Incorporation Reform Act (Victoria) 2012).

Further, there is an assumption that the members of an entity will be Australian. The Committee may wish to consider developments in privacy legislation, particularly the General Data Protection Regulation (GDPR) in the European Union, and what implications they may have for Australian businesses and their interplay with members with offshore residency and international obligations.

We note advice regarding GDPR from the Office of the Australian Information Commissioner, dated 31 May 2017, that: '*From 25 May 2018 Australian businesses of any size may need to comply with the GDPR if they have an establishment in the European Union (EU), if they offer goods and services in the EU, or if they monitor the behaviours of individuals in the EU.*' This nevertheless sits in contrast to provision within the UK Companies Act which grant rights of inspection and bases for copying registers along lines similar to those in Australia. Further developments around the details, and purpose of information, within registers can be observed in relation to transparency of beneficial ownership arising at the initiative of the Financial Action Task Force. All in all, striking the right balance between privacy considerations, member rights and wider public policy can be fraught and is more complex than immediately apparent in a very brief amendment to s169(1).

CPA Australia is concerned that as it currently stands, an entity is required by force of law to disclose personal information of its members, but (as an individual not subject to the requirements of the *Privacy Act 1988* (Cth) ("*Privacy Act*")), the recipient of that information is under no obligation to either protect the security of the personal information disclosed to it, or to securely destroy that personal information once the purpose for which it has been obtained has been fulfilled.

The Committee may wish to consider whether it is appropriate to require a person who receives a copy of the register of members under subsection 173(3) to keep that copy of the register secure and to securely destroy that copy after either use for the proper purpose or after a set period of time to align with the *Privacy Act* safeguards.

Further, Regulation 2C.1.04 should be subsequently amended to require an applicant's electronic address in their application for a copy of the register.

The Committee may wish to consider whether, for membership organisations, it would be appropriate for a third party who meets standard security management guidelines to manage requests for copying of a register and the management of its use for a proper purpose particularly when it is the whole register rather than an extract of a single or a few entries.

Any member interest, public interest and other concerns regarding secure management of information could be addressed with this mechanism which may need a register of managers approved for this purpose. In the current world of communication, the security of information including the ongoing security must be considered as an adjunct to allowing a person with no management systems or secure environments to have unlimited use and retention of data, this notwithstanding *the Act's* very strict rules around rights to inspect, rights to copy and use of information on registers.

The Committee may also wish to consider whether to suggest to the State and Territory Governments that they update their respective laws for incorporated associations to align with the amended Part 2C.1 *Registers Generally of the Act* (for example, subsection 56(2) of the Associations Incorporation Reform Act 2012 (Vic) does not require the members' register to include a member's electronic address).

If you require further information on our views expressed in this submission please contact Dr John Purcell FCPA, Policy Adviser – Environmental, Social and Governance on [REDACTED] or at [REDACTED]

Yours faithfully

Stuart Dignam
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