

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Innovation, Industry, Science and Research

Exposure draft of the Business Names Registration Bill 2011 and related bills

QUESTION 4: Has the department sought advice to allow access to information consistent with pre-existing regimes, thereby enabling credit providers access to information that is currently provided?

ANSWER: DIISR has consulted the Privacy and FOI Policy Branch of the Department of Prime Minister and Cabinet (PM&C) in response to representations made by information brokers seeking access to home address and date of birth information from the national business names register.

The Branch advised that it could not support making such information available under the provisions of the current Bills because the *Privacy Act 1988* requires agencies to only collect personal information that is for a lawful purpose directly related to a function of activity of the collector and, in their view, the Bills do not provide for personal information to be collected for information broker purposes.

It should be noted that Clause 4.3 (b) of the Intergovernmental Agreement which underpins the national law that the Bills establish outlines the purpose of the law, namely the registration and use of business names. The purpose of the national law does not include provision of data for authentication and verification purposes (for example through “match/no match” functionality).

Furthermore, Clause 4.4 (12) of the Intergovernmental Agreement states that “All business names data held by the Commission [ASIC], whether originating in State or Territory agencies or collected directly by Commonwealth agencies, will from the commencement of the national law be subject to the Commonwealth’s privacy and secrecy legislation.”

In addition to Privacy Act and policy considerations, PM&C were concerned about the efficacy and the implications for the Commonwealth of using or allowing a third party to use unchecked data for authentication and verification purposes.

DIISR also sought advice from the Department of Treasury and the Attorney-General's Department, who both confirmed that the business names register is not required to be a source of information for the purposes of the *Anti Money Laundering/Counter Terrorism Financing Act 2006*, or the *National Consumer Credit Act 2009*.

QUESTION 14: Can the Department provide the clauses of the Privacy Act that limit ASIC's disclosure powers to credit providers and agencies, and has the Department consulted the latest Privacy Act Determination which permits disclosure of information to credit providers?

ANSWER: In relation to the first part of the question, section 14 of the *Privacy Act 1988*, and in particular IPP 1, limits the collections of personal information by agencies to lawful purposes directly related to a function or activity of the collector (and the BNR Bills do not provide for collection for credit provider/agency related purposes). IPP 11 prohibits disclosure of such information, without consent, for purposes other than that collected, to, in summary, circumstances where:-

- a) there is an imminent threat to life or health of an individual;
- b) authorised or required by law; and
- c) it is reasonably necessary for enforcement of criminal law or law imposing a pecuniary penalty or for the protection of public revenue.

In relation to the second part, if the determination referred to in the question is the May 2011 determination, then, as it does not apply to ASIC (because ASIC is neither a credit provider nor a credit reporting agency); the department did not consult that determination.