SUBMISSION

Inquiry into Commonwealth Registers Bill 2019 and 4 others [Provisions]

Inquiry into Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019 [Provisions]

ACT Government

March 2019

Inquiry into Commonwealth Registers Bill 2019; Business Names Registration (Fees) Amendment (Registries Modernisation) Bill 2019; Corporations (Fees) Amendment (Registries Modernisation) Bill 2019; National Consumer Credit Protection (Fees) Amendment (Registries Modernisation) Bill 2019; and Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019.

Inquiry into Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019.

The ACT Government welcomes the opportunity to provide a submission to the above inquiries and supports action by the Australian Government on preventing, detecting and taking regulatory measures in response to illegal phoenix activity.

The measures outlined in the bills will complement reforms in the ACT, particularly those for improving practices and fairness in the construction industry.

Illegal phoenixing in the construction industry not only causes financial problems for contractors and others in the industry but can leave building owners with the costs for potentially serious rectification work. The ACT Government completed a review of its building regulatory system in 2015 (the Review). We have committed to an extensive reform program to improve the quality of building work and have introduced changes to licensing legislation to stop builders transferring their operations from one licensee to another to avoid their responsibilities, including complying with the Territory's building laws and rectifying any defective work. We are also considering changes to the ACT security of payments system and ways to protect certain payments during construction projects.

In 2016, the ACT Government introduced amendments to ACT construction licensing laws that require better reporting from licensees to the regulator based on a range of financial issues including in the event of insolvency, and additional grounds for refusing to renew or grant a licence based on a person's previous compliance history under other licenses in the ACT and other jurisdictions. These provisions are designed to help reduce phoenixing and the effect of insolvencies on contractors. However, our construction licensing laws can only do so much. They are effectively a 'last line of defence' and the Territory supports the Australian Government in doing more to prevent directors associated with corporations with questionable practices from registering new corporations to carry on with their activities while avoiding their debts.

ACT building and construction laws include many avenues for resolving disputes, and express powers to require rectification of non-compliant building work. These are only effective when the licensee still exists. Unlike individual licensees, corporations can wind up once a building project is complete and avoid fulfilling their obligations. This often involves transferring assets to another corporation with the clear intention to carry on operating and avoid their regulatory responsibilities. The ACT Government does not have powers to prevent this.

If a licensee is no longer available our regulatory authorities cannot adequately deal with compliance matters. Even if the ACT building regulator is successful in issuing or obtaining orders to rectify defective work, the licensee can start to wind up the corporation while still solvent to avoid doing the work, leaving necessary work incomplete. Directors can set up another corporation and transfer their assets to the new corporation so they can take on further building projects. At present, it is only our licensing laws that have prevented some directors from continuing their operation under a new corporation. However, the work under the original corporations remains undone and the building owners are left to bear the cost. Therefore, provisions such as those in the *Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019* relating to property transfers and creditor-defeating dispositions and voidable transactions, and provisions to improve the accountability of resigning directors are welcomed.

The ACT Government also supports the creation of director identification numbers in Schedule 2 to the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019. This will help regulatory authorities identify directors involved in different corporations and take appropriate action if they are associated with licenses with a poor compliance history.

Although the number of external administrations among ACT construction businesses is relatively few compared to the total number of businesses, the effect of a single insolvency can be extensive and extend across many businesses and individuals.

The Review found the amount of money owing to creditors and the deficiency between assets and liabilities was rising, significantly affecting unsecured creditors, who generally received none of the money they were owed. Even when a contractor is not insolvent, funds may also be unavailable due to poor financial management.

If supported and enforced, the relevant provisions in the bills will assist the ACT and other states and territories more effectively regulate a range of industries, including the construction industry.

The ACT Government supports amendments to create a new Commonwealth business registry regime and to address illegal phoenixing activity. The ACT Government considers implementation of these amendments is required as soon as practicable and urges the Parliament and Australian Government not to delay consideration or commencement of the new provisions.

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