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Senate Economics Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Via email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Sir/Madam,

**Re: Inquiry into the exposure draft of the Business Names Registration Bill 2011 and related bills**

American Express appreciates the opportunity to provide comments to the Senate Economics Committee (**the Committee**) on the Exposure Draft of the Business Names Registration Bill 2011 (**the Exposure Draft**).

#### **About American Express**

American Express Company is one of the largest global payment providers and is headquartered in New York. American Express has operated in Australia since 1954 as a travel company and has also been providing payment services for consumers, small business and corporate customers for more than 35 years. The company holds an Australian Financial Services Licence (**AFSL**) and an Australian Credit Licence (**ACL**).

#### **General Comments**

We appreciate the intent of the reforms that the Senate Committee seeks to make to the Business Name Regulations and generally, we support the establishment of the National Business Names Register (**the Register**).

However, we are concerned that the Exposure Draft seems to limit the types of information that may be included in the Register, as well as the purposes for which it may be accessed. The net effect of this is likely to make it increasingly difficult for small businesses and the individuals who operate them to obtain credit or at worst, successfully participate in the financial system, if financial services providers cannot meet their regulatory obligations.

We rely on data sets from select sources to facilitate decisions about new or existing credit facilities. This is not simply a matter of “best practice”. Like many financial services providers, we are legally compelled to comply with a complex series of interwoven local and international regulations.

The Know Your Customer (**KYC**) requirements of Anti-Money Laundering Counter-Terrorism Financing (**AML/CTF**) Act and associated Rules and Regulations in Australia mandate that identity verification of customers must occur before a business relationship can be established, when providing designated services. AML/CTF obligations also require reporting entities to perform ongoing customer due diligence and report suspicious matters to regulators within defined timeframes

Searches of business registers form part of the identity verification processes undertaken by American Express and other regulated AML/CTF reporting entities. Business registers are used to verify business registration details and those of the responsible entity or individual. These steps are designed to protect both the public and national interests. The regulator, AUSTRAC, monitors the compliance of regulated entities to these obligations.

Our ability to operate in the current regulatory environment is predicated on the ability to make strong reliable matches against reputable, independent databases. We note that financial services providers are currently permitted to use other publicly available databases regulated by ASIC, specifically relating to Companies and Directors, for this purpose.

These AML/CTF obligations often cannot be met without recourse to external data sources to obtain the necessary information sets. The proposed structure of the Business Names Register is of immense concern to us, not only because of the likely impact on our business but the potential risk of intervention by regulators should we fail to meet our regulatory obligations due to the absence of a critical data set.

Whilst this may not have been the intended consequence, we urge the Committee to consider the regulatory impact of preventing access to an independent and reliable data set.

### **The current system**

Under the current state based systems, business name registers collect and disclose a wide range of personally identifiable information, including dates of birth and residential addresses. Access to and use of this information in accordance with AML/CTF regulations for the purposes of identity verification is permitted.

### **The Proposed Regulations**

The following sections of the Exposure Draft seem to us to be inconsistent with current accepted practices.

#### **Section 7 Details that may be included in the Register**

We note that is not mandatory on all occasions for individuals seeking to include details in the Register to supply their full name and contact details including residential addresses. Instead, the prescribed contents are limited to;

- (a) contact details of an entity;*
- (b) any alternative contact details provided by an entity;*

- (c) if a home address is provided as the principal place of business in Australia of an entity that is an individual — that the address is a home address;*
- (d) the date and place of birth of an entity that is an individual;*
- (e) whether a business name is currently registered to an entity;*

We suggest that it should be mandatory for individuals seeking the inclusion of a Business name on the Register to supply their full name, date of birth, home address as well as their principal place of business. This could be achieved with minor redrafting of Section 7 as follows:

- (a) contact details of an entity including the full name and residential address of an entity that is an individual;*
- (b) any alternative contact details provided by an entity;*
- (c) if a home address is provided as the principal place of business in Australia of an entity that is an individual — that the address is a home address;*
- (d) the date and place of birth of an entity that is an individual;*
- (e) whether a business name is currently registered to an entity;*

### **Section 9 Accessing Register by request**

The proposed wording of Section 9 of the Exposure Draft states the following:

*...The following details are to be excised from a copy of an entry in the Register before it is given to any person:*

*(a) the date and place of birth of:*

*(i) an entity is an individual; or...*

*(c) if a home address is provided as the principal place of business in Australia of an entity that is an individual — all of the address other than the suburb and the State or Territory in which the entity lives.*

We understand this to mean that the date of birth or home address of any individual included on the Register will not be disclosed for matching purposes. Instead, the Register will only disclose a business address or other alternative address for purposes including service of documents. Further we understand that this will limit the ability to successfully search the Register using the individual's contact details.

The absence of this information will create significant operational difficulties for financial services providers. We rely on this data to assist with meeting our AML/CTF obligations. These obligations compel financial services providers to comply with AML/CTF obligations by verifying information already in their possession against independent and reliable data sets.

Currently, government data sets are viewed as being the best match to those criteria. Should the Register commence operations as intimated in the Exposure Draft, the unintended consequence will be that organisations will be restricted from verifying information against a recognised independent and reliable government data set.

We are perplexed as to why regulations are being contemplated that could potentially expose financial services providers to unnecessary risk and non compliance.

It should also be emphasised that having already collected, with consent, the name, date of birth and residential address of the relevant individual, all we are seeking to do would be to verify information already in our possession against the Register.

If these changes are implemented, this would result in an inability to verify dates of birth and residential addresses against what is considered an independent and reliable source of information.

### **Section 10 Publicly available information**

As with Section 9, Section 10 limits the disclosure of information from the Register.

*(2) However, if the address in paragraph (1) (d) is the entity's home address, ASIC must only make publicly available the suburb and the State or Territory where the entity lives.*

The proposed limitations will also limit the usefulness of the information that may be obtained from the Register and thereby the strength of any matches made. This will be of particular concern when entities from the same suburb and state share similar names. The ability of these entities to enter in to new financial relationships may be restricted by the inability of their preferred suppliers to properly identify and verify their details in accordance against the Register with the AML/CTF regulations.

We are concerned that the Committee should understand the implications of this drafting. We are also unclear as to what harm is perceived to warrant the suppression of such data from searches of the Register.

From our perspective, this information has been available for use for a significantly long period time and we are not aware of any harm having been caused to any individual by the supply of these details for purposes related to the operation of their business.

We acknowledge that the inclusion of personal information on any public register raises privacy and security issues. We do not seek to dismiss or diminish those concerns. However, we believe any concerns can be mitigated by good management and appropriate controls on the use of the data on the Register.

For a variety of economic and risk purposes, it seems logical that the current consent and disclosure regimes operated by financial services providers in compliance with the Privacy Act should apply to data on the Register. This approach would also be consistent with that taken in other debates about the use of personal information for commercial and regulatory purposes.

Further, this approach would mitigate any perceived harm that may be caused by the presence of personal information on the Register.

It is inconceivable that proprietors of a business are more likely to suffer harm or a loss of privacy as a consequence of their details on the Register than Company Directors, whose details including date of birth and residential address are in the public domain and available from ASIC.

### **Conclusion**

We strongly believe that the National Business Names Register can be implemented by May 2012 in a way that will balance the national interests with those of businesses and individuals. The potential consequences of restricting access to the Register must be avoided.

The Committee has the advantage of being able to leverage the various regimes that exist today to ensure that the regulations are practicable and workable.

With the greatest respect for the protection offered to Australians by the Privacy Act, we do not believe that the conduct of the Register should be at odds with the regulatory obligations placed on financial services providers by the AML/CTF regulations. We recommend that the Register operate in harmony with the existing legislation, rather than in opposition.

In light of these concerns, we urge the Committee to reconsider the suppression of vital data on the Register.

We would appreciate it if the contents of our submission were treated as commercial-in-confidence and not published or circulated outside the Office without our prior consent.

We would welcome the opportunity to participate in the hearings to be held by the Committee on the Exposure Draft.

Yours sincerely,

**For and on behalf of American Express Australia Limited**

Graeme Alexander  
Head of Compliance and Ethics, Australia and New Zealand