

August 8, 2011

Senator Mark Bishop
Chair, Senate Economics Committee
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Dear Senator

Veda thanks the Senate Economics Committee for their interest in industry concerns surrounding the proposed new Commonwealth Business Names Register (BNR). This further information is provided to assist the Committee in its deliberations.

Amend the objects and purpose

Following the Senate hearings, Veda further explored the privacy concerns cited by the Department of Innovation, Industry, Science and Research (DIISR).

Essentially, we understand the view on privacy taken by the Department of Prime Minister and Cabinet (responsible to Minister for Privacy, Brendan O'Connor) is based on the Department's proposed wording of the bill's objects.

Assuming this to be the case, a broadening of the objects and purpose of the legislation would be necessary to address the significant concerns raised in the Senate Committee hearings.

As currently drafted, the objects and purposes are tightly defined and do not recognise that information held on the Register may assist in the conduct of credit risk assessment, be it risk assessment for the purposes of AML/CTF legislation, compliance with National Consumer Credit Protection legislation, or, more broadly, for due diligence when extending credit.

Veda submits that the evidence provided to the Committee about the broader uses for the BNR (including AUSTRAC for AML/CTF and the Financial Ombudsman Service for NCCP) demonstrates a good public policy need to provide more suitable objects and purposes. Additionally, the design of the BNR should not stifle potential options mooted in the Treasury National Credit Reform Green Paper of July 2010 (Chapter One – *"credit for small business"*).

Veda has twice previously raised concerns about the narrowness of the proposed objects/purpose of the bill. Our particular concern was that the BNR should be able to search for business names related to a particular entity (ie *"what business names are registered to Bob Jones"*).

While this is provided for in Section 60, it is not reflected elsewhere in the object (S.16) and purposes (S.22), which are much narrower, referring only to the entity related to a business names (ie “*who is the person behind ‘Jones the Butcher’*”) and not what business names are related to a particular entity (“*what business names are registered to Bob Jones*”).

Once again, this highlights an unnecessarily constricted view of business names information and its uses.

60 Access to certain information in the Business Names Register by request

- (1) A person may lodge an application with ASIC for a copy of:
 - (a) the entry in the Business Names Register relating to a particular business name; or
 - (b) the entries in the Business Names Register relating to a particular entity.

16 Objects of this Act

- (1) The objects of this Act are:
 - (a) to ensure that if an entity carries on a business under a business name, those who engage or propose to engage with that business can identify the entity and how the entity may be contacted; and
 - (b) to remove the inconvenience caused by the registration of business names under the law of more than one jurisdiction within Australia.
- (2) These objects are achieved by requiring an entity that intends to carry on a business under a business name to register the business name on a nationally established and maintained register of business names.
- (3) The objects of this Act are also:
 - (a) to avoid confusion by ensuring that business names that are identical or nearly identical are not registered; and
 - (b) to ensure that business names that are undesirable (for example, because they are offensive) are not registered; and
 - (c) to ensure that business names that should be restricted for any other reason (for example, because they might mislead consumers) are not registered.
- (4) The objects mentioned in subsection (3) are achieved by rules dealing with the availability of business names.

22 The Business Names Register

- (1) ASIC must establish and maintain a Business Names Register.
- (2) The purpose of the Business Names Register is to enable those who engage or propose to engage with a business carried on under a business name to identify the entity carrying on the business and how the entity may be contacted.

Matching of information in states where date of birth is not currently collected

The Committee asked for further detail on current matching in those state’s where date of birth is not collected.

I can advise the Committee that where a satisfactory match cannot be achieved, the information is not included. At present, the various state based registers provide a wide breadth of information which can potentially be used to enable matching; for instance, except for the Northern Territory, all jurisdictions can provide current address.

Additionally, other data listed can potentially be used to provide matching capability eg address of other businesses is available except for Queensland and the Northern Territory. This will not be the case under the new Register, which will hold just seven data fields.

Veda notes that these other data fields can be of assistance to matching, particularly when used in conjunction with information held on other databases. These other databases include public records, such as court defaults judgements, bankruptcies and ASIC extracts, as well as commercial inquiries for credit and default listings collected by commercial credit reporting agencies.

Together, these data sources are used to create a trading history report, containing information on the business, its proprietors and the business relationships of the proprietors.

Statements made by the Department of Innovation to the Committee

Veda notes two comments made in the Hansard by DIISR:

CHAIR: If you have, can you please provide us with the details so that we may consider that. If you have not, can you explain to us in due course on notice why you have chosen not to. You made reference to the Privacy Principles and discussions with the relevant unit in PM&C. Have you taken legal advice on this point from the Solicitor-General?

Ms Bray: From the Australian Government Solicitor, yes.

CHAIR: Can you take on notice to provide a copy of that advice to the committee for its consideration?

Ms Bray: I will.

CHAIR: When that advice was provided, did you also at any stage seek advice as to whether it might be appropriate to insert provisions into the bill which provided an exemption, authority or permission for the pre-existing regime that had operated in a number of the states to continue allowing organisations to have access to that information?

Ms Bray: Could you repeat that question? Did I seek to make changes to the bill?

CHAIR: Yes.

Ms Bray: If we had made changes to the bill that would mean we agreed with the policy position of allowing access to the private bodies. After due consideration and agreement with the states and territories and PM&C, we decided not to do that. So we have an insert; we have not changed the legislation to allow for data checking by private bodies and we have not changed the regulations to allow that either.

Veda notes this appears to conflict with the Intergovernmental agreement for business names agreement, which provided for “an extract service for brokers on commercial terms agreed with individual brokers” [5.1 (g)] and that the purposes of the national BNR included “the parties agree that the levels of service provided by the Commonwealth’s national business names registration scheme will not be less than the levels of service currently provided in the State/Territory systems [1.1 (2)].

Additionally, evidence given to the Committee points to important public policy goals achieved by use of the information held on business names registers.

We also note the statement that:

CHAIR: All right. I still do not appreciate the difference between organisations that obtain credit information and the like lawfully and use it in a lawful manner, which might assist in the prevention of crimes at a later date, being distinguished from those who seek to attend to matters of a criminal nature after the offence has been created.

Ms Bray: Once data is provided to private bodies there is no control over what they might do with it.

This statement is not correct. Not only are there the obligations of the National Privacy Principles, but in addition, contractual terms and conditions can be imposed by agencies for private bodies seeking access.

We trust this of assistance to the Committee.

Yours sincerely

Matthew Strassberg

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