

**Australian Government
Senate Economics Legislation Committee**

**INQUIRY INTO TREASURY LAWS AMENDMENT (REGISTRIES
MODERNISATION AND OTHER MEASURES) BILL 2019**

Submission by Professor Helen Anderson, Melbourne Law School

27th February 2019

I thank the Senate Economics Legislation Committee for this opportunity to make a submission in response to the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019. I refer to my previous submission (attached here). My comments are confined to the director identification number provisions that will amend the *Corporations Act 2001* (Cth).

I am delighted to see the DIN legislation progressing into law. Here I raise a number of minor points for your consideration. I am no expert on legislative drafting and therefore I simply want to draw them to your attention.

The first is s 1272H, which combines the offence/civil penalty/accessory liability.

1272H Misrepresenting director identification numbers

- (1) A person must not *intentionally* represent to a Commonwealth body, company or registered body, as the director identification number of the person or another person, a number that is not that director identification number.

Note: Failure to comply with this subsection is an offence: see subsection 1311(1).

- (2) A person who contravenes, or is involved in a contravention of, subsection (1) contravenes this subsection.

Note 1: Subsection (2) is a civil penalty provision (see section 1317E).

Note 2: Section 79 defines *involved*.

I agree that it is valuable to have a range of options for a regulator to pursue, depending on the circumstances. However, I am concerned about the inclusion of the word ‘intentionally’. This may be appropriate for a criminal offence, although it should be noted that the explanatory memorandum states:

Strict liability offences

1.1 The new DIN requirement engages the presumption of innocence because it creates several new strict liability offences. A strict liability offence means that the prosecution is not required to prove fault as part of the offence; *it must merely prove that a contravention took place and the only permissible defence is an erroneous belief about a material event or circumstance.*

My concern is the piggybacking of the civil penalty and accessory liability provision onto the criminal provision. If there is an intention requirement in the criminal offence, my reading of the civil penalty provision is that there is an intention requirement as well, albeit established

to a different standard. Will the DIN's effectiveness be undermined by people 'accidentally' misquoting their DINs?

Perhaps there is scope for a genuine civil penalty provision here that adopts a reasonable person test, adopting the format of draft s 596AC of the Corporations Amendment (Strengthening Protections for Employee Entitlements) Bill 2018:

A person contravenes this subsection if:

- (a) the person represents to a Commonwealth body, company or registered body, as the director identification number of the person or another person, a number that is not that director identification number; and
- (b) the person knows, or a reasonable person in the position of the person would know, that the director identification number of the person or another person is a number that is not that director identification number.

The second issue I raise may already be dealt with by other legislation or indeed by the data standards that are to come later. Is there scope for people to change their details with the Registrar? This could be the usual address and contact details, but also things like surname change due to marriage or deed poll, and perhaps even gender change if gender is one of the pieces of identity information to be collected. How will deceased directors' DINs be removed from the register to ensure rogues do not use them?

To ensure the DIN is as effective as possible, it is important that information is kept up to date and this should be achieved as easily as possible to encourage the public's cooperation. On the other hand, it is vital that the DIN is not undermined by false alterations.

**Australian Government
Treasury**

**MODERNISING BUSINESS REGISTERS AND DIRECTOR IDENTIFICATION
NUMBER DRAFT LEGISLATION**

Submission by Professor Helen Anderson, Melbourne Law School

5 October 2018

I thank the Treasury for this opportunity to make a submission in response to the exposure draft of the legislation dealing with modernising business registers and the director identification number.

I first began campaigning for a director identification number in 2013: Helen Anderson, 'An Ounce of Prevention: Practical Ways to Hinder Phoenix Activity' (2013) 25(3) *Australian Insolvency Journal* 16, so this is an issue that is very dear to my heart. I refer to my previous submission on Modernising Business Registers for my broader ideas on the project, and I confine myself here to comments on the DIN legislation.

- Treasury should not allow the DIN project to become bogged down by the logistics of the broader Modernising Business Registers project. This could delay the implementation of the DIN for years.
- While I recognise that this is not a decision for Treasury, it is vital that the Government fund the implementation of the DIN project properly. To my knowledge, there has been no announcement as to how the project will be funded into the future.
- I note that the mode of identification has not been specified in the legislation. I am strongly opposed to biometric testing *at the initial implementation phase of the DIN* for the following reasons:
 - It is likely to be extremely costly, and finding funds may delay the project.
 - It is likely to meet stiff opposition from those concerned with privacy and civil liberties, and is an unnecessary over-reach. It will be likened to the Australia Card.
 - Government has a poor track record with data issues.
 - The DIN needs to have widespread community support, and the perception of excessive intrusion into people's private lives will have the opposite outcome.
- For this reason, I favour *commencing* the DIN with the same level of identification that is currently needed for passports or for the verification of identity needed for land transfers. **The machinery for these is already in place. The costs are knowable.**
- In future years, if biometrics become more widely accepted in Australia, the DIN (and other processes requiring proof of identity) can be upgraded to accommodate it.