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Dr Richard Grant  
Acting Secretary  
Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Dr Grant

I am writing to advise that I wish to correct the record in relation to evidence that I gave before the Senate Economics Legislation Committee on 2 August 2011. The clarifications aim to ensure that the comments I made during my evidence clearly reflect the context in which they were made, as follows:

As a point of clarification, I point out that Senator Bushby asked me about the address of the entity behind a business name, and the ability of a consumer to get correct details for service of process and/or dispute resolution. I stated that: "The consumer affairs agencies can get hold of the home address if they need to, as can the police". Senator Bushby then asked me: "Under what circumstances would they release that to the solicitor of a private individual who seeking to serve documents?"

This exchange might possibly have given a mistaken impression as to consumer agencies' ability to disclose personal information, such as home addresses, whether under existing laws or under the future Commonwealth national business names regime.

It should be noted that:

1. State and Territory agencies are bound by their own privacy legislation, and may only release personal information in accordance with those requirements. Where personal information is recorded on publicly accessible statutory registers, its release is subject to the relevant statutes as well as privacy legislation. Privacy concerns under Commonwealth law are a main reason for suppressing certain information (such as date of birth) on the new national business names public register.
2. Even where date of birth and home address are routinely disclosed on public searches under existing state legislation, jurisdictions may suppress it in certain circumstances, such as, health and safety concerns, witness protection.
3. Once the responsibility for administering business names registration passes to the Commonwealth and ASIC, both police and consumer agencies will need to access the

business names register to find information in relation to a registered business name. With respect to the draft Business Names Registration Bill 2011:

- Clause 61 of the Bill entitles law enforcement agencies to access all information on the business names register, including information that is not public under clauses 59 or 60, but that information may only be accessed and used for specified purposes (see subclause 61(1)).
- Those purposes do not include disclosure to third parties, such as the solicitor of a private individual.
- Clause 75 of the Bill contains offence and penalty provisions in relation to confidentiality of information, which would apply to any government official who wrongly disclosed information obtained clause 61.

In addition, there are a number of smaller clarifications that I would like to place on the public record, to clarify the intent of comments that I made during the hearing, which I have documented at Attachment A.

Yours sincerely

Ann Bray  
Acting Head of Division  
Industry and Small Business Policy Division

8 August 2011

**Clarifications to comments made during the public hearing**

**On page 2 of the proof transcript:**

I stated: "Also, because the ABR will in the future only show registered trading names—at the moment they show any name at all—it will be in the interests of the businesses to declare their ABN to ASIC so it can be shown and flow on to the ABR."

My answer should have been: "Also, because the ABR will in the future only show registered trading names—at the moment they show any name at all provided to it—it will be in the interests of the businesses to declare their ABN to ASIC so it can be shown and flow on to the ABR."

**Also on page 2 of the proof transcript:**

I stated: "For businesses an online system will also save time and effort in registration as only two states currently offer an online system. They will also be able to save from prefilling because information will be able to flow over from the ABN."

My answer should have been: "For businesses an online system will also save time and effort in registration as only two states currently offer an online system. They will also be able to save from prefilling because information will be able to flow over from the ABR".

**Also on page 2 of the proof transcript:**

I stated: "There have been many market testing discussion papers, stakeholder engagements and public forums."

My answer should have been: "There has been market testing, discussion papers, stakeholder engagements and public forums."

**Also on page 2 of the proof transcript:**

I stated: "We have also had public consultation sessions on the second exposure draft."

My answer should have been: "We have also had consultation sessions on the second exposure draft."

**On page 3 of the proof transcript:**

I stated: "The central purpose of the bill is to ensure, for those who do not trade under their entity name, that someone is able to identify that particular entity's real name."

My answer should have been: "The central purpose of the bill is to ensure, for those who do not trade under their entity name, that someone is able to identify that particular entity's real name and how the entity can be contacted".

**On page 4 of the proof transcript:**

I stated: "Government agencies, police bodies, state and territory agencies will have access to all the private data on the registers."

My answer should have been: "Government agencies, police bodies, certain state and territory agencies will have access to all the private data on the registers."

**Also on page 4 of the proof transcript:**

I stated "I can only say that the law enforcement agencies and the government bodies, those looking after consumer protection in the states and territories and the Commonwealth will have access to all the data on the bill, including date of birth and residential address for law enforcement purposes."

My answer should have been: "I can only say that the law enforcement agencies and the government bodies, those looking after consumer protection in the states and territories and the Commonwealth will have access to all the private data collected under the bill, including date of birth and residential address for law enforcement purposes and other purposes specified under the Bill."

**Also on page 4 of the proof transcript:**

I stated: "Only three states collect date of birth; the other five do not."

My answer should have been: "Only three states give out date of birth of adults; the other five do not."

**Also on page 4 of the proof transcript:**

I stated: "Queensland is the only one that verifies the data. Seven out of the eight states collect home addresses."

My answer should have been: "Queensland is the only one that verifies the data. The eight states provide information on home addresses in extracts to the public."

**On page 5 of the proof transcript:**

I stated: "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."

My answer should have been: "So 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."

**On page 6 of the proof transcript:**

I stated: "It is in the Privacy Principles that you are allowed to provide information for those purposes."

My answer should have been: "It is in the Privacy Principles that you are allowed to provide information for those purposes without consent."

**On page 7 of the proof transcript:**

I stated: "This information has not been checked."

My answer should have been: "The information has to be provided to ASIC and will not be checked."

**On page 8 of the proof transcript:**

I stated: " We will alert them to the fact that trademarks are the only of protecting their property and that they should register a trademark."

My answer should have been: " We will alert them to the fact that trade marks are the only way of protecting their property and that they should register a trade mark."

**Also on page 8 of the proof transcript:**

I stated: "So if people have battled out who owns a particular trade mark it can be deregistered."

My answer should have been: "So if people have battled out who owns a particular trade mark the business name can be deregistered."

**Also on page 8 of the proof transcript:**

I stated: "It is not a trade mark; it is an internet address."

My answer should have been: "It is not a trade mark unless it is a registered or unregistered trade marked; it is an internet address."

**Also on page 8 of the proof transcript:**

I stated: "There is a link at the moment with order."

*The transcript should read:* "There is a link at the moment with AuDA."

**On page 9 of the proof transcript:**

I stated: "But five years ago, certainly, you had to have one of those things to be able to register a .com.au address and it had to be a variation, such as a shortening or a lengthening of it."

My answer should have been: "But five years ago, certainly, you had to have one of those things to be able to register a .com.au address and it had to be the same or a variation, such as a shortening or a lengthening of it."

**Also on page 9 of the proof transcript:**

I stated: "If they are international businesses, they will not be required to register in Australia."

My answer should have been: "If they are overseas businesses, they will not be required to register in Australia."