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Senate Standing Committee on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

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## Commonwealth Registers Bill 2019 and 4 related bills

I would like to provide the following comments on behalf of the Housing Industry Association (HIA) in response to the Committee's inquiry into the *Commonwealth Registers Bill 2019* and four related bills.

The four related bills are:

- *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*
- *Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019*

HIA's response is limited to the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019* (Bill) which seeks to:

- modernise the Commonwealth business registry regimes; and
- introduce a Director Identification Number (DIN) requirement.

Broadly, HIA supports these reforms as they seek to introduce measures that cut red tape and reduce regulatory burden. HIA also supports moves targeted at curtailing illegal phoenixing activity.

In this regard, HIA has identified some areas of improvement outlined below.

### Modernising Business Registers

Concerns with the integrity and accuracy of the data collected by government agencies are not new, for example, the Black Economy Taskforce observed that:

*'The ASIC company/director database has the same individual recorded multiple times under slightly different names, or with different dates of birth, which means it is currently not possible to identify if that person is associated with multiple companies. There are similar issues with mismatches between the ASIC registry and the ABN registry. Addressing this would require director identity to link to a robust, verified individual identity.'*

Moves to address this, improve data quality and reduce red tape for businesses by streamlining registry services are encouraged.

The proposed measures would see a new regime aimed at modernising business registers and merging the Australian Business Register (ABR) with the Australian Securities and Investments Commission (ASIC) Register thereby making one platform administered by the ABR within the Australian Taxation Office (ATO).

Of note, the Bill proposes to remove prescriptive requirements currently contained in legislation into data standards. As noted in the Explanatory Memorandum to the Bill such matters include what information has to be provided to ASIC and the ATO (for the purposes of the ABR) and the manner and form in which such information has to be provided.<sup>1</sup>

HIA understand that the move away from this current approach is based on the desire to remove rules that are *'not uniform, technology neutral or governance neutral'*<sup>2</sup>. In some cases a data standard may be the most appropriate tool to achieve that goal. However, it is not clear why regulations are not proposed to be used in relation to, for example, the information to be collected and the manner and form in which such information is to be provided. These matters would typically be contained in regulations.

### **Director Identification Numbers**

The introduction of DINs responds to the problem of corporate phoenixing. Illegal corporate phoenixing is a persistent public policy problem that has widespread negative impacts on the economy.

Harmful phoenixing activity, left unchecked, has the capacity to undermine Australia's revenue base and the competitive 'level playing field'. It is foreseeable that legitimate business operators, paying taxes, wages and other debts, might be driven out of business by those engaging in illegal phoenix activity.

HIA does not support individuals who engage in illegal corporate phoenixing.

HIA sees the introduction of DINs as a measure that can assist in tracing and targeting those that engage in phoenixing behaviours to assist education, compliance and enforcement activities. Such measures should primarily target those directors and persons who engage in the practice.

DINs will also impact ordinary businesses, including small businesses, many of whom are "mums and dads" that never intend to phoenix or engage in any illegal activity. These businesses should not be adversely viewed or affected merely because at some point their business might fail. While HIA supports the principles underlying the introduction of DINs it remains unclear how the new measures will be used and administered in practice.

For example, a key element of the reforms is to verify the identity of individuals to improve data integrity and enforcement action. Consequentially, as part of the application process, in order to issue a DIN the register must be satisfied that the director's identity has been established. Unfortunately at this stage it is unclear what that verification involves. The Explanatory Memorandum to the Bill indicates that those matters may be dealt with in data standards and may require a 100 point identification check but little further detail is provided. While discretion and flexibility in relation to these types of matters is important, it is preferable that such matters be set out and considered prior to the passage of the Bill.

- *The process of obtaining a DIN*

Under the Bill, current and proposed company directors have an obligation to apply for a DIN.

HIA is of the view that regulators currently have enough information to identify and allocate DIN's to existing directors without the need for an application process. This approach would significantly reduce the proposed regulatory burden and new administrative process required to manage an application process for the majority of existing directors.

- *Time frames for application*

The Bill includes transitional provisions that apply in relation to a person appointed as a director at the time the new requirements commence. Specifically, the Bill provides that a person appointed as a director can, within the first 12 months of operation of the new regime, apply for a DIN within 28 days of being appointed as a director.

This differs from the general requirement that an individual must apply for a DIN prior to being appointed as a director. HIA submits that the proposed transitional arrangements should be permanent so that while an individual can apply for a DIN prior to being appointed as a director, individuals should also be able to apply for a DIN within 28 days of their appointment.

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<sup>1</sup> See paragraph 1.31

<sup>2</sup> Explanatory Memorandum, paragraph 1.30

- *Penalties*

In HIA's view the proposed penalty regime is disproportionate with the consequential harm that would result from non-compliance.

Directors who do not have a DIN or that fail to apply for a DIN within the applicable timeframe will be liable for civil and criminal penalties. This approach is considered unnecessary and excessive.

Due to existing regulatory frameworks, the regulator will be aware of the appointment of an individual as a director. As such, the task of requesting such individuals obtain a DIN where they have not already would seem to be the most appropriate course of action. It will also become quickly obvious if a director does not have a DIN as corporate governance measures are adapted to reflect this new requirement. In HIA's view the preferred response to this situation is a 'show cause' notice, notifying of the omission and requesting compliance.

Where such a notice has been provided and an individual does not comply, penalties may then be appropriate.

Finally, HIA is of the view that a moratorium on all penalties in the Bill should apply for the first 12 months of the regimes operation. This will provide the community with the time and opportunity to become educated about the new requirements and comply with them.

Yours sincerely  
HOUSING INDUSTRY ASSOCIATION LIMITED



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