**Australian Government**

**Treasury**

**MODERNISING BUSINESS REGISTERS PROGRAM**

**REVIEW OF REGISTRY FEES**

**Submission by Professor Helen Anderson, Melbourne Law School**

**3 December 2018**

I thank the Treasury for this opportunity to make a submission in response to the Review of Registry Fees Consultation Paper. 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 charging of fees for registry services.

In answer to the questions posed:

3. While it is appropriate to differentiate between small and large businesses, it is vital that even the smallest of businesses should be required to pay the annual review fee. It is a valuable reminder that incorporation is a privilege, not a right.

7. I am delighted to see, on page 13 of the Consultation Paper, that existing search fees are coming down and that there will be exemptions for certain categories of searches. In my opinion, Australia should follow the UK example and make all searches free. For further discussion of this point, see *Phoenix Activity: Recommendations on Detection, Disruption and Enforcement* (February 2017), [1.4]. Please [click here](http://law.unimelb.edu.au/centres/cclsr/research/major-research-projects/regulating-fraudulent-phoenix-activity) to access this report.

You mention on page 15 that ‘Current search fees could be inhibiting access to key business data and therefore limiting possible business opportunities, innovation and economic efficiency’. This is a fair comment. **However, the most important argument in favour of free access to information is to increase transparency and to allow creditors to self-protect against loss.** At present it is simply too cumbersome and expensive for small creditors to undertake the necessary searches to determine whether a prospective debtor company has directors with a history of defaults, phoenix activity or fraud.

The current enforcement system, where wrongdoing should be punished, is broken; the best way forward is to prevent losses in the first place, and ready access to information is the key. I hope that the Modernising Business Registers project makes sure that information is properly linked, so that the value of the search is maximised.

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