

27 January 2022

Data Economy Unit  
Consumer Data Right Division  
Treasury  
Langton Cres  
PARKES ACT 2600

By email: [regmod@treasury.gov.au](mailto:regmod@treasury.gov.au)

Dear Sir/Madam

### **Modernising Registry Fees**

Thank you for the opportunity to lodge a submission on this issues paper. Our submission primarily focuses on the search fees aspect of the consultation paper, namely the benefits of increasing data availability and use, specifically for retail public sector data.

We do not propose to address the consultation questions in detail but highlight, as we have in many prior submissions to government, that insolvency practitioners should be provided with free and open access to company registry information in order to be able to use that data to investigate and report on failed companies to the corporate regulator. It is unreasonable that liquidators should have to pay, often from their own pocket, to access information from a government department (ABRS) to report that information to a different government department (ASIC).

We also generally emphasise at the outset that equal access to “perfect” information is a cornerstone of economic theory in creating competitive markets – it allows and empowers businesses to make properly informed risk decisions about providing trade credit to better protect their own financial security and viability by reducing information asymmetries. These search fees also discriminate against SMEs who generally don’t have access to the credit rating agency data that larger firms have.

ARITA submits that open access, free of charge, to Australian Business Registry Services (ABRS) data will provide a number of benefits to the business community and the broader economy, namely:

- enhance the transparency and scrutiny of corporate conduct

- enhance and facilitate academic and empirical research into corporate conduct, which will inform and promote evidence-based policy and law-making, and
- remove the anomaly of insolvency practitioners paying to access data which is required to report to ASIC.

### Improving the efficiency of external administrations

Open and free access to ABRS data would address an anomaly in the conduct of external administrations.

Insolvency practitioners are duty-bound to conduct certain investigations relating to the affairs of companies to which they are appointed. For example, under s 533 of the *Corporations Act 2001* (Act) a liquidator is obliged to lodge with ASIC a report with respect to any possible breaches of duty or offences committed by a person involved in the management of a company.

Liquidators must comply with this duty even if this means incurring expenses which cannot be met out of available company property: s 545(3) of the Act. If the company being liquidated has assets, a liquidator is entitled to apply those assets toward the payment of expenses incurred in complying with the liquidator's statutory reporting duties. However, often there are insufficient company assets to cover these costs, leaving the liquidator personally 'out of pocket'.<sup>1</sup>

Consequently, in cases where there are no or limited company assets, liquidators must pay fees - at their own personal expense - to access company registry information (currently ASIC and soon the ABRS), investigate and then lodge the necessary report with ASIC. For example, if property of the company being liquidated has been transferred for no value to another company with a common director, the cost of a company search is required to verify the 'related party' status of that recipient in order to confirm an apparent case of a breach of that director's duties. In effect, the government charges fees for access to data where that data is required by the accessing party to report back to the government on a review of that same data.

ARITA submits that this is an inequitable situation which should be rectified by a move to open and free access to ABRS data for registered liquidators.

We further emphasise that liquidators gain no benefit themselves from the requirement to undertake these paid searches.

---

<sup>1</sup> See the February 2013 report of Amanda Coneyworth (nee Phillips) 'An analysis of official liquidations in Australia' at [4.10.1], available at <http://www.arita.com.au/about-us/terry-taylor-scholarship/past-recipients>. This research was conducted with the support of ARITA's Terry Taylor Scholarship.

## Open access to data

We consider data currently held in the Australian Securities and Investments Commission Register (ASIC Register), and to be held by the ABRS, to be 'high value data' in light of the potential benefits of its open and free access.

Data which is currently available on the ASIC Register includes:

- organisation and business names
- documents, and
- persons banned and disqualified from involvement in the management of a corporation.

Extracts of the above categories of information are often available for free, with a fee payable for more detailed information. For example, limited current company information (name, identification number, type of company) is available for free, but an historical extract of information is only available for a fee.

We believe open access, free of charge, to ABSR data would deliver the following benefits:

### ***Empowering businesses and public to scrutinise corporate conduct***

The Report of the Senate Economics References Committee on *Insolvency in the Australian construction industry* recommended 'ASIC and Australian Financial Security Authority company records be available online without the payment of a fee.'<sup>2</sup>

The Committee noted that free data would enable small business operators to conduct due diligence and protect themselves against unscrupulous phoenix activity. ARITA agrees with this recommendation of the Senate Committee.

The United Kingdom in 2015 established a 'truly open register of business information' when its Companies House (the equivalent of the ASIC Register) made its digital data available free of charge. Like the ASIC Register, this data includes basic information about companies and their accounts and electronic images of lodged documents.

This reform was a response to the UK's House of Commons Public Administration Select Committee Report on Open Data and Statistics of 17 March 2014 which recommended that charging for government data 'should become the exception rather than the rule.'

In announcing the change to open and free access to Companies House data, the UK Government stated that consequently 'it will be easier for businesses and members of the public to research and scrutinise the activities and ownership of companies and connected

---

<sup>2</sup> Report of the Senate Economics Reference Committee, 'Insolvency in the Australian Construction Industry', December 2015, p 188. It should be noted that AFSA records relate to personal insolvency (bankruptcy) and not companies.

individuals' and that it was 'a considerable step forward in improving corporate transparency'.<sup>3</sup>

ARITA submits that the UK Companies House model of free and open access to data should be adopted in respect of the ABRS.

### ***Improving empirical and academic research on corporate conduct***

Open and free access to ABRS data will also facilitate empirical and academic research. For example, there have been only a limited number of empirical studies of the performance of Australia's insolvency laws. The value of such research was borne out by the Productivity Commission's Report on 'Business Set-up, Transfer and Closure' dated 30 September 2015.<sup>4</sup>

ARITA has funded scholarships to promote empirical research into Australia's insolvency regime<sup>5</sup> and can confirm that the data-access costs of such studies are significant.

Free and open access to ABRS data would enable more empirical research which supports evidence-based policy and law reform. Law reform proposals have been known to be deferred due to the lack of evidence-based support, but the costs of empirical studies are a substantial obstacle to sustaining the case for change.

### **Calculating late lodgement dates**

Our members have had issues in the past when attempting to lodge forms with ASIC where they incorrectly receive a late fine from ASIC. This has occurred where a form is lodged on time, however, due to one of the following a late fine is issued by ASIC:

- a public holiday in the state where the company or Liquidator are based; or
- time differences between the state where the company or Liquidator are based and eastern standard time (**EST**) or eastern daylight savings time (**EDT**).

Members have experienced the following two scenarios:

1. According to section 36(2) of the *Acts Interpretation Act*, where a form is due on a day that is a public holiday, it may be lodged on the next business day. The problem occurs where the public holiday is in the state where the company is based, but not anywhere else. ASIC's system does not appear to recognise it is a public holiday and a late fine is issued. The member has always succeeded in having the late fine reversed, but this creates additional unnecessary work.

---

<sup>3</sup> Press Release, 'Free Companies House data to boost UK economy', 15 July 2014 available at <https://www.gov.uk/government/news/free-companies-house-data-to-boost-uk-economy>.

<sup>4</sup> Productivity Commission, 'Business Set-up, Transfer and Closure', Report No.75, 30 September 2015, in particular pp 363 and 364.

<sup>5</sup> Details and the research outcomes of ARITA's Terry Taylor Scholarship are available at <http://www.arita.com.au/about-us/terry-taylor-scholarship>

2. ASIC's system does not take into account different time zones. The member may lodge a form within time in the state where the company or Liquidator are domiciled, but based on EST or EDT the form would have been late. In these circumstances, ASIC will issue a late fine. Again, the member has succeeded in having the fines reversed, but this is an administrative burden.

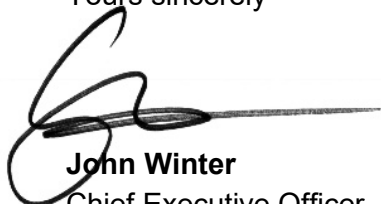
As such it is clear that where lodgements are time sensitive and time periods are business days, the system needs to account for different time zones and the fact that States have different public holidays.

### **Australian Financial Security Authority (AFSA) Records**

While outside the scope of this consultation, for completeness we note that AFSA records - primarily the National Personal Insolvency Index (NPII) can similarly be used for small business due diligence inquiries and insolvency practitioner investigations. Accordingly, ARITA submits that open and free access to AFSA's NPII data will deliver similar benefits.

Should you wish to discuss any of these matters further with ARITA, please do not hesitate to contact ARITA, Policy & Education Manager, Ms Kim Arnold, on 02 8004 4340.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Winter', is written over a horizontal line. The signature is stylized and includes a long horizontal stroke extending to the right.

**John Winter**  
Chief Executive Officer



## About ARITA

The Australian Restructuring Insolvency and Turnaround Association (ARITA) represents professionals who specialise in the fields of restructuring, insolvency and turnaround.

We have more than 2,200 members and subscribers including accountants, lawyers and other professionals with an interest in insolvency and restructuring.

Around 80% of Registered Liquidators and Registered Trustees choose to be ARITA members.

ARITA's ambition is to lead and support appropriate and efficient means to expertly manage financial recovery.

We achieve this by providing innovative training and education, upholding world class ethical and professional standards, partnering with government and promoting the ideals of the profession to the public at large. In 2020, ARITA delivered 70 professional development sessions to over 8,200 attendees.

ARITA promotes best practice and provides a forum for debate on key issues facing the profession.

We also engage in thought leadership and public policy advocacy underpinned by our members' knowledge and experience. We represented the profession at 15 inquiries, hearings and public policy consultations during 2020.