

Submission to the Queensland Legal Affairs, Police, Corrective Services and Emergency Services Committee

Inquiry into the Business Names (Commonwealth Powers) Bill 2011

For further information contact Matthew Strassberg, Senior Adviser, External Relations
(02) 9278 7838 or 0411 104341

EXECUTIVE SUMMARY

Veda is an information economy company, best known as Australia's largest consumer credit reporting agency. Our extensive involvement with consumer credit information has given us considerable data analytic skill, particular in the field of credit risk assessment, identity verification and fraud.

We have an existing relationship with several Queensland departments for the supply of various data; this has included information available on the Queensland business names register, which contains eleven data fields. The move to a Commonwealth business names register will result in less data available (seven fields); more importantly, the Commonwealth proposes to operationalize the Register in a way that will significantly inhibit the usefulness of data, in contrast to what has been the practice.

Currently, information on business names register extracts are used as part of credit risk assessment and to verify identity as required by the Commonwealth's anti-money laundering and counter terrorism financing legislation.

These concerns have been raised with the Commonwealth by the Australian Bankers Association, the Australian Finance Conference (representing second tier lenders such as motor financiers and non-bank lenders) as well as card issuers such as American Express.

The critical point is that information sought on a particular person should be able to be correctly matched to details held on the Business Names register.

Industry submissions to the Commonwealth Senate Committee received support in the Committee's findings and most recently the Tasmanian Parliamentary Committee inquiring into the Tasmanian business names bill also supported industry concerns.

For the purposes of the Committee's deliberations, we seek support for the following:

This Committee notes that:

- The information held on the business names register assists business to meet legislative requirements of the National Consumer Credit Protection Act and further, the collection and verification of business names is a specific obligation under the Anti-Money Laundering and Counter-Terrorism Financing Act.
- That the Register must operate in a fashion so as to ensure the information it discloses on paid extracts is matched to the particular entity enquired for.

MAIN SUBMISSION

In recent years, there has been increasing demand for data services to assist businesses to meet legislative requirements:

- Responsible lending obligations under the National Consumer Credit Protection Act contain broad obligations on lenders to verify a credit applicant's financial circumstances.
- Under the Anti-Money Laundering and Counter-Terrorism Financing Act (AML/CTF), there is a mandated requirement to collect the registered business name for certain classifications of business ownerships. Where a potentially higher risk is identified, the legislation requires reporting entities to take additional steps to verify information provided.

In response to these needs, Veda has a range of data products and services using information from a wide variety of sources, including information from ASIC extracts, public record data (bankruptcies, court judgements etc) and information available (as paid extracts) from state business names registers. Typically, lenders seek to identify potential risk; this in part can be gained from the ability to see connections that may not have been disclosed by a credit applicant.

Additionally, information on business names registers is explicitly required by AML/CTF legislation for certain applicants for financial services (eg sole traders)

The most significant issue for the new Register will be ensuring the information disclosed on paid extracts are able to be correctly matched to the person enquired for; the current scenario would have an enquiry on Robert Smith end up returning every business name attached to every Robert Smith in Australia.

Matching is not a simple task.

Looking at the more than 15 million names on the consumer credit bureau, enquiries that use name and address will result in a match rate of 65 per cent at best. Where date of birth can also be used, this climbs to 80-85 per cent.

On any large database, first-surname name repetition (“Robert Jones, John Smith,”) will occur for approximately 9 per cent of entries. In Australia, there are around 400 first-surname combinations each with more than 500 people. One of the most common of these, Robert Smith, occurs 2,100 times. For the purposes of matching, information economy companies must also be able to distinguish and correctly match, Bob Smith; Rob Smith; as well as being able to recognise “Robbie Smith Junior” as a different person.

Veda also brings to the Committee’s attention that while “Smith” may be relatively evenly spread across Australia, clustering of particular names makes correct matching even more difficult. A cursory look at the white pages reveals there are 258 Lee/Li listed telephone subscribers in Chatswood, 2067, NSW. Even with first name provided, there can be insurmountable difficulties with data matching accuracy. For instance, in the consumer credit bureau there are 260 “Thanh Nguyens” residing in Cabramatta, 2166, NSW.

It is possible for the Register can ensure accurate return of useable information in a manner consistent with the application of privacy principles, primarily by obtaining consent from the individual who has applied for credit or sought to obtain a financial service.

In addition, where an individual needs to have their identity verified, it is possible to use “match/no match”, as already practiced by the Commonwealth’s Document Verification Service (DVS):

- i. With consent from the individual concerned, the inquirer (Veda) provides key details (eg name, date of birth and postcode)
- ii. If this matches the details held by the register, the return indicates a “match”
- iii. The register does not actually disclose any information held

Attachments

1. Extract from the Senate Economics Committee inquiry in the Commonwealth Business Names Registration Bill 2011
2. Comparison of data currently available on extracts from state registers

EXTRACT FROM SENATE ECONOMICS COMMITTEE REPORT

Chapter 5

The committee's view

5.1 The final chapter of this report considers each of the key issues raised during this inquiry:

- clause 60 of the main bill and draft regulation 9 which limits the access of non-government entities to register information on privacy grounds;
- clause 40 of the main bill relating to notification by a successor in relation to a deceased estate, and possible jurisdictional issues relating to state probate laws;
- the capacity to allow registrants to comply with trademark and intellectual property requirements; and
- the appropriateness of fee caps specified in clause 5 of the Business Names Registration (Fees) Bill and, following this, the placement of the formula for determining registration fees in the draft regulations rather than in the bill.

5.2 In commenting on these issues, the committee is more than mindful of the proposed May 2012 starting date for the National Business Names Register. Urgent passage of these bills has been the most important consideration of the committee. The government has repeatedly expressed the view that urgent passage of the bill is arguably the most important consideration facing the committee. Accordingly, amendments have the capacity to delay passage of the bill in the Commonwealth Parliament. In the committee's view, this would be an unwelcome development.

Non-government entities' ability to verify register information

5.3 As discussed in chapter three, the committee heard the concerns of the Australian Finance Conference (AFC), the Australian Bankers' Association (ABA), AMEX, Veda Advantage and the Australian Retail Credit Association (ARCA) relating to their ability under the proposed legislation to comply with obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). The financial organisations argue that clause 60 of the main bill and draft regulation 9 will unnecessarily restrict their ability to verify the identity of credit applicants through the national business names register.

5.4 Credit providers must comply with strict identity verification guidelines outlined by the AML/CTF Act. Specifically, credit providers are required to 'know your customer' (KYC) before providing credit; a process which involves checking their personal details. When verifying business identity, credit providers have argued that business registries are an important source of verification.

5.5 Chapter three noted the Department of Innovation, Industry, Science and Research's (DIISR) explanation that Commonwealth legislation must comply with the *Privacy Act 1988*. In this context, the Commonwealth must ensure that a body does not release information that is not used for the purpose for which it is collected. DIISR argued that as identity verification is not the purpose of the register, it cannot release register information to third-party credit and financial service providers.

5.6 However, the committee notes that business name registrants provide consent for their information to be used for various lawful purposes at the time of registering a business name. Registrants also provide consent for their identity to be verified at the time of a credit or finance application. On this basis, it is difficult to see how the Information Privacy Principles under the Privacy Act could be breached by allowing non-government entities to access the national register to verify customers' identity.

5.7 DIISR also contends that the Inter-Governmental Agreement (IGA) signed by the states and territories prohibits the use of ASIC's database for identity verification purposes. In this context, the committee highlights subparagraph 5.1(f)(g) of the IGA which explicitly permits identity verification by information brokers. It also provides a clause whereby information brokers may arrange individual agreements with ASIC to help cater to their requirements.

5.8 The committee makes the following four comments:

- first, it queries whether there is a conflict between Commonwealth privacy laws, the IGA and the requirements of information brokers to access information through the proposed national register;
- second, it queries the distinction the bill makes between providing register information to government and non-government entities, particularly where the non-government entities are seeking to comply with Commonwealth legislation that will directly assist those government agencies that are able to access the register;
- third, the committee is not aware of any complaints by the departments of consumer affairs or business groups in the states and territories, nor any complaints from the Privacy Commissioner concerning accessing or use of business register information; and
- fourth, the committee is concerned that the bills as currently drafted will place a greater burden on businesses to provide hard copies of extracts and other particulars, and on information brokers to meet national and international standards of identity verification and credit reporting.

5.9 The committee acknowledges that these bills are in exposure draft form and that the intent is to open discussion on their content before they are introduced into the various parliaments. The committee suggests that the government give further consideration to its decision to deny information brokers the same level of access to the business names register that they currently have. Should the government decide to introduce the bill in its current form, the committee offers the following suggestions:

- new section 62(1)(c) be inserted into the Business Names Registration Bill 2011 to allow information brokers to verify certain additional information against the National Business Names Register; and
- clause 77 of the Business Names Registration Bill 2011 be amended to include a provision that permits ASIC to use the information on the National Business Names Register for identity verification purposes; and
- paragraphs 1(a) and 1(c) of draft regulation 9 of the proposed Business Names Registration Regulations 2011 be amended to allow business extracts from the National Business Names Register to include date of birth and residential information.

5.10 Further, the committee suggests that if the bill is introduced in its current form, the Explanatory Memorandum to the bill should clearly state the following:

- the government's responsibilities to gather and use information in relation to the *Privacy Act 1988* and its specific provisions; and
- the purpose(s) of the Business Names Registration Act and its limitations, the ways this relates to the *Privacy Act 1988* and any impact specific sections have on the stated purpose.

The views of police commissioners and intelligence agencies

5.11 Several prominent financial organisations cited their concern to the committee that they may not be able to comply with the AML/CTF Act. The committee is interested in whether the police and intelligence agencies shared these concerns that financial organisations may not be able to comply with the Act. As chapter one noted, the committee sent invitations to the Australian Federal Police (AFP), the state and territory police commissioners and the various intelligence agencies to comment on the bill's restrictions on access to the register.

5.12 At the time of tabling, the committee had received responses from the NSW, Western Australian, Tasmanian and Australian Federal Police as well as the Defence Intelligence Organisation. These bodies did not have any concerns with the Business Names Registration Bill.

5.13 However, the AFP and NSW Police had some reservations. AFP informed the committee that while they saw no operational difficulties, it noted that they are not sure how the bill would affect the capacity of information brokers to comply with their AML/CTF obligations.[\[1\]](#) NSW Police was concerned that ASIC will not verify the identity of ABN holders. It suggested that consideration be given to ASIC conducting its own proof of identity process (such as the 100 points system) during registration.[\[2\]](#)

5.14 The committee suggests that DIISR and AUSTRAC consult with police and intelligence agencies to clarify the possible effect of the bill's provisions on financial organisations' compliance with the AML/CTF Act. In particular, it should be made clear to these agencies that financial organisations will not have the fast and cheap online mechanism of the National Business Names Register to verify information, but will instead have to rely on other sources such as the electoral roll, driver's licences and passports.

Type of Data Held	Vic - Business Names Act 1962	NSW - Business Names Act 2002	QLD - Business Names Act 1962	ACT - Business Names Act 1963	Tas - Business Names Act 1962	SA - Business Names Act 1996	WA - Business Names Act 1962	NT - Business Names Act 2007	CW BUSINESS REGISTER
Section/Clause	6 (2A)	Division 4, 20 (2) & (3)	7 (1)	6 (1) 7 (1)	6.(1) 7.(1)	11 (3)	6.(1) 7.(1)	PART 4, 49.(1) & (2)	
Business Name Information									
Business number	Y								
Business name	Y		Y	Y	Y		Y	Y	Y
Other name (substitution)			Y	Y	Y		Y		
Status of Registration	Y								Y
Date of registration status	Y	Y							
Date business commenced	Y	Y	Y	Y	Y		Y		
Date business ceased		Y							
Date of Renewal of registration	Y	Y							Y
Term of registration			Y	Y					
Nature of business	Y	Y	Y	Y	Y	Y	Y		
Address of registered business	Y	Y	Y	Y	Y	Y	Y	Y	Y
Address for notice of service		Y				Y	Y		Y
Address - previous registered business address	Y								

Type of Data Held	Vic - Business Names Act 1962	NSW - Business Names Act 2002	QLD - Business Names Act 1962	ACT - Business Names Act 1963	Tas - Business Names Act 1962	SA - Business Names Act 1996	WA - Business Names Act 1962	NT - Business Names Act 2007	CW BUSINESS REGISTER
Address - postal address	Y		Y						
Address - other business addresses	Y	Y		Y	Y	Y	Y		
Address - previous other business addresses	Y								
Internet address	Y								
Proprietor Information									
Name of current proprietors	Y	Y	Y	Y	Y	Y	Y		Y
						Y			
Date of Birth of Current proprietors		Y	Y	If an applicant is a child	If an applicant is an infant	Y	If an applicant is an infant		
Place of birth of current proprietors			Y						
Date current proprietors name registered	Y								
Address of current proprietors	residential	proper address	usual place of residence	proper address	usual place of residence	residential	usual place of residence		
						Y			
Name - current proprietors previous name	Y			Y	Y		Y		
Date current proprietors name changed									
ACN		Y							

Type of Data Held	Vic - Business Names Act 1962	NSW - Business Names Act 2002	QLD - Business Names Act 1962	ACT - Business Names Act 1963	Tas - Business Names Act 1962	SA - Business Names Act 1996	WA - Business Names Act 1962	NT - Business Names Act 2007	CW BUSINESS REGISTER
ABN	Y	Y							Y
Name of former proprietors	Y								
Date former proprietor ceased									
Address of former proprietors	Y								
Name - former proprietors previous name	Y								
Date former proprietors name changed									
Other	Y	Y				Y			