

29 July 2016

Data Availability and Use
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601
By email: data.access@pc.gov.au

Dear Sir/Madam

Productivity Commission Inquiry – Data Availability and Use

Thank you for the opportunity to lodge a submission on this issues paper. Our submission refers to some of the Terms of Reference of this inquiry, namely the benefits of increasing data availability and use, specifically for public sector data.

We note out at the outset that equal access to “complete” information is a cornerstone of economic theory in creating competitive markets.

Key points

ARITA submits that open access, free of charge, to relevant Australian Securities and Investment Commission (ASIC) 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 ASIC to access data which is required to report to ASIC.

This approach has been adopted in the United Kingdom where (as of mid-2015) Companies House made all of its digital data available for no charge.

Yours sincerely

John Winter
Chief Executive Officer



About ARITA

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

We have more than 2,200 members including accountants, lawyers, bankers, academics and other related professionals.

ARITA's mission is to support restructuring, insolvency and turnaround professionals in their quest to restore the economic value of underperforming businesses and to assist financially challenged individuals.

We deliver this through the provision of innovative training and education, upholding world class ethical and professional standards, partnering with government, and promoting the work of the profession to the public at large.

Some 84 percent of registered liquidators and 89 percent of registered trustees choose to be ARITA Professional Members.

ARITA promotes best practice and provides a forum for debate on key issues facing the profession. We engage in thought leadership and advocacy underpinned by our members' knowledge and experience.

The benefits of open access and use of public sector (ASIC Register) data

Questions on High Value Public Sector Data

What public sector datasets should be considered high-value data to the: business sector; research sector; academics; or the broader community?

We consider data held by ASIC in its register (ASIC Register) 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.

What benefits would the community derive from increasing the availability and use of the public sector data?

We believe open access, free of charge, to ASIC Register 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.'¹

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.

¹ 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.

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 individuals' and that it was 'a considerable step forward in improving corporate transparency'.²

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

As an extension to this, we would add that free and open access to company data also facilitates journalists being able to uncover and report on corporate and director misconduct. We see this as a critical aspect of maintaining confidence in market operations and in supporting legitimate whistleblowing activities.

Improving empirical and academic research on corporate conduct

Open and free access to ASIC Register 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 2015.³

ARITA has funded scholarships to promote empirical research into Australia's insolvency regime⁴ and can confirm that the data-access costs of such studies are significant.

Free and open access to ASIC Register 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.

Improving the efficiency of external administrations

Open and free access to ASIC Register data would also 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

² 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>.

³ Productivity Commission, 'Business Set-up, Transfer and Closure', Report No.75, 30 September 2015, in particular pp 363 and 364.

⁴ Details and the research outcomes of ARITA's Terry Taylor Scholarship are available at <http://www.arita.com.au/about-us/terry-taylor-scholarship>

Corporations Act 2001 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 *Corporations Act 2001*. 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'.⁵

Consequently, in cases where there are no or limited company assets, liquidators must pay fees - at their own personal expense - to access ASIC Register data, 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, ASIC charges fees for access to its own data where that data is required by the accessing party to report back to ASIC 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 ASIC Register data.

Australian Financial Security Authority (AFSA) Records

While AFSA records - primarily the National Personal Insolvency Index (NPII) - do not have the same scope of application and utility as ASIC Register data, NPII data 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.

⁵ 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.