

2019

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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COMMONWEALTH REGISTERS BILL 2019  
TREASURY LAWS AMENDMENT (REGISTRIES MODERNISATION AND  
OTHER MEASURES) BILL 2019  
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

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EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Housing and Assistant Treasurer, the Hon Michael Sukkar MP)



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# Glossary

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The following abbreviations and acronyms are used throughout this Explanatory Memorandum.

<b><i>Abbreviation</i></b>	<b><i>Definition</i></b>
ABN Act	<i>A New Tax System (Australian Business Number) Act 1999</i>
ASIC	Australian Securities and Investments Commission
Business Names Act	<i>The Business Names Registration Act 2011 and the Business Names Registration (Transitional and Consequential Provisions) Act 2011</i>
CATSI Act	<i>The Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>
Commissioner	Commissioner of Taxation
Corporations Act	<i>Corporations Act 2001</i>
Corporations Regulations	<i>Corporations Regulations 2001</i>
Credit Act	<i>National Consumer Credit Protection Act 2009</i>
Credit Regulations	<i>National Consumer Credit Protection Regulations 2010</i>
DIN	Director Identification Number
Fees Acts	<i>Business Names Registration (Fees) Act 2011; Business Names Registration (Fees) Act 2011; National Consumer Credit Protection (Fees) Act 2009; Superannuation Auditor Registration Imposition Act 2012</i>
Fees Act	The provisions of the Commonwealth Registers Bill 2019 together with the amendments in Part 1 of Schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019 <sup>1</sup>

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<sup>1</sup> These amendments replicate the provisions of the Commonwealth Registers Bill in the Corporations Act, Credit Act, and Business Names Act.

<b><i>Abbreviation</i></b>	<b><i>Definition</i></b>
registrar	The Commonwealth body appointed to administer the new registry regime under the new Act
SMSF	Self-managed superannuation fund
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>

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## ***General outline and financial impact***

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### **Modernisation of Commonwealth registers**

The legislative package creates a new Act called the *Commonwealth Registers Act 2019* and makes related amendments to a suite of existing laws to create a new Commonwealth business registry regime.

***Date of effect:*** The Commonwealth Registers Bill 2019 commences the day after Royal Assent. The remainder of the new registry regime commences two years after Royal Assent or on such earlier date as may be proclaimed by the Governor-General.

***Proposal announced:*** The legislative package partially implements the measure ‘Delivering Australia’s Digital Future – modernising business registers’ which was announced in the 2018-19 Budget.

***Financial impact:*** Nil.

***Human rights implications:*** This measure is compatible with human rights. See *Statement of Compatibility with Human Rights* — Chapter 3.

***Compliance cost impact:*** Nil. The legislative package transfers functions and powers which are largely set out in existing Commonwealth laws to the registrar.

### **Director identification numbers**

Schedule 2 to the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019 amends the Corporations Act and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* to introduce a director identification number (DIN) requirement.

***Date of effect:*** This Schedule commences two years after Royal Assent or on such earlier date as may be proclaimed by the Governor-General.

***Proposal announced:*** This Schedule implements a measure announced by the former Minister for Revenue and Financial Services on 12 September 2017.

***Financial impact:*** Nil.

***Human rights implications:*** This Schedule is compatible with human rights. See *Statement of Compatibility with Human Rights* — Chapter 3.

***Compliance cost impact:*** This measure will increase compliance costs by approximately \$21.5 million per year on average over ten years. However, most of the regulatory burden will occur in the first 18 months as existing directors fulfil their obligation under this measure to obtain a DIN.





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# Chapter 1

## Modernisation of Commonwealth registers

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### Outline of chapter

1.1 The legislative package creates a new Act called the *Commonwealth Registers Act 2019* (the new Act) and makes related amendments<sup>2</sup> to a range of existing laws to create a new Commonwealth business registry regime. It sets out:

- what information is subject to the new regime;
- who may be appointed to administer the new regime as its registrar;
- the functions and powers of the registrar;
- how the registrar performs its functions and exercises its powers;
- the framework for protecting and disclosing information held by the registrar; and
- other matters that support the new regime.

### Context of amendments

1.2 The Australian Government has committed to simplifying its interactions with business to support growth, innovation and employment.

1.3 The National Business Simplification Initiative, announced in 2016, aims to reduce the time that businesses spend complying with regulations and interacting with government so that they can focus on growing their business, creating more jobs, and developing new products

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<sup>2</sup> These related amendments fall into two categories. Firstly, amendments to the Corporations Act, the Credit Act and the Business Names Act replicate the new Act almost in its entirety with no substantive differences. These replications are included for constitutional reasons related to the terms upon which the states referred power to the Commonwealth for relevant matters. These terms require amendments relying on the referrals to be made to the Commonwealth Acts that were tabled in state parliaments in connection with each respective referral. All references in this memorandum to the ‘new Act’ include the replicated provisions in the Corporations Act, Credit Act and the Business Names Act unless indicated otherwise. Secondly, amendments are made to a number of Acts as a result, or in support, of the new regime. These amendments are referred to as ‘consequential amendments’ in this memorandum.

and market opportunities. The Initiative is a Commonwealth led agreement between federal, state and territory governments to work together to make it simpler to do business in Australia.

1.4 As part of the Initiative, the Government is developing a modern approach to managing Commonwealth registers to provide more user-friendly and streamlined registry services. The initial focus of this modernisation process is on the registers kept by ASIC as well as the Australian Business Register, which is kept by the Commissioner of Taxation (the Commissioner).

## **Summary of new law**

1.5 The new law facilitates a modern government registry regime that is flexible, technology neutral and governance neutral. The regime initially applies to the business registers administered by ASIC and the Australian Business Register, which is kept by the Commissioner. Additional government registers may be brought into the regime by future legislative reforms.

1.6 Under the new regime the Minister will appoint an existing Commonwealth body to be the registrar. Different registrars can be appointed for different functions or powers of the registrar.

1.7 The functions and powers of the registrar are largely set out in existing Commonwealth laws. In particular, most powers and functions are set out in the Commonwealth acts that contain the registers being brought into the new regime. These acts include the Corporations Act, the ABN Act, the Business Names Act, the Credit Act, and the SIS Act.

1.8 The registrar performs its functions and exercises its powers in accordance with the data standards and other Commonwealth laws. The data standards are disallowable instruments made by the registrar. They may deal with a variety of matters including what information may be collected for the purposes of performing the registrar's functions, how such information is to be given to the registrar, and how information held by the registrar is to be stored.

1.9 The new law provides for the protection and disclosure of information held by the registrar. It is an offence for an official to disclose information held by the registrar unless the disclosure is authorised. A disclosure is authorised where: it is for the purposes of the new registry regime; it happens in the course of the performance of an official's duties; each person to whom the information relates consents to the disclosure; the information is disclosed to a government agency for the performance of its functions; or, the benefits associated with the disclosure outweigh the risks (including privacy risks) after those risks have been mitigated.

1.10 All decisions made by the registrar under the new Act are reviewable by the Administrative Appeals Tribunal except those made by disallowable instrument.

## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Registry information is held by the Government body which is appointed by the Minister to be the registrar. The information is subject to uniform rules that are flexible, technology neutral and governance neutral.	There are a series of specific registers held by ASIC and the Commissioner. The rules applying to these registers are prescriptive and are not uniform, technology neutral or governance neutral.

## Detailed explanation of new law

1.11 The legislative package creates the new Act and makes consequential amendments to a suite of existing laws to create a new Commonwealth business registry regime. It sets out:

- what information is subject to the new regime;
- who may be appointed to administer the new regime as its registrar;
- the functions and powers of the registrar;
- how the registrar performs its functions and exercises its powers;
- the framework for protecting and disclosing information held by the registrar; and
- other matters that support the new regime.

1.12 The objective of the new regime is to facilitate a modern government registry regime that is flexible, technology neutral and governance neutral, and that facilitates timely and efficient access to information (including, where appropriate, on a real time basis) by regulators and other users of the information. The new Act includes a simplified outline of its contents to assist readers understand the new regime. *[Clauses 3 and 4 of the Commonwealth Registers Bill 2019]*

## What information is subject to the new regime?

1.13 Initially, information related to 35 existing business registers will be subject to the new registry regime. The existing business registers comprise 34 registers currently kept by ASIC and the Australian Business

Register, which is currently kept by the Commissioner<sup>3</sup>. Table 1.1 lists the registers being brought into the new regime and the current legislative provision(s) that establish the register.<sup>4</sup>

**Table 1.1 – Registers being brought into the new regime**

<i>No.</i>	<i>Current provision(s)</i>	<i>Register</i>
<b>Entity name/identifier/information registers</b>		
1.	Section 24 of the ABN Act	Australian Business Register
2.	Sections 118, 601DB and 1378 of the Corporations Act	ACN register
3.	Section 22 of the Business Names Act	Business Names Register
4.	Section 601CB of the Corporations Act	Australian registrable bodies register – Australian bodies
5.	Section 601CE of the Corporations Act	Australian registrable bodies register – Foreign companies
6.	Section 152 of the Corporations Act	Reserved names register
7.	Section 601EB of the Corporations Act	Managed investment scheme register
8.	Part 10.13 of the Corporations Act (preserving the operation of the repealed Chapter 2K of that Act) <sup>5</sup>	Company charges register*
9.	Section 213 of the Credit Act and subregulation 29(1) of the Credit Regulations	Credit registers – Licensees
10.	Section 213 of the Credit Act and subregulation 29(3) of the Credit Regulations	Credit registers – Credit representatives
11.	Section 213 of the Credit Act and subregulation 29(4) of the Credit Regulations	Credit registers – Registered persons
12.	Section 213 of the Credit Act and Regulation 30A of the Credit Regulations	Credit register of unlicensed carried over instrument lenders

<sup>3</sup> The Commissioner is currently the Registrar of the Australian Business Register. See section 28 of the ABN Act.

<sup>4</sup> Registers established by regulations will be made subject to the new regime by amendments made to those regulations.

<sup>5</sup> The transitional arrangement ends on 30 January 2019. The registrar may continue to hold historical data after this date.

<i>No.</i>	<i>Current provision(s)</i>	<i>Register</i>
<b>Registers of banned or disqualified persons</b>		
13.	Section 1274AA of the Corporations Act 2001	Register of disqualified company directors and other officers
14.	Section 92AA of the Corporations Act and subregulation 7.6.06(1) of the Corporations Regulations	Register of banning orders under Division 8 of Part 7.6 of the Corporations Act
15.	Section 92AA of the Corporations Act and subregulation 7.6.06(2) of the Corporations Regulations	Register of disqualification orders under Division 8 of Part 7.6 of the Corporations Act
16.	Regulation 10.2.96 of the Corporations Regulations <sup>6</sup>	Banned securities representatives register*
17.	Regulation 10.2.96 of the Corporations Regulations <sup>7</sup>	Banned futures representatives register*
18.	Section 213 of the Credit Act and subregulation 30(1) of the Credit Regulations	Credit register of persons against whom a banning order is made
19.	Section 213 of the Credit Act and subregulation 30(2) of the Credit Regulations	Credit register of persons against whom a disqualification order is made
20.	Section 213 of the Credit Act and subregulation 30(3) of the Credit Regulations	Credit register of persons who are banned under a law of a State or Territory
21.	Section 128K of the SIS Act	Register of Disqualified self-managed superannuation fund (SMSF) auditors
<b>Professional registers</b>		
22.	Section 922A of the Corporations Act and subregulation 7.6.05(1) of the Corporations Regulations	Register of financial services licensees
23.	Section 922A of the Corporations Act and subregulation 7.6.05(2) of the Corporations Regulations	Register of authorised representatives of financial services licensees
24.	Section 922Q of the Corporations Act	Register of financial advisers <sup>8</sup>

<sup>6</sup> Register originally kept by virtue of section 789 of the Corporations Act (repealed by Act No. 122) of 2001 and before that by section 789 of the Corporations Law (as set out in section 82 of the *Corporations Act 1989*).

<sup>7</sup> Register originally kept by virtue of section 789 of the Corporations Act (repealed by Act No. 122) of 2001 and before that by section 789 of the Corporations Law (as set out in section 82 of the *Corporations Act 1989*).

<sup>8</sup> Described as the ‘relevant provider’ register in the regulations.

<b>No.</b>	<b>Current provision(s)</b>	<b>Register</b>
25.	Section 1285 of the Corporations Act	Register of auditors
26.	Section 15-1 of Schedule 2 to the Corporations Act <sup>9</sup>	Register of liquidators
27.	Section 283BCA of the Corporations Act	Register relating to trustees for debenture holders
28.	Section 128J of the SIS Act	Register of approved SMSF auditors
29.	Section 1274 of the Corporations Act and regulation 7.6.02AGA of the Corporations Regulations	Carbon registrants register
30.	Regulation 10.2.96 of the Corporations Regulations <sup>10</sup>	Register of futures licensees*
31.	Regulation 10.2.96 of the Corporations Regulations <sup>11</sup>	Register of licence holders*
32.	Regulation 10.2.96 of the Corporations Regulations <sup>12</sup>	Register of securities representatives*
33.	Regulation 10.2.96 of the Corporations Regulations <sup>13</sup>	Register of foreign insurance agents*
34.	Regulation 10.2.96 of the Corporations Regulations <sup>14</sup>	Register of general insurance brokers*
35.	Regulation 10.2.96 of the Corporations Regulations <sup>15</sup>	Register of life insurance brokers*

\* Historical register. The registrar holds the information contained in the register and may exercise any functions and powers preserved by transitional arrangements.

<sup>9</sup> Formerly kept under section 1286 of the Corporations Act. Section 1286 was repealed in 2016 by the *Insolvency Law Reform Act 2016*, which inserted section 15-1 of Schedule 2 to the Corporations Act.

<sup>10</sup> Regulation 10.2.96 preserves the operation of subsection 1155(1) of the Corporations Act as originally enacted.

<sup>11</sup> Regulation 10.2.96 preserves the operation of subsection 789(1) of the Corporations Act as originally enacted.

<sup>12</sup> Regulation 10.2.96 preserves the operation of a register kept for the purposes of maintaining information obtained under section 791 of the Corporations Act as originally enacted.

<sup>13</sup> Regulation 10.2.96 preserves the operation of section 31E of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the commencement of item 1 of schedule 1 to the *Financial Services Reform Act 2001* (FSR commencement).

<sup>14</sup> Regulation 10.2.96 preserves the operation of subsection 22(1) of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement.

<sup>15</sup> Regulation 10.2.96 preserves the operation of subsection 22(1) of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement.

1.14 Additional registers may be brought into the new regime by future legislative reforms.

### Who may be appointed registrar?

1.15 Under the new regime the Minister may, by notifiable instrument, appoint any existing Commonwealth body to be the registrar. **Commonwealth body** is a defined term. It is defined as meaning:

- an Agency (within the meaning of the *Public Service Act 1999*)<sup>16</sup>;
- a body, whether incorporated or not, established for a public purpose by or under a law of the Commonwealth; and
- a person: holding or performing the duties of an office established by or under a law of the Commonwealth; or holding an appointment made under a law of the Commonwealth. [*Definition of ‘Commonwealth body’, Clause 5, and subclause 6(1) of the Commonwealth Registers Bill 2019, items 1, 5, 8, 10, 14 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, section 3, paragraph 6A(a) and subsection 62A(1) of the Business Names Act, section 9, paragraph 9C(a) and subsection 1270(1) of the Corporations Act, and section 5, paragraph 16A(a) and subsection 212A(1) of the Credit Act*]

1.16 Only a Commonwealth body can be appointed as the registrar. Other bodies, such as a state government body or a private body, cannot be appointed as the registrar.

1.17 Different Commonwealth bodies can be appointed registrar for different functions of the registrar. Where this occurs, a reference to ‘registrar’ in the new regime is taken to be a reference to each body appointed as registrar, as applicable. This enables a shared services approach to be adopted where such an approach would facilitate the efficient and effective administration of the new regime. [*Subclauses 6(2) and 6(3) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, paragraph 6A(b) and subsection 62A(2) of the Business Names Act, paragraph 9C(b) and subsection 1270(2) of the Corporations Act, and paragraph 16A(b) and subsection 212A(2) of the Credit Act*]

### What are the functions and powers of the registrar?

1.18 The new law sets out the functions and powers of the registrar.

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<sup>16</sup> Section 7 of the *Public Service Act 1999* defines Agency to mean: a Department, an Executive Agency; or a Statutory Agency. Section 4A of the *Taxation Administration Act 1953* provides that for the purposes of the Public Service Act, the Commissioner and the APS employees assisting the Commissioner together constitute a Statutory Agency.

1.19 A body's functions comprise those actions or activities that are properly performed by the body. The new law provides that the functions of the registrar are:

- such functions as are conferred on the registrar by a law of the Commonwealth;
- such functions as may be prescribed by rules made by the Minister; and
- such functions as are incidental to the functions mentioned above.

*[Clause 7 of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, section 62B of the Business Names Act, section 1270A of the Corporations Act and section 212B of the Credit Act]*

1.20 A power is something a body can do. The new law ties the powers of the registrar to its functions. In particular, it provides that the powers of the registrar include:

- such powers as are conferred on the registrar in relation to its functions by a law of the Commonwealth; and
- the power to do all things necessary or convenient to be done for or in connection with the performance of those functions.

*[Clause 8 of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, section 62C of the Business Names Act, section 1270B of the Corporations Act and section 212C of the Credit Act]*

### ***Most functions and powers are set out in existing laws***

1.21 The functions and powers of the registrar are largely set out in existing Commonwealth laws. In particular, most are set out in the existing provisions of primary and subordinate legislation that relate to the registers being brought into the new regime (see Table 1.1). These provisions are contained in various parts of the Corporations Act, the Corporations Regulations, the ABN Act, the Business Names Act, the Credit Act, the Credit Regulations, and the SIS Act.<sup>17</sup>

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<sup>17</sup> Note that functions and powers conferred on the registrar by the Corporations Act, the Credit Act and the Business Names Act must be performed and exercised by the registrar under the replicated provisions in those Acts due to the terms upon which the states referred power to the Commonwealth in relation to those Acts. To ensure this, the Commonwealth Registers Bill 2019 includes provisions that ensure that the regime in that Bill cannot operate with respect to functions or powers under the Corporations Act, the Credit Act, the



1.22 It is not practicable to comprehensively list all of the functions and the powers that have been transferred to the registrar through amendments to existing legislation. They are set out in hundreds of consequential amendments that are made to support the new regime. However, the amended functions and powers relate to registry matters such as:

- the subject matters for which the registrar can collect information;
- how persons make applications to the registrar for certain things (for example, the allocation of an Australian Business Number);
- the ability of the registrar to assess those applications; and
- the ability of the registrar to hold information.

1.23 The consequential amendments do not create new functions and powers. Rather, they transfer existing functions and powers, which are currently allocated to specific regulators, to the registrar. Paragraphs 1.91 to 1.103 of this explanatory memorandum provide further information in relation to the consequential amendments.

***Core functions and powers are set out in the new Act***

1.24 Functions and powers of the registrar are also set out in the new Act which contains the core provisions of the new regime. These functions and powers apply to all information subject to the new regime. They are designed to enable the regime to apply in a holistic, consistent and flexible manner regardless of the information it contains. Examples of such functions and powers include: the registrar's ability to make data standards relating to the performance of its functions and powers; and the registrar's ability to make a disclosure framework relating to the disclosure of protected information.

1.25 Several benefits derive from the functions and powers contained in the new Act. In particular, they overcome several undesirable features of the current registries regime. These features include:

- registers being maintained separately from each other despite sometimes holding similar information – resulting in clients having to provide the same information several times in relation to different registers;

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Business Names Act or any other Act that may rely on a similar referral. See clauses 5 (definition of 'excluded law'), 7 and 8 of the Commonwealth Registers Bill 2019.

- regulators having limited abilities to determine what information is required for each register – resulting in registers becoming outdated;
- regulators having varying abilities to determine the manner and form in which registry information is collected and the business rules associated with such collections – resulting in inefficiencies, including an inability to make full use of technology (for example, email and the internet) and to consistently and flexibly deal with incomplete or defective applications; and
- different and sometimes inconsistent rules applying to the management and use of registers – resulting in Government failing to make best use of registry data.

***Additional functions may be prescribed by the rules***

1.26 The Minister may prescribe additional functions for the registrar by rules made for this purpose. This ability is supported by a rule making power that enables the Minister, by legislative instrument, to make rules prescribing matters: required or permitted by the new Act to be prescribed by the rules; or, necessary or convenient to be prescribed for carrying out or giving effect to the new Act. *[Paragraph 7(c) and subclause 25(1) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, paragraph 62B(b) and subsection 62U(1) of the Business Names Act, paragraph 1270A(b) and subsection 1270T(1) of the Corporations Act and paragraph 212B(b) and subsection 212U(1) of the Credit Act]*

1.27 This power is intended to provide flexibility for the new regime, particularly with respect to the registrar’s functions. Examples of additional functions that could be prescribed by the Minister include functions regarding the management of Commonwealth data or functions around educating the public about data resources and data security. While functions permitting the collection of additional data could be prescribed, such collections could only proceed on a voluntary basis as there is no provision for penalties for non-compliance.

1.28 Further information regarding the new rule making power more generally is contained in paragraphs 1.85 to 1.90 of this memorandum. For present purposes, it is noted that any rules made using this power (including rules prescribing additional functions for the registrar) are legislative instruments and are subject to parliamentary oversight through the disallowance process set out in the *Legislation Act 2003*.

**How does the registrar perform its functions and powers?**

1.29 The registrar performs its functions and powers in accordance with the data standards and other Commonwealth laws. *[Clause 15 of the*

***Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, section 62K of the Business Names Act, section 1270J of the Corporations Act and section 212K of the Credit Act]***

### ***Data standards***

1.30 The new law allows the registrar to make data standards on matters relating to the performance of the registrar's functions and the exercise of the registrar's powers. The data standards may deal with a variety of registry related matters that are currently dealt with by prescriptive rules in primary legislation that are not uniform, technology neutral or governance neutral. ***[Subclause 13(1) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62H(1) of the Business Names Act, subsection 1270G(1) of the Corporations Act and subsection 212H(1) of the Credit Act]***

1.31 To assist readers to understand the role of the data standards, the new Act provides examples of what the data standards may cover. These examples clarify that the data standards may provide for matters such as the following:

- what information may be collected for the purposes of the performance of the registrar's functions and the exercise of the registrar's powers;
  - how such information may be collected;
  - the manner and form in which such information is given to the registrar;
  - when information is to be given to the registrar;
  - how information held by the registrar is to be authenticated, verified or validated;
  - how information held by the registrar is to be stored;
  - the correction of information held by the registrar;
  - the manner and form of communication between the registrar and persons who give information to the registrar or seek to access information held by the registrar; and
  - integrating or linking information held by the registrar.<sup>18</sup>
- [Subclause 13(2) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62H(2) of the***

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<sup>18</sup> The ability to integrate and link information is important to the effective and efficient administration of the new registry regime given that the data being brought into the new regime is currently maintained on a number of discrete registers and includes historical data.

***Business Names Act, subsection 1270G(2) of the Corporations Act and subsection 212H(2) of the Credit Act***

1.32 These examples are an inclusive list of the matters that may be dealt with by the data standards. Their inclusion in the new Act is not intended to limit the matters that may properly be dealt with by the data standards. *[Subclause 13(2) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62H(2) of the Business Names Act, subsection 1270G(2) of the Corporations Act and subsection 212H(2) of the Credit Act]*

1.33 The new Act clarifies that the data standards may include different provisions relating to different functions or powers of the registrar. This ensures that the data standards do not need to adopt a ‘one size fits all’ approach to the administration of registry functions and powers. The variety of functions and powers given to the registrar means that the registrar should be able to tailor data standards so that they are appropriate for the different purposes for which they may be made. *[Subclause 13(3) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62H(3) of the Business Names Act, subsection 1270G(3) of the Corporations Act and subsection 212H(3) of the Credit Act]*

1.34 This approach of enabling the registrar to make data standards facilitates the efficient and effective administration of registry services. Data standards can be readily amended over time to keep up with changes in best practice, industry preference, the needs of those using registry services, and technology. The flexibility offered also enables a ‘tell us once’ approach to the collection of information, minimising the number of interactions clients have with the registrar. Currently, a reporting entity may have to provide the same information to multiple registers, increasing regulatory burden and the cost of administering registry services.

1.35 To ensure these benefits can be realised the new law includes provisions that ensure the data standards may request information in a wide variety of ways that make best use of available technology. In particular, the new law expressly clarifies that:

- the data standards may provide that information is to be given to the registrar in electronic form, or any other specified form; and
- a requirement under a law that information is to be provided to the registrar in a particular form or manner (however described), including a requirement that information is to be “lodged” or “furnished”, is not taken to restrict by implication what the data standards may provide in relation to that information. *[Clause 14 of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019,*

**section 62J of the Business Names Act, section 1270H of the Corporations Act and section 212J of the Credit Act]**

1.36 The new law includes provisions designed to promote the smooth transition of registry functions and powers from one registrar to another.<sup>19</sup> As already noted, under the new regime the Minister may appoint any government body as registrar for particular functions and powers and may change the appointed body at any time. Should the body appointed as registrar for particular functions and powers change, the new law provides that any existing data standards continue to apply until the new registrar has prepared replacement standards. *[Subclauses 13(4) of the Commonwealth Registers Bill 2019, items 5, 10, 18, 359, 1315, 1414 and 1467 of Schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62H(4) of the Business Names Act, schedule 3 of the Business Names Registration (Transitional and Consequential Provisions) Act 2011, subsection 1270G(4) and Part 10.34 of the Corporations Act, subsection 212H(4) of the Credit Act and Schedule 7 of the National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009]*

1.37 Data standards are disallowable instruments for the purposes of the *Legislation Act 2003*. Under that Act, legislative instruments and their explanatory statements must be tabled in both Houses of the Parliament within six sitting days after the date of registration of the instrument on the Federal Register of Legislation. Once tabled, the instruments will be subject to the same level of parliamentary scrutiny as regulations (including consideration by the Senate Standing Committee on Regulations and Ordinances), and notice of a motion to disallow the instruments may be given in either House of the Parliament within 15 sitting days after the date the instruments are tabled.

1.38 In accordance with the requirements of the *Legislation Act 2003*, the registrar must be satisfied that appropriate consultation has been undertaken prior to making the data standards. This would include, for example, the registrar consulting with regulators who use registry information to carry out their statutory functions or powers before the registrar makes a data standard that relates to information used by those regulators. It would also include consultation with industry where industry is likely to be affected by the data standard and consultation is reasonably practicable.

***Other Commonwealth laws***

1.39 The registrar must also perform its functions and exercise its powers in compliance with any other applicable law of the Commonwealth. These laws fall into two broad categories. *[Clause 15 of the*

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<sup>19</sup> Such provisions include transitional provisions that provide for the completion of actions started but not finished by ASIC at the time a registrar is first appointed. Such actions can be completed by either ASIC or the registrar to ensure continuity of registry administration.

*Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, section 62K of the Business Names Act, section 1270J of the Corporations Act and section 212K of the Credit Act]*

1.40 The first category relates to current laws governing the registers being brought into the new regime. These laws will continue to apply in relation to functions and powers assigned to the registrar until such time as data standards are made in relation to them. This ensures the smooth transition of functions and powers into the new registry regime in circumstances where data standards in relation to those functions and powers do not yet exist. In particular, it avoids any possibility of a situation arising where there is an absence of law in relation to how registry functions and powers are performed. *[Subclause 15(1) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62K(1) of the Business Names Act, subsection 1270J(1) of the Corporations Act and subsection 212K(1) of the Credit Act]*

1.41 The second category relates to other laws of the Commonwealth that properly apply to the registrar. These include laws of general application such as those relating to freedom of information, archiving of Commonwealth records, good governance, and the management of financial resources. *[Subclause 15(2) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62K(2) of the Business Names Act, subsection 1270J(2) of the Corporations Act and subsection 212K(2) of the Credit Act]*

## How is information held by the registrar protected and disclosed?

1.42 The new law provides for the protection and disclosure of information held by the registrar, including disclosure via a disclosure framework made by the registrar.

### *Protection of registry information*

1.43 It is an offence for an official to record or disclose information held by the registrar unless the recording or disclosure is authorised. In particular, unless authorised, a person commits an offence if:

- the person is, or has been, in official employment<sup>20</sup>;

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<sup>20</sup> **Official employment** is defined by the new law to capture persons who may have access to information under the new regime because they are employed by the Commonwealth or are a delegate of the registrar. In particular, a person is in official employment for the purposes of the new law if they: are appointed or employed by the Commonwealth; perform services for the Commonwealth (for example, as a contractor); or exercise powers or perform functions under a delegation by the registrar.

- the person makes a record of information, or discloses information to another person; and
- the information is protected information<sup>21</sup> that was obtained by the person in the course of their official employment.  
*[Clause 5, definitions of ‘official employment’ and ‘protected information’, and subclause 17(1) of the Commonwealth Registers Bill 2019, items 1, 5, 8, 10, 14, 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, section 3 and subsection 62M(1) of the Business Names Act, section 9 and subsection 1270L(1) of the Corporations Act, and section 5 and subsection 212M(1) of the Credit Act]*

1.44 The maximum penalty for disclosing registry information in breach of this offence provision is imprisonment for two years. The penalty is consistent with comparable provisions in other Acts, including the ASIC Act<sup>22</sup>, the ABN Act<sup>23</sup> and the *Taxation Administration Act 1953*<sup>24</sup>. The principles set out in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*<sup>25</sup> were also considered in determining the applicable penalty. *[Subclause 17(1) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsections 62M(1) and 62M(2) of the Business Names Act, subsections 1270L(2) and 1270L(3) of the Corporations Act and subsection 212M(1) and 212M(2) of the Credit Act]*

### ***Disclosure of registry information***

1.45 As mentioned above, the prohibition against recording and disclosing registry information does not apply where the recording or disclosure is authorised. A recording or disclosure is authorised if:

- the recording or disclosure is for the purposes of the new Act or happens in the course of the performance of the duties of a person’s official employment;
- the disclosure is to another person for use, in the course of the performance of the duties of the other person’s official

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<sup>21</sup> **Protected information** is defined in the new law so as to capture information disclosed or obtained by a person in the course of their duties in relation to the new registry regime. In particular, the new law defines protected information to mean information: obtained by a person in the course of the person’s official employment; and is disclosed to, or obtained by, any person under, or in relation to, the new registry regime (which includes the new Act or another Commonwealth law in connection with particular functions or powers of the registrar).

<sup>22</sup> See section 127 of the ASIC Act.

<sup>23</sup> See section 30 of the ABN Act.

<sup>24</sup> See section 355-25 of Schedule 1 to the *Taxation Administration Act 1953*.

<sup>25</sup> Attorney-General’s Department, September 2011 edition.

employment, in relation to the performance of the functions of a government entity<sup>26</sup>;

- each person to whom the information relates consents to the disclosure; or
- the disclosure is in accordance with the disclosure framework.

*[Clause 5, definition of ‘government entity’, and subclauses 17(2) and 17(3) of the Commonwealth Registers Bill 2019, items 1, 5, 8, 10, 14, 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, section 3 and subsections 62M(2) and 62M(3) of the Business Names Act, section 9 and subsections 1270L(2) and 1270L(3) of the Corporations Act, and section 5 and subsections 212M(2) and 212M(3) of the Credit Act]*

1.46 A defendant carries an evidential burden for establishing that a recording or disclosure of registry information was authorised. To satisfy this evidential burden the defendant must adduce or point to evidence that suggests a reasonable possibility that the recording or disclosure was authorised.<sup>27</sup> Once this is done, the prosecution bears the burden of proof. *[Subclause 17(3) of the Commonwealth Registers Bill 2019]*

1.47 The new law expressly authorises disclosure to a government entity in relation to the performance or exercise of its functions or powers. The intent of this authorisation is to, for example, ensure ASIC has real-time access to all the registry information it requires in order to exercise its regulatory functions or powers. *[Subclauses 17(2) and 17(3) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62M(2) of the Business Names Act, subsection 1270L(2) of the Corporations Act and subsection 212M(2) of the Credit Act]*

1.48 The new law clarifies how its protection and disclosure regime relates to other secrecy provisions in Commonwealth law. The effect of

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<sup>26</sup> **Government entity** is defined in the new law as having the meaning given by section 41 of the ABN Act. That section defines government entity as including: a department of state of the Commonwealth, a state or a territory; a department of the Parliament established under the *Parliamentary Services Act 1999*; an Executive Agency, or Statutory Agency, within the meaning of the *Public Service Act 1999*; and certain organisations established by the Commonwealth, a state or a territory to carry on an enterprise or established for a public purpose by an Australian law. Explicit authorisations to disclose registry information in accordance with intergovernmental agreements to state or territory officials for the performance of their official duties are contained in the replicated provisions of the new Act. These explicit authorisations exist for the purposes of compliance with intergovernmental agreements between the states/territories and the Commonwealth which require the states and territories to be given access to registry information collected under the Corporations Act, the Business Names Act and the Credit Act.

<sup>27</sup> See subsection 13.3(3) of the *Criminal Code*.



the new law is that other Commonwealth secrecy provisions<sup>28</sup> do not apply in addition to the new law's protection and disclosure regime unless expressly designated. The following secrecy provisions have been designated for this purpose:

- sections 18 to 18B and 92 of the *Australian Security Intelligence Organisation Act 1979*;
- section 34 of the *Inspector-General of Intelligence and Security Act 1986*;
- sections 39 to 41 of the *Intelligence Services Act 2001*;
- a provision of a law of the Commonwealth prescribed by the rules;
- a provision of a law of the Commonwealth of a kind prescribed by the rules; and,
- section 8WB of the *Taxation Administration Act 1953* (which contains special rules relating to the disclosure of tax file numbers)<sup>29</sup>.

*[Clause 18 of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, section 62N of the Business Names Act, section 1270M of the Corporations Act and section 212N of the Credit Act]*

1.49 The intent of the new law in this regard is to avoid unnecessary overlap in the operation of secrecy provisions in relation to registry information. It is not optimal for multiple secrecy provisions to unnecessarily apply to the same piece of information. For example, the Productivity Commission identified over 500 different secrecy provisions and found that they often interacted in a way that leads to undesirable complexity, resulting in unnecessary barriers to data access that stifles socially beneficial activities.<sup>30</sup>

1.50 Similarly, the new regime's disclosure framework is expressly authorised for the purposes of paragraph 6.2(b) of the *Privacy Act 1988*. Paragraph 6.2(b) of the *Privacy Act 1988* allows disclosure of personal

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<sup>28</sup> The new law defines **secrecy provision** for this purpose as a provision of a law of the Commonwealth (other than under the new regime) that prohibits or regulates the use or disclosure of information.

<sup>29</sup> The registrar may request and record tax file numbers only for the purposes of the director identification number regime (see Chapter 2 of this memorandum). The effect of designating section 8WB is that the registrar is unable to disclose tax file information it holds unless otherwise authorised by law.

<sup>30</sup> See the Productivity Commission report on Data Availability and Use, May 2017, at pp 33, 131 to 133 and 331.

information where it is authorised by an Australian law. As the new disclosure framework is such an Australian law, this provision simply clarifies the operation of the current law. *[Clause 20 of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, section 62Q of the Business Names Act, section 1270P of the Corporations Act and section 212Q of the Credit Act]*

1.51 The new regime exempts a person from being required to provide registry information to a court except where the disclosure is necessary for giving effect to a taxation law or an Australian business law. What constitutes a **taxation law** is defined in section 995-1 of the *Income Tax Assessment Act 1997* to include: a provision of an Act for which the Commissioner has general administration; legislative instruments made under such a provision; or the *Tax Agent Services Act 2009* or regulations made under that Act. The new law defines **Australian business law** to mean a law of the Commonwealth, or of a State or Territory, that is a law that regulates, or relates to the regulation of, business or persons engaged in business. This definition is based on the definition of ‘business law’ in section 3 of the *Mutual Assistance in Business Regulation Act 1992*.<sup>31</sup> *[Clause 21 of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, section 62R of the Business Names Act, section 1270Q of the Corporations Act and section 212R of the Credit Act]*

1.52 The new law in this respect is based on existing subsection 30(5) of the ABN Act, which is being repealed by the new law. That subsection currently exempts a person from having to provide protected documents or information (as defined in the ABN Act) to a court except where the proceedings relate to a taxation law. The provision guards against registry information being required to be produced for purposes unrelated to its collection.

### ***The disclosure framework***

1.53 The new law provides that the registrar may make the disclosure framework referred to in the final dot point of paragraph 1.45. Under the disclosure framework the registrar may authorise the disclosure of registry information where it is satisfied that the benefits of disclosure outweigh the risks, after those risks have been mitigated. *[Subclauses 16(1) and 16(5) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsections 62L(1) and 62L(5) of the Business Names Act, subsections 1270K(1) and 1270K(5) of the Corporations Act and subsections 212L(1) and 212L(5) of the Credit Act]*

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<sup>31</sup> However, note that the definition in the new regime is confined to only Australian business laws.

1.54 The disclosure framework may provide for any matter related to the disclosure of registry information. For example, the disclosure framework may provide for matters such as:

- the circumstances in which information must not be disclosed without the consent of the person to whom it relates;
- the circumstances in which de-identified information may be disclosed;
- the circumstances in which information may be disclosed to the general public;
- the circumstances in which confidentiality agreements are required for the disclosure of information; and
- the imposition of conditions on disclosure of information.  
*[Subclause 16(2) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62L(2) of the Business Names Act, subsection 1270K(2) of the Corporations Act and subsection 212L(2) of the Credit Act]*

1.55 In addition, the new law clarifies that the disclosure framework may include different provisions relating to different functions or powers of the registrar. This ensures that the disclosure framework can be tailored to particular functions and powers of the registrar. *[Subclause 16(3) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62L(3) of the Business Names Act, subsection 1270K(3) of the Corporations Act and subsection 212L(3) of the Credit Act]*

1.56 To support the effectiveness of the disclosure framework in relation to circumstances in which confidentiality agreements are required for the disclosure of registry information, penalties can apply to a person who contravenes such an agreement. In particular, a person commits an offence if they are party to a confidentiality agreement required by the disclosure framework and fail to comply with the agreement. The maximum penalty for the offence is 100 penalty units or imprisonment for two years, or both. The penalty is consistent with comparable provisions in other Acts, including the ASIC Act.<sup>32</sup> The principles set out in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*<sup>33</sup> were also considered in framing the offence and determining the applicable penalty. *[Subclause 16(4) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62L(4) of the Business Names Act, subsection 1270K(4) of the Corporations Act and subsection 212L(4) of the Credit Act]*

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<sup>32</sup> See subsections 127(4D) and 127(4E) of the ASIC Act.

<sup>33</sup> Attorney-General's Department, September 2011 edition.

1.57 The above approach to disclosure aligns with the Productivity Commission's 2017 recommendation to take a more principled approach to the release of Government data. In particular, the Commission recommended that Government data be able to be released publicly where the benefits of the release outweigh the risks involved (including privacy risks) after those risks have been mitigated to the extent practicable.<sup>34</sup> The intention of this recommendation was to capture the benefits of 'big data' while managing all risks of disclosure, not just those relating to personal information.

1.58 It is envisaged that the ability to make a disclosure framework will provide the registrar with flexibility regarding the release of registry information. For example, the framework could allow a trusted user (for instance a university whose IT systems, processes and staff have been vetted) to access information that may not be appropriate for wider dissemination where a social benefit exists and appropriate undertakings are made.

1.59 As is the case with respect to data standards, the new law includes provisions designed to promote the smooth transition of registry functions and powers from one registrar to another. Should the body appointed as registrar for particular functions and powers change, the new law provides that any existing disclosure framework continues to apply until the new registrar has prepared a replacement framework. *[Subclause 16(7) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62L(7) of the Business Names Act, subsection 1270K(7) of the Corporations Act and subsection 212L(7) of the Credit Act]*

1.60 The disclosure framework is a disallowable instrument for the purposes of the *Legislation Act 2003*. Under that Act, legislative instruments and their explanatory statements must be tabled in both Houses of the Parliament within six sitting days after the date of registration of the instrument on the Federal Register of Legislation. Once tabled, the instruments will be subject to the same level of parliamentary scrutiny as regulations (including consideration by the Senate Standing Committee on Regulations and Ordinances), and notice of a motion to disallow the instruments may be given in either House of the Parliament within 15 sitting days after the date the instruments are tabled. In addition to parliamentary oversight, the disclosure framework is subject to a privacy impact assessment under the *Privacy Act 1988* and the consultation requirements contained in the *Legislation Act 2003*. *[Subclause 16(1) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other*

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<sup>34</sup> Productivity Commission Inquiry Report No. 82, Data Availability and Use, May 2017. See, for example, recommendation 6.1 and pp. 100 and 125 of the report.

*Measures) Bill 2019, subsection 62L(1) of the Business Names Act, subsection 1270K(1) of the Corporations Act and subsection 212L(1) of the Credit Act]*

1.61 The consultation requirements contained in the *Legislation Act 2003* require the registrar to be satisfied that appropriate consultation has been undertaken on the disclosure framework, prior to making the disclosure framework. This would include the registrar consulting with regulators who use registry information in support of their functions and powers, where such regulators are likely to be affected by the proposed framework or have expertise relevant to the disclosure of information held by the registrar. It would also include consultation with industry where industry is likely to be affected by the disclosure framework and consultation is reasonably practicable.

1.62 The new law also allows a person to apply to the registrar to prevent an inappropriate disclosure of registry information that relates to them. The data standards may provide for how such applications are to be made and decided. However, where the registrar is satisfied that the disclosure is not appropriate, the disclosure is taken to not be in accordance with the disclosure framework.<sup>35</sup> [*Clause 19 of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, section 62P of the Business Names Act, section 1270N of the Corporations Act and section 212P of the Credit Act]*

### **What other matters does the new law provide for?**

1.63 The new law also provides for other matters designed to support the effectiveness and efficiency of the registry regime. In this respect, the new regime provides for:

- when the Minister can direct the registrar;
- the circumstances in which, and to whom, the registrar may delegate its functions and powers;
- the use of assisted decision making processes by the registrar;
- review rights with respect to decisions made by the registrar;
- the extent to which the registrar and associated persons may be liable for damages in connection with the new regime;
- the admissibility of registry information in court proceedings;

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<sup>35</sup> Note that the relevant information may still be recorded or disclosed: for the purposes of the new law (for example, storing the information in a register); or, in the course of the performance of the duties of a person's official employment in relation to the registrar or any other government entity (for example, this may occur to assist an entity enforce a law of the Commonwealth).

- the information that must be included in the registrar's annual report about the operation of the new regime; and
- what rules may be made by the Minister for the purposes of the new regime.

### ***Directions by the Minister***

1.64 The new law enables the Minister to give binding directions of a general nature to the registrar about the performance of its functions and powers. Similar directions powers exist in current laws of the Commonwealth.<sup>36</sup> *[Subclauses 9(1), 9(3) and 9(5) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsections 62D(1), 62D(3) and 62D(5) of the Business Names Act, subsection 1270C(1), 1270C(3) and 1270C(5) of the Corporations Act and subsections 212D(1), 212D(3) and 212D(5) of the Credit Act]*

1.65 This direction power promotes the effective and efficient operation of the new regime. In particular, the power ensures a coordinated approach to the performance of the registrar's functions and powers given that those functions and powers may be dispersed across several government bodies. For instance, where functions and powers are dispersed the Minister could direct that all registry information be stored on a central IT platform rather than on individual databases maintained by appointed bodies. The power could also be used, for example, to:

- make directions that promote business continuity and minimise disruption where there is a change in the body to which particular registry functions and powers are assigned;
- direct the registrar to comply with particular standards, for example this could include any current or future whole of government standards relating to data management;
- direct that forms are to include warnings or notices about certain things, for examples penalties for making false statements; or
- direct as to consultation processes that are to be followed prior to making data standards or the disclosure framework (any such requirements would be in addition to those required by the *Legislation Act 2003*). *[Subclauses 9(1), 9(2), 9(3) and 9(5) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsections 62D(1), 62D(2), 62D(3) and 62D(5) of the Business Names Act, subsection 1270C(1), 1270C(2), 1270C(3) and 1253(5) of the Corporations Act and subsections 212D(1), 212D(2), 212D(3) and 212D(5) of the Credit Act]*

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<sup>36</sup> See, for example, section 29 of the *Competition and Consumer Act 2010* and section 12 of the *Australian Securities and Investments Commission Act 2001*.

1.66 The new law also enables the Minister to direct the registrar as to particular matters to be dealt with in the data standards or disclosure framework. For example, the Minister could direct that the disclosure framework provide for the provision of specified information to a particular government body that requires the information. Where the Minister makes such a direction, the registrar must include the matter in its disclosure framework whether or not they are satisfied of the matters set out in paragraph 1.53 of this memorandum. However, the Minister cannot direct the registrar as to how they are to apply the data standards or disclosure framework in a particular case. *[Subclauses 9(2), 9(4), 9(5) and 16(6) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsections 62D(2), 62D(4), 62D(5) and 62L(6) of the Business Names Act, subsection 1270C(2), 1270C(4), 1270C(5) and 1270K(6) of the Corporations Act and subsections 212D(2), 212D(4), 212D(5) and 212L(6) of the Credit Act]*

1.67 All directions by the Minister must be in writing and are legislative instruments for the purposes of the *Legislation Act 2003*. As noted in the Bill, the *Legislation (Exemptions and Other Matters) Regulations 2015* provide that section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to an instrument that is a direction by a Minister to any person or body.<sup>37</sup> *[Subclause 9(1) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62D(1) of the Business Names Act, subsection 1270C(1) of the Corporations Act and subsections 212D(1) of the Credit Act]*

### ***Delegation by the registrar***

1.68 The new registers regime includes a delegation power that can be used by the registrar to assist them in the performance of their functions and powers.<sup>38</sup> The power provides that the registrar may delegate all or any of its functions or power (other than the power to make data standards or the disclosure framework) to any person to whom it may delegate any of its other functions, as a Commonwealth body, under Commonwealth law. *[Paragraph 10(1)(a) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, paragraph 62E(1)(a) and subsection 62E(2) of the Business Names Act, paragraph 1270D(1)(a) and subsection 1270D(2) of the Corporations Act, and paragraph 212E(1)(a) and subsection 212E(2) of the Credit Act]*

1.69 The new law therefore effectively adopts the existing delegation regime (if any) applicable to the body appointed as registrar. This should in practice allow any existing delegations, with respect to functions and powers being transferred to the registrar, to remain in place should the

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<sup>37</sup> See sections 9 and 11 of the *Legislation (Exemptions and Other Matters) Regulations 2015*.

<sup>38</sup> In performing a delegated function or exercising a delegated power, the delegate must comply with any written direction of the registrar.

registrar so desire. As already noted, these functions and powers may generally be described as registry in nature (as opposed to being regulatory in nature).

1.70 The new law also permits the registrar to delegate its functions and powers to any person of a kind specified in the rules. This allows the rules to rectify a situation where the above mentioned delegation arrangements are not sufficient to facilitate the effective and efficient administration of the new regime. Any such rules are legislative instruments and are therefore subject to requirements of the *Legislation Act 2003*, including parliamentary oversight through the disallowance process and appropriate consultation.<sup>39</sup> [*Paragraph 10(1)(b) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, paragraph 62E(1)(b) of the Business Names Act, paragraph 1270D(1)(b) of the Corporations Act and paragraph 212E(1)(b) of the Credit Act*]

### ***Assisted decision making***

1.71 The new law allows the registrar to use processes to assist it to make decisions. In particular, the new law permits the registrar to arrange for the use, under the registrar's control, of a process to assist decision making for any purpose for which the registrar may make a decision, other than decisions reviewing other decisions. The new law enables the registrar to use a wide variety of processes and technologies for this purpose (including computer applications and systems) and a decision made using such a process is taken to be a decision of the registrar. [*Subclause 11(1) and 11(2) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsections 62E(1) and 62E(3) of the Business Names Act, subsections 1270E(1) and 1270E(3) of the Corporations Act and subsections 212E(1) and 212E(3) of the Credit Act*]

1.72 The administration of functions and powers being transferred to the registrar requires it to make a large number of decisions. The use of assisted decision making processes, including computer automated and computer-assisted decision making, will improve the timeliness and accuracy of decision making and enable the registrar to deliver a high standard of service in an effective and efficient manner. The new law provides a sound legislative basis to ensure these benefits can be realised.

1.73 The new law includes provisions to promote the appropriate use of assisted decision making processes. For example:

- the use of such processes must be arranged by the registrar and used under its control;

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<sup>39</sup> As already noted, the use of rules as opposed to regulations reflects current drafting practice.



- any decision made by such processes must comply with all of the requirements of the legislative provisions under which the decision was made. This means, for instance, that any review mechanism applicable to the decision remains in place; and
- the registrar may change a decision made by an assisted decision making process if it is satisfied that the decision is wrong. In this circumstance, a person would not need to request a review of the incorrect decision because the registrar is able to change the decision on its own motion. *[Subclauses 11(1) and 11(3) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsections 62F(1) and 62F(3) of the Business Names Act, subsections 1270E(1) and 1270E(3) of the Corporations Act and subsections 212F(1) and 212F(3) of the Credit Act]*

### **Review rights**

1.74 All decisions made by the registrar under the new regime are subject to merits review by the Administrative Appeals Tribunal, except decisions made by legislative instrument. This includes decisions made by the registrar under the data standards or disclosure framework. Decisions made by legislative instrument are subject to the processes applicable to such instruments, including parliamentary oversight via the disallowance process, rather than merits review.<sup>40</sup> *[Clause 22 of the Commonwealth Registers Bill 2019, items 4, 12 and 17 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 56(2) of the Business Names Act, subsection 1317B(1) of the Corporations Act and subsection 327(1) of the Credit Act]*

### **Statutory immunity**

1.75 The new law provides statutory immunity for acts done in good faith in connection with the new registry regime. The provision operates with respect to persons who may be involved in the performance of functions and powers under the new regime. These include: the Minister; the registrar, including its staff and members; a delegate of the registrar, including its staff; and, employees and officers of Commonwealth bodies. Such persons are immune from an action or other proceeding for damages for or in relation to an act done, or omitted to be done, in good faith in performance of any function, or in the exercise or purported exercise of any power, under the new law. *[Clause 12 of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, section 62G of the Business Names Act, section 1270F of the Corporations Act and section 212G of the Credit Act]*

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<sup>40</sup> See the *Legislation Act 2003*.

1.76 This immunity is necessary to ensure that persons involved in the performance of functions or powers of the registrar can carry out their duties in good faith without the risk of incurring personal liability. In the absence of this immunity such persons may be concerned that their duties, which may involve a large number of decisions (such as whether to register a company) and the maintenance of large amounts of data related to corporations and businesses, may expose them to undue personal liability.

1.77 This statutory immunity would not be absolute. It would only apply in relation to acts or omissions carried out in good faith in connection with the new regime. In addition, the new provision does not affect the ability of the registrar or an associated person to incur contractual liability. For example, the provision does not extend to contractual arrangements entered into by the registrar or an associated person.

1.78 Similar provisions currently exist in related laws. For example, subsection 246(1) of the ASIC Act provides for statutory immunity for particular persons, including ASIC, ASIC members, ASIC staff and delegates. In particular, it provides that relevant people are not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power, conferred or expressed to be conferred by or under the corporations legislation, or a prescribed law of the Commonwealth, a State or a Territory. ASIC and its members and staff are also provided with statutory immunity under section 78 of the Business Names Act on similar terms.

### ***Admissibility of registry information***

1.79 The new law inserts a provision dealing with the use in court proceedings of information held by the registrar. The purpose of the provision is to enable a document, or a copy of a document, that purports to be an extract of information held by the registrar, to be admissible as prima facie evidence of the information stated in it (without the need for certification or any further proof of, or the production of, the original). That is, the document, or copy of the document, is proof, in the absence of evidence to the contrary, of any information stated in it that purports to be held by the registrar. However, the document is not so admissible if it appears to the court to have been revised or tampered with in a way that affects, or is likely to affect, the information. *[Subclause 23(1) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62S(1) of the Business Names Act, subsection 1270R(1) of the Corporations Act and subsection 212S(1) of the Credit Act]*

1.80 This provision assists the administration of justice and reduces the administrative burden on the registrar. The provision means that any

information held by the registrar can be taken as correct unless proven otherwise and can be relied upon as such in any court proceedings. It also minimises the circumstances in which the registrar must formally certify documents in support of proceedings.

1.81 Notwithstanding the above, the new law enables the registrar to give a person a certified copy of, or extract from, the information held by the registrar. Such a certified copy is also admissible as prima facie proof of the information that is stated in it and that purports to be held by the registrar. However, where both a certified copy and uncertified copy of information are inconsistent with each other, the certified copy prevails.

*[Subclauses 23(2) and 23(3) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsections 62S(2) and 62S(3) of the Business Names Act, subsections 1270R(1) and 1270R(3) of the Corporations Act and subsections 212S(1) and 212S(3) of the Credit Act]*

1.82 The new law enables the rules to prescribe a fee for obtaining certified information from the registrar. Where a fee is prescribed it must be paid before the registrar can provide the certified information.

*[Subclause 23(2) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62S(2) of the Business Names Act, subsection 1270R(2) of the Corporations Act and subsection 212S(2) of the Credit Act]*

1.83 These new rules regarding the admissibility of registry information are not intended to otherwise affect the rules of evidence. In particular, the new rules do not limit the manner in which evidence may be adduced, or the admissibility of evidence, under the *Evidence Act 1995*.

*[Subclause 23(4) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62S(4) of the Business Names Act, subsection 1270R(4) of the Corporations Act and subsection 212S(4) of the Credit Act]*

#### ***Information to be included in the registrar's annual report***

1.84 The new law provides that each annual report prepared by the registrar must include information about the performance of the registrar's functions and exercise of the registrar's power during that period. The new law does not itself require any government body appointed registrar to prepare an annual report. Any such requirement is specified by existing laws where appropriate. The new law simply requires that the annual report include information about the body's role as registrar. *[Clause 24 of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, section 62T of the Business Names Act, section 1270S of the Corporations Act and section 212T of the Credit Act]*

#### ***Rules made by the Minister***

1.85 The new law provides the Minister with a rule making power. In particular, the Minister may, by legislative instrument, make rules

prescribing matters: required or permitted by the new regime to be prescribed by the rules; or, necessary or convenient to be prescribed for carrying out or giving effect to the new Act. *[Subclause 25(1) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62U(1) of the Business Names Act, subsection 1270T(1) of the Corporations Act and subsection 212U(1) of the Credit Act]*

1.86 Dealing with these matters in instruments rather than regulations accords with the Office of Parliamentary Counsel's (OPC) Drafting Direction No. 3.8 – Subordinate legislation. That Drafting Direction states that 'OPC's starting point is that subordinate instruments should be made in the form of legislative instruments (as distinct from regulations) unless there is good reason not to do so'.

1.87 Consistent with the Drafting Direction, the approach of dealing with these matters in instruments (rather than regulations) has a number of advantages including:

- it facilitates the use of a single type of legislative instrument (or a reduced number of types of instruments) being needed for the Act;
- it enables the number and content of the legislative instruments under the Act to be rationalised;
- it simplifies the language and structure of the provisions in the Act that provide the authority for the legislative instruments; and
- it shortens the Act.

1.88 Due to these advantages, the Drafting Direction states that drafters should adopt this approach where appropriate with new Acts.

1.89 The Drafting Direction states that matters such as compliance and enforcement, the imposition of taxes, setting amounts to be appropriated, and amendments to the text of an Act, should be included in regulations unless there is a strong justification otherwise. The new Act does not enable instruments to provide for any of these matters. This is clarified by a provision that specifically prevents instruments from covering these types of matters. *[Subclause 25(2) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62U(2) of the Business Names Act, subsection 1270T(2) of the Corporations Act and subsection 212U(2) of the Credit Act]*

1.90 The new law also clarifies that a rule made under this power is a legislative instrument for the purposes of the *Legislation Act 2003*. Under that Act, legislative instruments and their explanatory statements must be tabled in both Houses of the Parliament within 6 sitting days after the registration of the instrument on the Federal Register of Legislation. Once

tabled, the instruments will be subject to the same level of parliamentary scrutiny as regulations (including consideration by the Senate Standing Committee on Regulations and Ordinances), and notice of a motion to disallow the instruments may be given in either House of the Parliament within 15 sitting days after the date the instruments are tabled.

*[Subclause 25(1) of the Commonwealth Registers Bill 2019, items 5, 10 and 18 of schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, subsection 62U(1) of the Business Names Act, subsection 1270T(1) of the Corporations Act and subsection 212U(1) of the Credit Act]*

## Consequential amendments

1.91 The 35 business registers are brought into the modernised regime through consequential amendments to the legislation under which those registers are administered.<sup>41</sup> These consequential amendments:

- make the registrar responsible for administering the functions and powers that make up the registers;
- replace prescription of various matters with the requirements of the data standards and disclosure framework;
- remove other aspects of the registers that are displaced by the new regime; and
- allow the registrar to collect fees relating to the registers.

1.92 Each of these categories of consequential amendments is explained below.

1.93 It should be noted at the outset that only ‘registry’ aspects of the current law are brought into the new registry regime and therefore affected by the present amendments. ‘Regulatory’ functions and powers are not affected by the new law and continue to be administered by the body that currently administers those functions and powers. This means that for regulatory functions and powers there is no change to the way in which the present law operates, including how the relevant regulator interacts with the entities it regulates or how information flows between them.

1.94 Whether a provision of the relevant law is ‘registry’ or ‘regulatory’ depends on its nature. Relevant factors include the purpose of the provision and the extent to which it involves the exercise of discretion or regulatory powers (such as monitoring, investigation, and enforcement powers). While all relevant factors need to be considered and balanced, generally the greater the extent of discretion and regulatory powers

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<sup>41</sup> These consequential amendments are contained in Part 2 of Schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019.

involved the more likely a provision is regulatory. In practice registry provisions tend to relate to the establishment, maintenance and use of registers while regulatory provisions tend to relate to things such as monitoring and enforcing the law and licencing and registering market operators and financial service providers.<sup>42</sup>

## **The registrar is now responsible for administering registry provisions**

1.95 The consequential amendments change the registry provisions of 34 of the business registers transferred into the new regime so that they are administered by the registrar rather than by ASIC. To achieve this, the new law replaces relevant references to ASIC in the current law with references to the registrar. These changes make the registrar responsible for administering registry functions and powers instead of ASIC in the amended legislation that is currently administered by ASIC. Equivalent amendments are not required to transfer functions and powers from the Commissioner to the registrar under the ABN Act. That Act already allocates relevant functions and powers to a registrar, which is separately defined to be the Commissioner.

1.96 Key registry functions and powers that are being transferred to the registrar under this category of consequential amendments include:

- receiving registry information (including information contained in applications for registration) from registrants;
- recording that information (and telling the registrant when that record has been made);
- receiving updates of registry information from registrants, including through the initiation of processes, such as annual reviews, to update registry information; and
- making decisions about registry information, including the removing of records, and associated internal review of those decisions.

*[See Appendix table A1]*

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<sup>42</sup> For example, ASIC retains the power to commence criminal proceedings for all offences under the Corporations Act (see section 1315 of that Act). There are also some key areas of regulatory functions and powers, which operate in tandem with registry provisions, that will remain with ASIC. These include: deciding whether an entity should be registered for the purposes of some professional registers and for the Managed Investment Scheme register; determining what information must be provided by administrators of insolvent companies; and using discretion to decide when entities should be deregistered on the basis of non-compliance with regulatory provisions.

## Removal of prescriptive requirements from registry provisions

1.97 The consequential amendments repeal prescriptive requirements in registry provisions that relate to matters that are dealt with by the data standards under the new regime. For example, the laws under which the 35 business registers are currently administered typically prescribe matters such as: what information has to be provided by registrants to ASIC and the Australian Business Registrar (the Commissioner of Taxation); and, the manner and form in which such information has to be provided.

1.98 The consequential amendments remove such prescriptive requirements from registry provisions and replace them with an obligation to meet the requirements of the data standards. As discussed in paragraphs 1.30 to 1.38 of this memorandum, this allows the data standards to flexibly provide for matters such as what information the registrar needs in relation to its functions and powers and how that information is to be provided. [See Appendix table A2]

## Displaced registry provisions are repealed and registry function is harmonised

1.99 This category of consequential amendments repeals registry provisions in the current law that are made redundant by, or are inconsistent or duplicative of, provisions in the new law. These amendments ensure that where the new law deals with a matter it applies exclusively and uniformly to all functions and powers transferred to the registrar. Under the current law there are different rules applying to different registry functions and powers and in some instances there are multiple overlapping laws relating to the same matter.

1.100 The matters the new law is intended to cover exclusively, and apply uniformly across registry functions and powers, include:

- the use of assisted decision making processes by the registrar;
- the extent to which the registrar and associated persons may be liable for damages in connection with the new regime;
- the admissibility of registry information in court proceedings;
- how registry information is to be collected and maintained;<sup>43</sup> and
- the protection and disclosure of registry information.

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<sup>43</sup> In particular, the new law abolishes any subject matter specific registers in affected laws and replaces them with a regime in which all information related to those functions and powers is held by the registrar.

*[See appendix table A3]*

## **The registrar collects fees relating to registry functions and powers**

1.101 This category of consequential amendments makes the registrar the entity responsible for collecting fees relating to its functions and powers under the new law. Currently, the Fees Acts provide for the recovery of fees by ASIC for various activities related to administering the present regime of business registers. Under the new law, the registrar collects any fee related to the performance of a registry function or the exercise of a registry power.

1.102 As noted above, the Fees Acts currently permit fees to be charged in connection with certain registry services. Regulations made under these Acts prescribe the particular fees for chargeable matters. Common fees include:

- fees for applying for the registration of an entity;
- fees for applying to deregister an entity;
- annual review fees;
- business name registration and renewal fees; and
- late fees.

1.103 These consequential amendments do not affect how the fee regime operates or the amount payable for particular fees. The amendments affect the government body that collects the fees payable in connection with those functions and powers allocated to the registrar.<sup>44</sup> *[Business Names Registration (Fees) Amendment (Registries Modernisation) Bill 2019; Corporations (Fees) Amendment (Registries Modernisation) Bill 2019; and the National Consumer Credit Protection (Fees) Amendment (Registries Modernisation) Bill 2019. See also Appendix table A4]*

## **Commencement and application provisions**

1.104 The Commonwealth Registers Bill 2019 commences the day after Royal Assent. The remainder of the new registry regime commences

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<sup>44</sup> Note: The amendments to the *Business Names Registration (Fees) Act 2011*, the *Corporations (Fees) Act 2001* and the *National Consumer Credit Protection (Fees) Act 2009* are introduced into Parliament as three separate Bills. Notwithstanding the consequential nature of the amendments being made, it is OPC's practice not to include amendments of imposition Acts in omnibus amendment Bills if the amendments of the imposition Acts could be characterised as, or may appear to be, impositions of taxation. This practice is aimed at ensuring that such amendments comply with section 55 of the constitution which requires laws imposing taxation to deal only with the imposition of taxation.



on a date to be set by proclamation. This mechanism is used so that a commencement date can be set when administrative arrangements supporting the new regime are in place. These arrangements include the use of a new information technology platform and the development of systems and processes to support the new regime's operation. However, if any provisions do not commence within 24 months of the day that the Bill receives Royal Assent, they will automatically commence the day after the end of that period. Automatic commencement after a designated period is a standard feature of provisions that provide for commencement by proclamation. Automatic commencement ensures that laws do not sit dormant on the statute books indefinitely. *[Section 2 of the Commonwealth Registers Bill, section 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019]*

1.105 There are application rules that apply in relation to the consequential amendments made in support of the new registry regime. In particular, each consequential amendment related to a particular function or power does not apply until a registrar is appointed with respect to that function or power. This ensures that a registry function or power continues to be administered under the current law until it is allocated by the Minister to the registrar under the new law. *[Schedule 1, items 359, 1315, 1414, 1465 and 1466 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019]*



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## **Chapter 2**

# ***Director identification numbers***

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### **Outline of chapter**

2.1 Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019 amends the Corporations Act and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) to introduce a director identification number (DIN) requirement. It sets out:

- the persons to which the new requirement applies;
- the obligations associated with the new requirement;
- how the new requirement is administered; and
- the consequences of contravening the new law.

### **Context of amendments**

2.2 Phoenixing occurs when the controllers of a company deliberately avoid paying liabilities by shutting down an indebted company and transferring its assets to another company. This impacts on creditors who fail to receive payments for goods and services, employees through lost wages and/or superannuation entitlements and the general public through lost revenue to the Government. The total cost of phoenixing to the Australian economy is estimated to be between \$2.9 billion and \$5.1 billion annually.

2.3 The Commonwealth Government currently has a number of initiatives underway to deter and penalise phoenix activity in order to protect those who are negatively affected by such fraudulent behaviour. One initiative is the introduction of a DIN, which the Government announced on 12 September 2017.

2.4 The DIN will require all directors to confirm their identity and it will be a unique identifier for each person who consents to being a director. The person will keep that unique identifier permanently, even if they cease to be a director. It is not intended that a person's DIN will ever be re-issued to someone else or that one person will ever be issued with more than one DIN (except in limited circumstances such as when a record is corrupted). As such, the DIN will provide traceability of a director's relationships across companies, enabling better tracking of directors of failed companies and will prevent the use of fictitious

identities. This will assist regulators and external administrators to investigate a director's involvement in what may be repeated unlawful activity including illegal phoenix activity.

2.5 To date, although the law has required that directors' details be lodged with ASIC, it has not required the regulator to verify the identity of directors. This verification aspect of the DIN will improve the integrity of the data and help with enforcement action associated with phoenixing.

2.6 The new DIN regime will also offer benefits beyond combating phoenixing. For instance, simpler more effective tracking of directors and their corporate history will reduce time and cost for administrators and liquidators, thereby improving the efficiency of the insolvency process. In addition, the new regime will improve data integrity and security. For example, it would be possible to allow directors to be identified by a number rather than by other more personally identifiable information.

2.7 The introduction of a DIN was recommended by the Productivity Commission in its September 2015 final report into *Business Set-up, Transfer and Closure*.<sup>45</sup> In the report, the Productivity Commission noted its confidence that the introduction of a DIN would likely be of significant net benefit to the community as a whole.

## **Summary of new law**

2.8 The new law amends the Corporations Act and the CATSI Act to introduce a DIN requirement. The new requirement assists regulators to better detect, deter and disrupt phoenixing and improves the integrity of corporate data maintained by the registrar.

2.9 Under the new requirement a person appointed as a director of a body corporate registered under the Corporations Act or the CATSI Act must apply to the registrar for a DIN. The person must apply before they are appointed a director unless the period is extended by the regulations or unless they are provided an exemption or extension by the registrar. After receiving an application, the registrar must provide the director with a DIN if the registrar is satisfied that the director's identity has been established.

2.10 The registrar is provided with powers to administer the new requirement. These include powers to: issue DINs; keep necessary records; cancel and reissue DINs; determine the numbering plan for the new requirement; and, determine how directors can establish their identity. The registrar may make data standards, by way of legislative instrument, in relation to these and other matters.

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<sup>45</sup> See recommendation 15.6 of the Productivity Commission's report.

2.11 There are civil and criminal penalties for directors that fail to apply for a DIN within the applicable timeframe. The registrar, or a senior member of its staff, may also issue infringement notices in relation to such conduct. There are also civil and criminal penalties which apply to conduct that would otherwise undermine the new DIN requirement. For example, there are criminal penalties for deliberately providing false identity information to the registrar, intentionally providing a false DIN to a Government body or relevant body corporate, or intentionally applying for multiple DINs.

2.12 The new requirement contains transitional provisions that apply in relation to a person that is appointed as a director at the time the new requirement starts to apply. Such a person has the period specified in a legislative instrument made by the Minister to apply for a DIN. In addition, during the first 12 months of the operation of the new requirement, a person who is appointed as a director will have an additional 28 days to apply for a DIN (that is, for the first 12 months a person must apply for a DIN within 28 days of being appointed as a director).

## Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
A director of a body corporate registered under the Corporations Act or the CATSI Act must apply for a DIN before becoming a director unless a later period is prescribed by the regulations (transitional arrangements provide additional time to apply for a DIN when the new requirement first starts to apply).	No equivalent.
The registrar must give an applicant director a DIN if satisfied that their identity has been established.	No equivalent.
The registrar may exempt a person from needing to obtain a DIN or provide them with additional time in which to apply for a DIN.	No equivalent.
The registrar is provided with powers to administer the new requirement including powers to record DINs, cancel and reissue DINs, determine the numbering plan for the new requirement, and determine how	No equivalent.

<i>New law</i>	<i>Current law</i>
directors are to establish their identity.	
A person must not engage in certain conduct that would undermine the new requirement including deliberately providing false information to the registrar, intentionally providing a false DIN to a Commonwealth body or registered body corporate, or intentionally applying for multiple DINs.	There are existing penalties in the Criminal Code that relate to providing false information to the Commonwealth. These offences are relied upon by the new law where appropriate.

## Detailed explanation of new law

2.13 Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019 amends the Corporations Act and the CATSI Act to introduce a DIN requirement.

2.14 The objective of the new requirement is to promote good corporate conduct. In particular, the new requirement assists regulators to detect and address unlawful behaviour and, through doing so, deter such behaviour. It does so by requiring each appointed director of a registered body corporate to have a unique identification number.

2.15 To implement the DIN requirement, the Bill inserts a new part into both the Corporations Act and the CATSI Act. The new parts detail:

- the persons to which the new requirement applies;
- the obligations associated with the new requirement;
- how the new requirement is administered; and
- the consequences of contravening the new law.

### To whom does the new requirement apply?

2.16 The new law is drafted so that the requirement to obtain a DIN applies in relation to body corporates registered under the Corporations Act or the CATSI Act (a registered body).

#### *Who is an eligible officer?*

2.17 The new law defines who is an **eligible officer** for the purposes of the new requirement. An eligible officer is a director of a registered body who:

- is appointed to the position of director, or is appointed to the position of an alternate director and is acting in that capacity (regardless of the name that is given to that position); or
- any other officer of the registered body who is an officer of a kind prescribed by the regulations.

*[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 5 and 11, section 308-15 of the CATSI Act and section 1272B of the Corporations Act]*

2.18 The DIN requirement therefore initially operates with respect to only appointed directors and acting alternate directors. It does not, at least initially, extend to what are commonly referred to as de facto<sup>46</sup> or shadow directors<sup>47</sup>. This reflects that the current operation of the broader registry regime applicable to registered bodies does not generally extend to de facto and shadow directors.

2.19 As noted above, the definition of eligible officer may be extended by regulation to any other officers of a registered body. The term ‘officer’ in relation to a registered body is defined in section 9 of the Corporations Act and section 683-1 of the CATSI Act. Those sections define the term to mean a director (including a de facto or shadow director), a secretary, and a range of other persons that may affect the business of a registered body, including administrators, receivers and liquidators.

2.20 The effect of this regulation making power is to allow the DIN to be extended to any such officer of a registered body if doing so is appropriate. This ability provides the flexibility necessary to future-proof the new requirement to ensure its ongoing effectiveness. Any such regulations will be subject to parliamentary scrutiny through the disallowance procedures of the *Legislation Act 2003*.

2.21 The new law also gives the registrar the power to exempt a person or class of person from being an eligible officer. This allows the registrar to respond where the imposition of the requirement would have unintended consequences or would otherwise be unsuitable for a particular person or class of persons. Any exemption that relates to a class of persons is a legislative instrument and is therefore subject to parliamentary scrutiny through the disallowance procedures of the

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<sup>46</sup> A ‘de facto’ director is a person who is not validly appointed as a director but who acts in the position of a director. See the definition of ‘director’ in section 9 of the Corporations Act and section 683-1 of the CATSI Act.

<sup>47</sup> A ‘shadow director’ is a person who is not validly appointed as a director but the directors of the body are accustomed to act in accordance with the person’s instructions or wishes.

*Legislation Act 2003*.<sup>48</sup> An exemption in relation to a particular person would not be by way of legislative instrument because any such decision would be of an administrative character – that is, determining particular cases in which the law is not to apply.<sup>49</sup> As these decisions are not made by legislative instrument, the registrar must notify the relevant person of the exemption. [*Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 5 and 11, section 308-15 of the CATSI Act and section 1272B of the Corporations Act*]

2.22 All references to ‘director’ are references to a person to which the new DIN requirement applies unless indicated otherwise.

### ***What is a registered body?***

2.23 For the new DIN requirement to apply to a person, the person must be a director of a registered body. For the purposes of the new law, a registered body is:

- a company, registered foreign company or registered Australian body (which are registered under the Corporations Act); or
- an Aboriginal and Torres Strait Islander corporation (which are registered under the CATSI Act).

### ***Companies***

2.24 The meaning of ‘company’ is defined in section 9 of the Corporations Act. That section defines company as meaning a company registered under the Corporations Act. Chapter 2A of the Act deals with the registration of companies, including what types of companies can be registered<sup>50</sup> and how a company is registered<sup>51</sup>.

2.25 Applying the DIN in relation to companies ensures that directors of all Australian companies are subject to the new DIN requirement. This includes directors of companies that are responsible for managed investment schemes<sup>52</sup> and registered charities<sup>53</sup>. It also includes directors

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<sup>48</sup> The statement in the legislation that class exemptions are made by way of legislative instruments is inserted to assist readers. Such instruments are legislative in nature as they determine the law or alter the content of the law, rather than determine particular cases or particular circumstances in which the law is to apply or is not to apply.

<sup>49</sup> See section 8 of the *Legislation Act 2003*.

<sup>50</sup> See Part 2A.1 of the Corporations Act.

<sup>51</sup> See Part 2A.2 of the Corporations Act.

<sup>52</sup> Under section 601FA of the Corporations Act a responsible entity for such a scheme must be a public company.

<sup>53</sup> The DIN requirement applies whether or not a company registered under the Corporations Act is also registered under another law for a particular purpose, for example as a not-for-profit entity under the *Australian Charities and Not-For Profits Commission Act 2012*.



of companies that are preserved by transitional provisions in Chapter 10 of the Corporations Act.<sup>54</sup>

*Registered foreign companies*

2.26 Registered foreign company is defined in Section 9 of the Corporations Act as meaning a foreign company that is registered under Division 2 of Part 5B.2 of the Corporations Act. That division prohibits a foreign company from carrying on business<sup>55</sup> in Australia<sup>56</sup> unless it is registered or its application for registration is pending<sup>57</sup>, and sets out the requirements for registration<sup>58</sup>.

2.27 By virtue of the definition of ‘foreign company’<sup>59</sup>, a registered foreign company may in some instances be an unincorporated body. However, the DIN requirement does not operate in relation to these unincorporated bodies as they cannot hold property in their own name and are therefore not prone to issues such as phoenixing activity. For this reason and for consistency with the new requirement’s operation with respect to Australian bodies, the requirement only operates with respect to registered foreign companies that are body corporates. *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, item 11, paragraphs 1272B(1)(a) and 1272B(1)(b) of the Corporations Act]*

2.28 Applying the DIN requirement to foreign companies that are body corporates ensures that the requirement operates in a jurisdictionally neutral manner. In particular, it ensures that the requirement applies to body corporates incorporated in an external territory or otherwise outside Australia, where those bodies carry on business in Australia. This ensures that the new requirement operates consistently, regardless as to where a registered body is incorporated. *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, item 11, subsection 1272B(1) of the Corporations Act]*

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<sup>54</sup> See section 1378 of the Corporations Act, which provides that companies registered under Part 2A.2 of the old Corporations Law of a State or Territory continue to be registered as if they were registered under Part 2A.2 of the Corporations Act.

<sup>55</sup> Section 21 provides that a body corporate that has a place of business in Australia carries on business in Australia. The section (and Division 3 of Part 1.2 of the Act more generally) also provides some additional information to elucidate the concept of carrying on a business. However, the term is not comprehensively defined in the Act.

<sup>56</sup> ‘In Australia’ or ‘in this jurisdiction’ means within the geographic area of each state and territory in Australia, including the coastal sea and, for the purposes of Chapter 7, any prescribed external territory: see section 5 (General territorial application of Act) and the definition of ‘Australia’ in section 9.

<sup>57</sup> See section 601CD of the Corporations Act.

<sup>58</sup> See section 601CE of the Corporations Act.

<sup>59</sup> See section 9 of the Corporations Act.

*Registered Australian Body*

2.29 Registered Australian body is defined in section 9 of the Corporations Act as a ‘registrable Australian body’<sup>60</sup> that is registered under Division 1 of Part 5B.2 of the Corporations Act. Section 601CA of that Act provides that a registrable Australian body must not carry on business in a state or territory unless:

- that state or territory is its place of origin;
- it has its head office or principle place of business in that state or territory; or
- it is registered under Division 1 of Part 5B.2 or its application for registration is yet to be dealt with.

2.30 Applying the DIN requirement to registered Australian bodies ensures that the regime applies in relation to body corporates that are not companies, but which carry on business in one or more states or territories other than their home jurisdiction. As with registered foreign companies, some registered Australian bodies are unincorporated. However, the new requirement does not operate in relation to these bodies as they cannot hold property in their own name and are therefore not prone to issues such as phoenixing activity. The new requirement only applies in relation to registered Australian bodies that are body corporates. *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, item 11, subsection 1272B(1) of the Corporations Act]*

*Aboriginal and Torres Strait Islander corporations*

2.31 The CATSI Act is the law that establishes the role of the Registrar of Indigenous Corporations and allows Aboriginal and Torres Strait Islander groups to form corporations. Registration under the CATSI Act is mostly voluntary. However, some corporations—for example, ‘prescribed bodies corporate’ set up under the *Native Title Act 1993*—are required to register under the CATSI Act.

2.32 The CATSI Act sets out the meaning of Aboriginal and Torres Strait Islander corporation and how such corporations are registered. Section 16-5 of the CATSI Act provides that an Aboriginal and Torres Strait Islander corporation is a corporation registered under the CATSI Act. Part 2-2 of the Act deals with applications for registration. In particular, section 42-1 provides that a corporation comes into existence on registration under the CATSI Act.

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<sup>60</sup> Registrable Australian body is defined in section 9 as a body corporate (which is not a company, exempt public authority or corporation sole); or, an Australian unincorporated body that may sue or be sued or may hold property in the name of its secretary or an officer of the body.

2.33 Applying the DIN requirement to directors of Aboriginal and Torres Strait Islander corporations ensures that these directors are treated equivalently to those of registered bodies under the Corporations Act. It also ensures that the members and creditors of all registered bodies may benefit from the regime. *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, item 5, subsection 308-15(1) of the CATSI Act]*

### **What obligations are associated with the new DIN requirement?**

2.34 The new law inserts four obligations in relation to the new requirement. These obligations:

- require a director to apply for a DIN prior to being appointed as a director;
- require a director to apply for a DIN within a prescribed period of being directed to do so by the registrar;
- prohibit a person from knowingly applying for multiple DINs; and
- prohibit a person from misrepresenting a DIN to a government body or registered body.

#### ***Directors must apply for a DIN prior to being appointed***

2.35 The first obligation requires a director to apply for a DIN prior to being appointed as a director or within any later period specified in the regulations. While the new law requires that all directors have a DIN, it is a defence if the director applied to the registrar for a DIN prior to being first appointed as a director of any registered body (or within such later period as the regulations may allow) and the application has not yet been dealt with.<sup>61</sup> *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 5 and 11, subsections 308-20(1) and 308-20(2) of the CATSI Act and subsections 1272C(1) and 1272C(2) of the Corporations Act]*

2.36 The applicable point by which a director must have applied for a DIN for the purposes of the above mentioned defence may be extended by the registrar for a particular director or for a specified class of directors. For a particular director, the period may be extended on application by the director for the period specified in the application or for such other period as the registrar considers reasonable. As such an extension applies the laws to a particular case, it is of an administrative character. An extension relating to a class of persons, however, must be made by legislative instrument as such an extension is legislative in character. As such, any class extensions are subject to parliamentary oversight through the

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<sup>61</sup> For this reason, this memorandum refers to the relevant obligation as being to apply for a DIN prior to appointment rather than as a requirement to have a DIN.

disallowance process under the *Legislation Act 2003*. The ability to grant extensions provides the registrar with discretion to extend the period for compliance where warranted.<sup>62</sup> [*Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 5 and 11, section 308-30 of the CATSI Act and section 1272E of the Corporations Act*]

2.37 It is also a defence in relation to this obligation if the director was appointed without their knowledge. This defence is aimed at ensuring that a person does not breach the obligation because of the wrong doing of another, for example, due to identity theft or forgery. In such a situation it would be more appropriate for the regulator to explore other options, for example, investigating whether a company has breached section 201D of the Corporations Act, which requires a person to consent to being a director. [*Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 5 and 11, subsection 308-20(3) of the CATSI Act and subsection 1272C(3) of the Corporations Act*]

2.38 A defendant carries an evidential burden for establishing both defences related to this obligation. The evidential burden in these defences has been reversed because the subject of the defences is peculiarly within the knowledge of the defendant and is significantly more difficult and costly for the prosecution to disprove than for the defence to establish. The burden of proof on the defendant is an evidential burden. To satisfy this evidential burden the defendant must adduce or point to evidence that suggests a reasonable possibility that the defence exists.<sup>63</sup> Once this is done, the prosecution bears the burden of proof.

2.39 This obligation is designed to ensure the effectiveness of the new requirement and that it does not have unintended consequences. In particular:

- the obligation's compulsory nature ensures that all directors (except those granted an exemption) apply for a DIN, which is essential for the new requirement to achieve its objective;
- the fact that the obligation is an obligation to apply for a DIN means that a director does not breach the obligation where there is a delay in processing an application for reasons beyond their control; and
- the requirement for every director to apply for a DIN regardless of the length of their appointment ensures that the DIN requirement cannot be avoided by a person stepping into the role of a director for short periods at critical times.

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<sup>62</sup> For example, this power could be applied to the benefit of directors residing in very remote areas should that remoteness affect their ability to apply for a DIN prior to appointment.

<sup>63</sup> See subsection 13.3(3) of the *Criminal Code*.

2.40 The new law does not include an offence prohibiting the provision of false or misleading information to the registrar. For this purpose, the new law relies upon existing prohibitions that cover such matters including section 137.1 of the *Criminal Code*, section 1308 of the *Corporations Act* and section 561-1 of the *CATSI Act*. Each of these sections prohibits the provision of false or misleading information. Such prohibitions are important as a deterrent against the provision of false or misleading information to the registrar (for example, as a deterrent against a person attempting to acquire a DIN against a false identity).

2.41 The new law includes transitional arrangements for persons who are directors at the time the new requirement starts. Such persons have to apply for a DIN within the period specified in a legislative instrument made by the Minister. There is no requirement for such persons to apply for a DIN until this instrument is made.<sup>64</sup> In addition, a transitional arrangement provides an extra 28 days for a director to apply for a DIN during the first year of operation of the new requirement (that is, during the first year of the new requirement a person has 28 days to apply for a DIN from date they are first appointed a director). Paragraphs 2.80 to 2.81 of this memorandum provides further information about these arrangements.

***Directors must apply for a DIN upon being directed to by the registrar***

2.42 The second obligation requires a director to apply for a DIN within a prescribed period of being directed to do so by the registrar. The prescribed period may be determined by the registrar in its direction by the registrar specifying the number of days a director has to apply for a DIN. If the number of days is not specified in the direction, the prescribed period is 28 days from the date the direction is given to the director. The registrar may also extend the period that a director has to comply with a direction.<sup>65</sup> [*Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 5 and 11, subsections 308-25(1) and 308-25(2) of the CATSI Act and subsections 1272D(1) and 1272D(2) of the Corporations Act*]

2.43 This obligation ensures the registrar can require a director to apply or reapply for a DIN where it is desirable to do so. This ability is important in enabling the registrar to effectively administer and maintain the new DIN requirement. For example, the registrar may wish a director to apply or reapply for a DIN because:

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<sup>64</sup> This ensures that people who are directors at the time the new requirement starts do not ‘automatically’ breach the obligation to obtain a DIN. Such existing directors would not have been able to obtain a DIN prior to being appointed a director and will therefore be allowed a transitional period in which to do so (which will be specified in the instrument).

<sup>65</sup> The power of the registrar to extend the period is identical to that applicable to the first obligation discussed in paragraph 2.36 of this memorandum.

- the director has never applied for a DIN;
- the director's existing DIN profile has been lost or corrupted;  
or
- the registrar wishes to verify the director's identity.

2.44 This obligation does not include the defences which apply in relation to the first obligation discussed above. Those defences are not relevant to this obligation. Unlike the first obligation, this obligation is not breached until the end of the relevant period. Similarly, the defence of being appointed without knowledge is not relevant in the present context where the registrar has directed the person to apply because they are a director.

***A person must not knowingly apply for multiple DINs***

2.45 The third and fourth obligations associated with the new DIN requirement are necessary to ensure the integrity of the new requirement.

2.46 The third obligation prohibits a person from applying for a DIN if the person knows that they already have a DIN. However, the prohibition does not apply in the following circumstances:

- where the registrar has directed the person to reapply for a DIN<sup>66</sup> – this defence ensures that this obligation does not conflict with the ability of the registrar to require a director to reapply for a DIN; or
- where the person applied for the additional DIN under another Act – this defence ensures that a person cannot be convicted of breaching this obligation under both the Corporations Act and the CATSI Act if the violation only relates to one of those Acts.

***[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 5 and 11, section 308-40 of the CATSI Act and section 1272G of the Corporations Act]***

2.47 The prohibition would not be contravened only because a person applies for a DIN in circumstances where they have previously held a DIN that has been cancelled. In such circumstances the person would not already have a DIN at the time they subsequently apply for a DIN. This is the case whether the cancellation occurred by operation of law (for example, where the person's DIN was automatically cancelled because they did not become a director within 12 months of being given it) or due to a decision of the registrar.

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<sup>66</sup> A defendant bears an evidential burden in relation to this matter. The significance of this burden and the rationale for imposing it on the defendant are as described in paragraph 2.38 of this memorandum.

2.48 This obligation is designed to prevent a person from seeking to circumvent the new requirement by obtaining multiple DINs. The integrity of the regime requires each director to hold no more than one DIN. A person holding multiple DINs would be difficult to identify and track in relation to their directorships and corporate activities.

***A person must not misrepresent a DIN to a government or registered body***

2.49 The fourth (and final) obligation associated with the new DIN requirement is directed at preventing a person misrepresenting a DIN to a body that is likely to rely upon it for regulatory compliance or identification purposes. In particular, the new law prohibits a person from intentionally representing to a Commonwealth body or a registered body that a DIN is associated with a person when it is not. For this purpose, the new law uses the definition of Commonwealth body set out in the new Commonwealth Registers Bill 2019 discussed in Chapter 1 of this memorandum. [*Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 5 and 11, subsection 308-45 of the CATSI Act and section 1272H of the Corporations Act*]

2.50 It is important that directors honestly report DINs to Government and regulated bodies. These bodies may rely upon the DIN to establish the identity of directors and those seeking to become directors (for example, to confirm that the person has not been disqualified). A registered body may also be required under the new law to collect and report the DIN of a newly appointed director for the purpose of facilitating the administration of the new requirement. Such a requirement would not be possible in a regime where people were not required to honestly report DINs.

## **How is the new DIN requirement administered?**

2.51 The administration of the new requirement relies on the new registry regime outlined in Chapter 1 of this memorandum. Under the new requirement, the registrar is responsible for the administration of all functions and powers that are of a registry nature. These functions and powers are explained in this section of this explanatory memorandum. The remaining functions and powers are administered by the regulators that have the general administration of the Corporations Act and the CATSI Act, namely ASIC and the Office of the Registrar of Indigenous Corporations (ORIC)<sup>67</sup> respectively. These remaining functions and

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<sup>67</sup> The Registrar of Aboriginal and Torres Strait Islander Corporations is charged with the administration of the CATSI Act (see section 658-1 of the Act). However, for ease of understanding this memorandum generally refers to ORIC rather than the Registrar of Aboriginal and Torres Strait Islander Corporations.

powers relate to the enforcement of the new requirement through the civil penalty and criminal offence provisions discussed in the next section of this memorandum.

***What powers and functions does the new law confer on the registrar?***

2.52 The new law provides the registrar with the functions and powers it requires to administer the registry aspects of the DIN requirement. In particular, the new law provides the registrar with the ability to:

- give a person a DIN if the person has applied for a DIN and the registrar is satisfied that the person's identity has been established; *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 5 and 11, subsections 308-5(1) of the CATSI Act and subsection 1272(1) of the Corporations Act]*
- direct a director to apply for a DIN (whether or not the director already has a DIN); *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 5 and 11, subsection 308-10(2) of the CATSI Act and subsection 1272A(2) of the Corporations Act]*
- keep a record of each DIN that has been given to a person; *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 5 and 11, subsection 308-5(2) of the CATSI Act and subsection 1272(2) of the Corporations Act]*
- cancel a DIN that has been given to a person if the registrar is no longer satisfied that the person's identity has been established or if the registrar has given the person another DIN; and *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 5 and 11, subsection 308-5(3) of the CATSI Act and subsection 1272(3) of the Corporations Act]*
- notify a person that they have been given a DIN or that a DIN, which has previously been given to them, has been cancelled. *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 5 and 11, subsections 308-5(1) and 308-5(3) of the CATSI Act and subsections 1272(1) and 1272(3) of the Corporations Act]*

2.53 The registrar is provided with little or no discretion in the exercise of most of these functions and powers. In particular, the registrar must give a person a DIN if that person is eligible to apply for a DIN and has established their identity to the satisfaction of the registrar. Likewise, the registrar cannot give a person a DIN or cancel a person's DIN without notifying the person.



2.54 The new law also allows the registrar to request a person's tax file number to facilitate the administration of the DIN requirement.<sup>68</sup> This will enable the registrar to use a person's tax file number to assist with establishing the person's identity for the purposes of the requirement where the person is willing to provide it. The use of a person's tax file number (when provided) is likely to reduce the time and cost involved in establishing a person's identity to the benefit of both the applicant and the registrar. [*Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 15 and 16, section 202 of the Income Tax Assessment Act 1936 and paragraphs 8WA(1AA)(b) and 8WB(1A)(a) and (b) of the Taxation Administration Act 1953*]

2.55 It should be noted that this ability only allows the registrar to request a person's tax file number. The registrar cannot require a person to provide a tax file number. In addition, the current rules limiting the use and disclosure of tax file information contained in the *Taxation Administration Act 1953* continue to apply in relation to any such information held by the registrar. This ensures that any tax file information collected can only be used for the purposes of administering the DIN requirement and cannot be disclosed to third persons except in accordance with that taxation law.<sup>69</sup>

#### ***Who may apply for a DIN?***

2.56 The registrar may only give a person a DIN if that person has applied for one. The new law provides for two categories of persons who may apply for a DIN. No other person can apply.

2.57 The first category of persons who may apply for a DIN are directors. As noted above, a director commits an offence if they do not have a DIN and have not applied for one by the prescribed time. In addition, the objective of the regime is to promote good corporate conduct of directors by, among other things, establishing their identity and tracking their directorships over time. It is therefore essential that directors be able to apply for a DIN.

2.58 The second category of persons who may apply for a DIN are persons who are not directors but intend to become directors within 12 months. It is not compulsory or required that such a person apply for a DIN unless they are actually appointed as a director.<sup>70</sup> However, the new

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<sup>68</sup> Without these amendments made by the new law it would be an offence under section 8WA of the *Taxation Administration Act 1953* for the registrar to request a person's tax file number.

<sup>69</sup> In particular, the registrar is generally permitted to disclose tax file information to the Commissioner for the purposes of verifying with the Commissioner that the number belongs to the person who provided it.

<sup>70</sup> See paragraphs 2.35 to 2.41 of this memorandum.

law enables such persons to obtain a DIN should they so desire. The intent is to facilitate the operation of the new DIN requirement by enabling prospective directors to apply for a DIN where convenient or necessary to do so. *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 5 and 11, subsection 308-10(3) of the CATSI Act and subsection 1272A(3) of the Corporations Act]*

2.59 A DIN allocated to a prospective director is automatically cancelled by operation of law if the person does not become a director within 12 months of being given the DIN. This ensures the new requirement remains focused on those that are directors or are likely to become directors. A DIN that is cancelled pursuant to this provision may be reallocated to the same person should they later reapply for a DIN.<sup>71</sup> *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 5 and 11, subsection 308-5(4) of the CATSI Act and subsection 1272(4) of the Corporations Act]*

### ***How does the registrar perform its functions and exercise its powers?***

2.60 The registrar performs its functions and exercises its powers in relation to the DIN requirement primarily in accordance with the data standards.<sup>72</sup> As explained in paragraphs 1.30 to 1.38 of this memorandum, the data standards are legislative instruments that the new law allows the registrar to make on matters relating to the performance of the registrar's functions and the exercise of the registrar's powers.

2.61 In the present context, the data standards can provide for matters related to the performance of the registrar's functions and the exercise of the registrar's powers in relation to the DIN requirement. These functions and powers are specified in paragraphs 2.52 to 2.55 of this memorandum. Examples of particular matters related to the DIN requirement that the registrar may deal with in the data standards include:<sup>73</sup>

- how a person's identity is to be established for the purposes of the new requirement (for instance, the registrar could require an applicant to provide 100 points of identification);
- the numbering plan for the new requirement (for instance, the registrar could specify rules relating to the allocation and use of numbers in connection with the new requirement,

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<sup>71</sup> It is a decision for the registrar as to how to treat cancelled numbers. The registrar could, for example, decide to reuse the number or to quarantine the number.

<sup>72</sup> As explained in paragraphs 1.39 to 1.41 of this memorandum, the registrar must also perform its functions and powers in accordance with any other applicable laws of the Commonwealth. An example of such a law is section 8WA of the *Taxation Administration Act 1953*, which limits the use and disclosure of tax file number information.

<sup>73</sup> Note that while all these matters may be dealt with by the data standards this does not mean that they must be dealt with by the standards.

including rules affecting numbers that have previously been given or cancelled<sup>74</sup>);

- how DIN records are to be stored, maintained and integrated or linked to other data;
- how a person is to apply for a DIN and the manner and form of any application;
- how the registrar may check or validate the accuracy of any records held in relation to the new requirement; and
- how the registrar may notify people of relevant matters under the new requirement.

2.62 There is flexibility in the legislation for data standards to include different provisions relating to different functions or powers of the registrar. For example, in setting data standards for the information the registrar needs to collect to be satisfied of a person's identity, there can be different proof of identity requirements for directors of a registered body under the CATSI Act to those that apply to directors of a registered body under the Corporations Act. Likewise, the standards may provide different requirements for establishing the identity of directors that may not have traditional forms of identification to ensure that such directors are not discriminated against or unfairly disadvantaged.

2.63 Other amendments in the Bill enable the registrar to make data standards relating to how the registrar is informed of relevant matters relating to directors that already hold a DIN. For example, existing section 205B of the Corporations Act requires companies to lodge a notice of the personal details of a new director with the registrar within 28 days of their appointment. As under the new law this notice must meet any requirements of the data standards, the registrar may require companies to provide details of any existing DIN held by a new director. An equivalent ability exists in relation to the other types of registered bodies.<sup>75</sup> These abilities facilitate the proper functioning of the new requirement by enabling details of any existing DIN held by a newly appointed director to be collected for the purposes of tracking their directorships over time.

*[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other*

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<sup>74</sup> In particular, the registrar may decide to reuse a DIN that has previously been allocated to a person but then cancelled, whether or not the cancellation occurred by operation of law or because of a decision made by the registrar.

<sup>75</sup> In particular, the new law also allows the data standards to require a registered foreign company or registered Australian body to provide the registrar with details of any existing DIN held by a new director of the body. In the case of the CATSI Act, the new law amends the information that must be provided to ORIC when a person becomes a director of an Aboriginal and Torres Strait Islander corporation so that it includes the person's DIN, or the fact that the person does not have a DIN.

*Measures) Bill 2019, items 1 to 4, paragraphs 21-1(3)(ea), 22-1(4)(da), 23-1(4)(da) and subsection 304-5(4) of the CATSI Act]*

## What are the consequences of contravening the new law

2.64 Civil and criminal penalties apply to contraventions of the DIN requirement. The registrar may also issue infringement notices in relation to some contraventions.

### *Civil and criminal penalties*

2.65 A contravention of every obligation in the new law is both a civil penalty provision and an offence. This allows the regulator or prosecutor (as the case may be) to take a proportional approach to the enforcement of the new regime.

2.66 The maximum penalties applicable to each obligation in the Bill are detailed in the following table.

**Table 2.1 Penalties concerning obligations**

<i>Obligation</i>	<i>Maximum penalty</i>
Requirement to apply for a director identification number prior to appointment or within such other period as allowed by the regulations or registrar	<i>Corporations Act</i> Criminal – 60 penalty units (strict liability) Civil penalty – Greater of 5,000 penalty units or three times the benefit derived or detriment avoided because of the contravention <i>CATSI Act</i> Criminal – 25 penalty units (strict liability) Civil penalty – \$200,000

<b><i>Obligation</i></b>	<b><i>Maximum penalty</i></b>
Requirement to apply for a director identification number if directed by the registrar	<p><i>Corporations Act</i>            Criminal – 60 penalty units (strict liability)            Civil penalty – Greater of 5,000 penalty units or three times the benefit derived or detriment avoided because of the contravention</p> <p><i>CATSI Act</i>            Criminal – 25 penalty units (strict liability)            Civil penalty – \$200,000</p>
Applying for additional DINs	<p><i>Corporations Act</i>            Criminal – 120 penalty units or imprisonment for 12 months, or both            Civil penalty – Greater of 5,000 penalty units or three times the benefit derived or detriment avoided because of the contravention</p> <p><i>CATSI Act</i>            Criminal – 100 penalty units or imprisonment for 12 months, or both            Civil penalty – \$200,000</p>
Misrepresenting a DIN	<p><i>Corporations Act</i>            Criminal – 120 penalty units or imprisonment for 12 months, or both            Civil penalty – Greater of 5,000 penalty units or three times the benefit derived or detriment avoided because of the contravention</p> <p><i>CATSI Act</i>            Criminal – 100 penalty units or imprisonment for 12 months, or both            Civil penalty – \$200,000</p>
Accessorial liability (being involved in a contravention of one of the above obligations)	<p><i>Corporations Act</i>            Civil penalty (natural person) – Greater of 5,000 penalty units or three times the benefit derived or detriment avoided because of the contravention            Civil penalty (body corporate) – Greater of: 50,000 penalty units; three times the benefit derived or detriment avoided because of the contravention; or, 10 per cent of the annual turnover</p>

<i>Obligation</i>	<i>Maximum penalty</i>
	of the body corporate up to a maximum amount of 2.5 million penalty units <i>CATSI Act</i> Civil penalty – \$200,000 for a natural person

*[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 5, 6, 11, 12, and 14, subsections 308-20(1), 308-20(4), 308-20(5), 308-25(1), 308-25(3), 308-25(4), 308-40(1), 308-40(4), 308-45(1) and 308-45(2), and paragraph 386-1(1)(ab), of the CATSI Act and subsections 1272C(1), 1272C(4), 1272C(5), 1272D(1), 1272D(3), 1272D(4), 1272G(1), 1272G(4), 1272H(1), 1272H(2), and section 1317E and schedule 3, of the Corporations Act]*

2.67 The penalties applicable to each obligation are broadly consistent with current penalties applicable to comparable provisions in the Corporations Act and the CATSI Act respectively. However, the maximum penalty between the Acts varies for some offences. This reflects current differences in the penalty regime as between the two Acts. Similarly, the current civil penalty regime within the CATSI Act does not provide for pecuniary penalty orders to be made against corporations.

2.68 Breaching either of the first two obligations is an offence of strict liability. The application of strict liability negates the requirement for the regulator or prosecutor (as the case may be) to prove fault.

2.69 The imposition of strict liability in relation to these obligations is necessary to ensure the integrity of the new DIN requirement which relates to corporate regulation. As already noted, the effectiveness of the new requirement necessitates that all directors have applied for a DIN and therefore that there is strong deterrence for those who may seek to avoid the requirement. For similar reasons, the registrar may issue an infringement notice under the *Regulatory Powers (Standard Provisions) Act 2014* in relation to a breach of either obligation.

2.70 Civil penalties also apply to any person who is involved in a contravention of any of the obligations in Table 2.1. Sections 79 of the Corporations Act and 694-55 of the CATSI Act define when a person is involved in a contravention. Those sections provide that a person is so involved if, and only if, the person has aided, abetted, counselled, procured, induced or been knowingly concerned or a party to the contravention, or has conspired with others to effect the contravention.

2.71 The way the law gives effect to penalties varies between the Corporations Act and the CATSI Act. In the case of the Corporations Act, the penalties are given effect to by making the necessary amendments to existing subsection 1317E of the Corporations Act (in relation to civil penalties) and Schedule 3 of the Corporations Act (in relation to criminal penalties). In the case of the CATSI Act, the civil penalty provisions are

given effect to by making necessary amendments to existing subsection 386-1 of the Act while criminal penalties are specified in the provisions that create the offence.

2.72 The principles set out in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*<sup>76</sup> were considered in framing each offence in the new law and in determining applicable penalties.

### ***Infringement notices***

2.73 Breaches of the two obligations relating to failing to apply for a DIN (see the first two items in Table 2.1) are also subject to the infringement notice regime in Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*. Because these obligations involve timeframes and apply to a large number of people, minor breaches may be expected to occur with some frequency. Infringement notices are an efficient way of dealing with minor breaches, as they avoid the significant delays and costs associated with court action.

2.74 Part 5 of the Regulatory Powers Act sets out a standard framework under which infringement notices can be issued. This includes important matters such as when an infringement notice may be issued and by whom, what matters must be set out in an infringement notice, the maximum penalty<sup>77</sup> that can be imposed, how an extension of time for payment may be requested, how and under what circumstances an infringement notice may be withdrawn, and the effect and consequences if a person pays the amount stated in the notice.

2.75 In order for the standard framework in the Regulatory Powers Act to operate the new law must set out who can act as an infringement officer and as a chief executive for the purposes of the standard framework. In this respect, the new law provides as follows:

- an ***infringement officer*** is each member of the staff of the registrar who holds, or is acting in, an office or position that is equivalent to an SES employee;
- the ***chief executive*** is the person specified as the relevant chief executive in the registrar's instrument of appointment under the new law; or if there is no person specified—the registrar.

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<sup>76</sup> Attorney-General's Department, September 2011 edition.

<sup>77</sup> The Regulatory Powers Act provides that a maximum penalty of 60 penalty units can be imposed by an infringement notice, which is the amount set out in *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, issued by the Attorney-General's Department.

2.76 The new law makes one modification to the standard framework for issuing infringement notices under Part 5 of the Regulatory Powers Act. The effect of this modification is that an infringement notice issued in relation to an alleged contravention of the new law does not need to give details of the place of the alleged contravention (as would otherwise be required under paragraph 104(1)(e)(iii) of the Regulatory Powers Act). The ‘place’ of the alleged contravention is not relevant in the context of the present obligations which relate to failing to apply for a DIN and would not further a recipient’s understanding of the alleged contravention to which an infringement notice relates. In addition, the requirement to specify the place of the alleged contravention may be difficult and unduly burdensome in the context of the relevant contraventions as the information may not be obtainable or it may be unclear where the alleged contravention took place.<sup>78</sup> All other requirements of the standard infringement notice regime in Part 5 of the Regulatory Powers Act apply unmodified, including the requirements aimed at ensuring a recipient of an infringement notice understands the alleged contravention to which the notice relates. *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 5 and 11, sections 308-35 of the CATSI Act and section 1272F of the Corporations Act]*

## **Consequential amendments**

2.77 Definitions are inserted into sections 9 of the Corporations Act and 700-1 of the CATSI Act, which are the main definitions section of those Acts.<sup>79</sup> The definitions support the operation and readability of the new law. *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, items 7, 8 and 10, sections 694-120 and 700-1 of the CATSI Act and section 9 of the Corporations Act]*

## **Commencement, application and transitional provisions**

### *Commencement*

2.78 The new requirement commences on a date set by proclamation. This mechanism is used so that a commencement date can be set when administrative arrangements supporting the new regime are in place. These arrangements include the use of a new information technology platform and the development of systems and process to support the new requirement’s operation. However, if any provisions do not commence

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<sup>78</sup> Note that ‘place’ and ‘place of the alleged contravention’ are not defined in the Regulatory Powers Act. The terms take their ordinary meaning.

<sup>79</sup> Consistent with the current structure of the CATSI Act, the definition of ‘Commonwealth registrar’ is inserted into Part 17-2 (Interpretation of other expressions) of the CATSI Act.



within 24 months of the Bills receiving Royal Assent, they automatically commence the day after the end of that period. Automatic commencement after a designated period is a standard feature of provisions that provide for commencement by proclamation. Automatic commencement ensures that laws do not sit dormant on the statute books indefinitely. *[Section 2 of the of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019]*

### ***Application***

2.79 Each function and power in the new law does not apply until the function or power is assigned to the registrar. This means that the DIN requirement will not apply until the day (the application day) the Minister appoints a registrar to administer the new requirement.<sup>80</sup> *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 9 and 13, subitem 5(1) of the Bill and subsection 1653(1) of the Corporations Act]*

### ***Transitional arrangements***

2.80 The new law provides that a person who is a director immediately before the application day must apply for a DIN within a period specified by a legislative instrument made by the Minister.<sup>81</sup> Until this period is specified, there is no requirement on such directors to apply for a DIN. Without this transitional rule, a person who is a director when the new requirement starts may be placed in a position where they are unable to comply with the new law because it would require them to have applied for a DIN at some time in the past, namely within 28 days<sup>82</sup> of being appointed as a director. This transitional period will also provide time for existing directors to become familiar with the new requirement and for any information or awareness campaigns in relation to it to take effect. *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 9 and 13, subitems 5(2) and 5(3) of the Bill and subsections 1653(2) and 1653(3) of the Corporations Act]*

2.81 In addition, the new law provides a person who is appointed a director within the first 12 months of the new regime's operation with an additional 28 days to apply for a DIN. After this transitional period ends, the standard rule applies, that is, a director must apply for a DIN prior to being appointed as a director or within any later period as may be allowed

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<sup>80</sup> The application day need not be the same for the purposes of the new requirement under the CATSI Act and Corporations Act respectively.

<sup>81</sup> As the instrument made by the Minister is a legislative instrument it is subject to requirements of the *Legislation Act 2003*, including parliamentary oversight through the disallowance process and appropriate consultation. The power to make this instrument under the Corporations Act is separate to the power to make it under the CATSI Act. This means that a different period can be specified for CATSI Act purposes to that specified for Corporations Act purposes.

<sup>82</sup> See paragraph 2.81 of this memorandum.

by the regulations or the registrar (see paragraphs 2.35 to 2.36 of this memorandum). This transitional period is designed to provide time for new directors to become familiar with the new requirement and for any information or awareness campaigns in relation to it to take effect.

*[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, items 9 and 13, subitem 5(4) of the Bill and subsection 1653(4) of the Corporations Act]*

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# **Chapter 3**

## **Statement of Compatibility with Human Rights**

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**Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011***

***Commonwealth Registers Bill 2019***

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

***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***

3.1 These Bills (the legislative package) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview**

3.2 The legislative package contains measures that:

- modernise Commonwealth business registers; and
- introduce a DIN requirement.

#### ***Modernisation of Commonwealth Registers***

3.3 The new law facilitates a modern government registry regime that is flexible, technology neutral and governance neutral. The regime initially applies to the business registers administered by ASIC and the Australian Business Register. Additional government registers may be brought into the regime by future legislative reforms.

3.4 Under the new regime, the Minister appoints an existing Commonwealth body to be the registrar. Different registrars can be appointed for different functions or powers of the registrar.

3.5 The functions and powers of the registrar are largely set out in existing Commonwealth laws. In particular, most powers and functions are set out in the Commonwealth acts that contain the registers being brought into the new regime. These acts include: the Corporations Act; the ABN Act; the Business Names Act; the Credit Act; and, the SIS Act.

3.6 The registrar performs its functions and exercises its powers in accordance with the data standards and other Commonwealth laws. The data standards are disallowable instruments made by the registrar. They may deal with a variety of matters including what information may be collected for the purposes of performing the registrar's functions, how such information is to be given to the registrar, and how information held by the registrar is to be stored.

3.7 The new law also provides for the protection and disclosure of information held by the registrar. It is an offence for an official to disclose information held by the registrar unless the disclosure is authorised. A disclosure is authorised where: it is for the purposes of the new registry regime; it happens in the course of the performance of an official's duties; each person to whom the information relates consents to the disclosure; the information is disclosed to a government agency for the performance of its functions; or, the benefits associated with the disclosure outweigh the risks (including privacy risks) after those risks have been mitigated.

3.8 All decisions made by the registrar under the new regime are reviewable by the Administrative Appeals Tribunal except those made by disallowable instrument.

#### ***Director Identification Number***

3.9 The new law amends the Corporations Act and the CATSI Act to introduce a DIN requirement. The new requirement assists regulators to better detect, deter and disrupt phoenixing and improves the integrity of corporate data maintained by the registrar.

3.10 Under the new requirement a person appointed as a director of a body corporate registered under the Corporations Act or the CATSI Act must apply to the registrar for a DIN. The person must apply before they are appointed as a director unless the regulations provide additional time or they are provided an exemption or extension by the registrar. After receiving an application, the registrar must provide the director with a DIN if the registrar is satisfied that the director's identity has been established.

3.11 The registrar is provided with powers to administer the new requirement. These include powers to: issue DINs; keep necessary records; cancel and reissue DINs; determine the numbering plan for the new requirement; and, determine how directors are to establish their

identity. The registrar may make data standards, by way of legislative instrument, in relation to these and other matters.

3.12 There are civil and criminal penalties for directors that fail to apply for a DIN within the applicable timeframe. The registrar, or a senior member of its staff, may also issue infringement notices in relation to such conduct. There are also civil and criminal penalties which apply to conduct that would otherwise undermine the new DIN requirement. For example, there are criminal penalties for deliberately providing false identity information to the registrar, intentionally providing a false DIN to a Government body or relevant body corporate, and intentionally applying for multiple DINs.

3.13 The new requirement contains transitional provisions that apply in relation to a person who is currently appointed as a director at the time the new requirement starts to apply. Such a person has the time specified in a legislative instrument to apply for a DIN from the day the new requirement starts, and the new requirement does not apply to them unless such an instrument is made. In addition, during the first 12 months of the new requirement's operation a person appointed as a director will have an additional 28 days to apply for a DIN (that is, for the first 12 months of new requirement's application, a person must apply for a DIN within 28 days of first being appointed as a director).

## **Human rights implications**

3.14 The legislative package engages, or may engage, the following human rights:

- the right to the presumption of innocence; and
- the right to privacy.

### ***Engagement of the presumption of innocence***

3.15 Paragraph 2 of Article 14 of the International Convention on Civil and Political Rights (ICCPR) protects the right of a person charged with a criminal offence to be presumed innocent until proven guilty according to law. The presumption of innocence is also a fundamental principle of the common law. As the Parliamentary Joint Committee on Human Rights has observed, the presumption of innocence 'imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this

principle'.<sup>83</sup> The presumption of innocence generally requires the prosecution to prove each element of a criminal offence beyond reasonable doubt.

*Offence provisions that carry an evidential burden*

3.16 An offence provision that requires a defendant to carry an evidential burden may be considered to engage the right to the presumption of innocence. A number of offences in the legislative package contain offence specific defences for which the defendant carries an evidential burden. In accordance with the *Criminal Code Act 1995* and the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*<sup>84</sup>, offence specific defences in the legislative package are made explicit through words of exception and exemption.

3.17 The evidential burden in those defences has been reversed because the subject matter of the defence is:

- peculiarly within the knowledge of the defendant; and,
- significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

3.18 Details of each defence and the relevant subject matter are in the following table.

**Table 3.1 Offence Specific Defences**

<i>Offence</i>	<i>Defence</i>	<i>Explanation</i>
<i>Modernisation of Commonwealth Registers</i>		
Disclosure of protected information.	There are six defences to this offence: 1. The disclosure is allowed by other parts of the laws that implement the new regime. 2. The disclosure happens in the course of the performance of the person's official duties.	The details of disclosures are peculiarly within the knowledge of the defendant who has allegedly made the disclosure. Such matters would be significantly more difficult for the prosecution to disprove than for the defendant to establish.

<sup>83</sup> Parliamentary Joint Committee on Human Rights, *General Comment No 43 Article 14: Right to equality before courts and tribunals and to a fair trial*, CCPR/C/CG/32, 23 August 2007, [30].

<sup>84</sup> Attorney-General's Department, September 2011 edition.

<i>Offence</i>	<i>Defence</i>	<i>Explanation</i>
	<p>3. The disclosure is to another Commonwealth official for official use.</p> <p>4. The disclosure is to a State or Territory official for official use.</p> <p>5. The disclosure is with the consent of the person to which the information relates.</p> <p>6. The disclosure is in accordance with the disclosure framework.</p>	
<b><i>Director Identification Number</i></b>		
Requirement to have a DIN	<p>There are two defences to this offence:</p> <p>1. The person applied for a DIN: before appointment; within a period specified in regulations after appointment (if such regulations are made); or within a period allowed by the registrar.</p> <p>2. The person was appointed as an eligible officer (which triggers the requirement to have a DIN) without their knowledge.</p>	<p>The details of both when a person applied for a DIN and whether a DIN was applied for without their knowledge are peculiarly within the knowledge of the defendant. Such matters would be significantly more difficult for the prosecution to disprove than for the defendant to establish.</p>
Applying for an additional DIN	<p>There are two defences to this offence.</p> <p>1. The person was directed by the registrar to make the application.</p>	<p>The details of when a person has received a direction from the registrar and when they are applying for a DIN only in relation to the Corporations Act or CATSI Act are both peculiarly within the knowledge of the defendant. Such matters</p>

<i>Offence</i>	<i>Defence</i>	<i>Explanation</i>
	2. For the offence of applying for an additional DIN under the CATSI Act, applying for a DIN only in relation to the Corporations Act (and vice versa).	would be significantly more difficult for the prosecution to disprove than for the defendant to establish.

3.19 The offences are critical to the operation of the regime. The imposition of an evidential burden for the defences achieves a legitimate object because it ensures that the offences are prosecutable, thereby allowing effective enforcement of the new regime.

3.20 The burden of proof on the defendant is an evidential burden. The effect of the imposition is therefore that the defendant must merely adduce or point to evidence of the defence. Once this is done, the prosecution bears the burden of proof.

3.21 Because of the low evidential burden on the defendant, to the extent that imposing that burden is a limitation on the right to be presumed innocent, it is proportionate and reasonable in the circumstances.

*Strict liability offences*

3.22 The new DIN requirement engages the presumption of innocence because it creates several new strict liability offences. A strict liability offence means that the prosecution is not required to prove fault as part of the offence; it must merely prove that a contravention took place and the only permissible defence is an erroneous belief about a material event or circumstance.

3.23 The measure includes the following strict liability offences, each attracting a penalty of 60 penalty units under the Corporations Act or 25 penalty units under the CATSI Act:

- failure to apply for a DIN within the prescribed period (subsections 1272C(1) of the Corporations Act and 308-20(1) of the CATSI Act); and
- failure to apply for a DIN after being directed by the registrar (subsections 1272D(1) of the Corporations Act and 308-25(1) of the CATSI Act).

3.24 As explained in Chapter 2 of this memorandum, the offences are also subject to the infringement notice regime under the *Regulatory Powers (Standard Provisions) Act 2014*.



3.25 The presumption of innocence is not an absolute right and is subject to permissible limits, for example in a situation in which threats to the rights of the innocent are minimal in comparison to the threats to the wider public interest. However, because proof of fault is one of the fundamental protections of criminal law, strict liability should only apply where there is adequate justification and subject to specific considerations.

3.26 The strict liability offences created by the legislative package pursue the legitimate objectives of enforcing the DIN regime. The strict liability nature of the offences is also consistent with existing offences in the Corporations Act and CATSI Act. For example, those Acts contain strict liability offences relating to the information requirements around the registration of bodies and keeping that information up to date.

3.27 These offences are directed at proving the identity of directors to assist regulators better detect, deter and disrupt phoenixing and improve the integrity of corporate data maintained by the registrar. The limitations on the presumption of innocence afforded by these offences can be considered rational and necessary because they enhance the effectiveness of the enforcement regime in deterring avoidance of the DIN requirement and ensure the integrity of information about companies and their officers.

#### *Right to a fair hearing*

3.28 Article 14 of the ICCPR ensures that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

3.29 In relation to the DIN requirement, the strict liability offences above relating to failure to apply for a DIN might be considered to engage the right to a fair and public hearing because they are subject to the infringement notice regime under the *Regulatory Powers (Standard Provisions) Act 2014*. Infringement notices can be issued when an infringement officer reasonably believes that the offences have been contravened and give the option of paying a stated penalty as an alternative to Court proceedings.

3.30 Because the obligations to apply for a DIN involve timeframes and apply to a large number of people, minor breaches may be expected to occur with some frequency. Infringement notices are an efficient way of dealing with minor breaches, as they avoid the significant delays and costs associated with court action. Compliance with infringement notices as an alternative to Court action is also voluntary. For these reasons, the DIN requirement is not considered to limit the right to a fair and public hearing.

#### *Engagement of the right to privacy*

3.31 Article 17 of the ICCPR requires parties to the ICCPR to uphold the individual right not to have one's private, family and home life or

correspondence unlawfully or arbitrarily interfered with. It also includes the right to protection by law of one's reputation. According to the Parliamentary Joint Committee on Human Rights' *Guide to Human Rights*, the right to privacy includes:

- the right to respect for confidential and private information, particularly the storing, use and sharing of such information; and
- the right to control dissemination of information about one's private life.

3.32 The right to privacy is not an absolute right and is subject to permissible limits. The implied limitation arises, inter alia, from the term 'arbitrary' in Article 17 of the ICCPR, which prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence.

3.33 The modernisation of Commonwealth registers and DIN measures could engage the right to privacy because they provide for the collection and disclosure of information that may include personal information. Personal information could potentially be collected and/or disclosed as part of the administration of the Commonwealth registers and DIN regimes.

#### *Collection of information by the registrar*

3.34 The registrar performs its functions and exercises its powers in accordance with the data standards and other Commonwealth laws. The data standards are disallowable instruments made by the registrar. They may deal with a variety of matters including what information may be collected for the purposes of performing the registrar's functions, how such information is to be given to the registrar, and how information held by the registrar is to be stored.

3.35 The data standards may engage the right to privacy by requiring that personal information be provided to the registrar. While the making of the data standards is a matter for the registrar, it is likely that personal information about company officers, financial service licensees and other persons on the current business registers will be collected. This is because such information is required for the effective operation of the registry regime.

3.36 In relation to a DIN, the registrar will make data standards that require personal information be given for the purposes of verifying a directors identity. This is an essential part of the effective administration of the DIN regime.

3.37 The data standards are disallowable instruments for the purposes of the *Legislation Act 2003*. Under that Act, legislative instruments and their explanatory statements must be tabled in both Houses of the

Parliament within six sitting days after the date of registration of the instrument on the Federal Register of Legislation. Once tabled, the instruments will be subject to the same level of parliamentary scrutiny as regulations (including consideration by the Senate Standing Committee on Regulations and Ordinances), and notice of a motion to disallow the instruments may be given in either House of the Parliament within 15 sitting days after the date the instruments are tabled. In addition to parliamentary oversight, relevant data standards are subject to a privacy impact assessment under the *Privacy Act 1988* and the consultation requirements contained in the *Legislation Act 2003*.

3.38 Before the data standards are made, a full assessment of their compatibility with human rights cannot be made. When the data standards are made by the registrar a human rights compatibility statement will be completed for them in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

*Disclosure of information by the registrar*

3.39 Information held by the registrar is protected by offences in the new law. Specifically, registry information cannot be disclosed unless the disclosure is authorised.

3.40 Disclosure is authorised in the following circumstances:

- the recording or disclosure is for the purposes of the new regime or happens in the course of the performance of the duties of a person's official employment;
- the disclosure is to another person for use, in the course of the performance of the duties of the other person's official employment, in relation to the performance of the functions of a government entity;
- the disclosure is to a State or Territory official for use in the course of their duties of employment in relation to the performance or exercise of functions or powers of a government entity, pursuant to an intergovernmental agreement with the Commonwealth;
- each person to whom the information relates consents to the disclosure; or
- the disclosure is in accordance with the disclosure framework.

3.41 These disclosures achieve a number of legitimate objectives, and ensure that the new registry regime can be effectively administered.

3.42 In relation to disclosure within Government, registry information that is required for the administration of other Australian laws is made available for that purpose. Disclosure with consent achieves the

benefit of allowing data to be used for other purposes with a public benefit so long as each person to whom the data relates consents to the disclosure.

3.43 Disclosure in accordance with the disclosure framework is intended to provide the registrar with flexibility that will provide broader public benefits in the future. It is envisaged that the ability to make a disclosure framework will provide the registrar with flexibility regarding the release of registry information. For example, the framework could allow a trusted user (for instance a university whose IT systems, processes and staff have been vetted) to access information that may not be appropriate for wider dissemination where a social benefit exists and appropriate undertakings are made.

3.44 The registrar makes the disclosure framework by legislative instrument. It may provide for any matter related to the disclosure of registry information. The registrar will decide what information is disclosed based on a balance of the benefits of disclosure, such as the ability to use data for research purposes, with the risks of disclosure, including those related to privacy, after those risks have been mitigated.

3.45 The disclosure framework is a disallowable instrument for the purposes of the *Legislation Act 2003*. Under that Act, legislative instruments and their explanatory statements must be tabled in both Houses of the Parliament within six sitting days after the date of registration of the instrument on the Federal Register of Legislation. Once tabled, the instruments will be subject to the same level of parliamentary scrutiny as regulations (including consideration by the Senate Standing Committee on Regulations and Ordinances), and notice of a motion to disallow the instruments may be given in either House of the Parliament within 15 sitting days after the date the instruments are tabled. In addition to parliamentary oversight, the disclosure framework is subject to a privacy impact assessment under the *Privacy Act 1988* and the consultation requirements contained in the *Legislation Act 2003*.

3.46 Until the disclosure framework is made, a full assessment of its compatibility with human rights cannot be made. When the framework is made by the registrar a human rights compatibility statement will be completed for it in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

## **Conclusion**

3.47 These Bills are compatible with human rights. The legislative package engages, or may engage the right to the presumption of innocence and the right to privacy and reputation. However, to the extent that the legislative package places limitations on these rights, these limitations can be considered legitimate, rational and necessary in light of the objectives they aim to achieve, and reasonable and proportionate in their extent.

## **Appendix Consequential amendments<sup>85</sup>**

**Table A1 – Amendments transferring functions and powers to the registrar**

<i>Item<sup>86</sup></i>	<i>Provision</i>
<b>ABN Act</b>	
20	Title
22	Subsection 9(1)
23	Subsection 9(1) (note 1)
24	Subsection 9(1) (note 2)
29	Subsection 9A(3)
88	Section 41 (definition of Registrar)
89	Section 41
<b>A New Tax System (Goods and Services Tax) Act 1999</b>	
90	Subsection 25-10(2)
91	Subsection 25-60(2)
92	Section 146-20 (heading)
93	Subsection 146-20(1) (note)
94	Paragraph 146-20(3)(b)
98	Section 195-1
<b>Australian Prudential Regulation Authority Act 1998</b>	
99	Subsection 56(1)
<b>ASIC Act</b>	
103	Subsection 127(2A)
<b>BNR Act</b>	
114	Paragraph 6(1)(b)
117	Paragraph 19(2)(a)
119	Subsection 23(1)
122	Subsection 24(1)
123	Subsection 24(1)
124	Subsection 24(2)

<sup>85</sup> See paragraphs 1.91 to 1.103 of this memorandum.

<sup>86</sup> Item refers to the item number of the relevant amendment in schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019.

<b><i>Item</i></b> <sup>86</sup>	<b><i>Provision</i></b>
125	Subsections 24(3) and (4)
126	Subparagraphs 25(a)(iv), (v), (vi) and (vii)
127	Paragraph 25(e)
128	Subparagraph 25(e)(i)
129	Paragraph 25(e)
130	Subsection 28(2A)
131	Subsection 28(3)
132	Paragraph 29(1)(a)
133	Paragraph 29(4)(b)
134	Subsections 29(5), (6) and (7)
135	Subsection 30(1)
138	Paragraph 31(3)(a)
139	Paragraph 31(3)(b)
140	Subsection 31(4)
145	Section 33 (heading)
146	Subsection 33(1)
147	Subsection 33(2)
148	Subsection 33(3)
149	Paragraph 33(3)(a)
150	Subsection 33(4)
151	Paragraph 33(4)(a)
153	Subsection 33(8)
154	Paragraph 33(8)(c)
155	Subsection 34(1)
156	Subsection 34(1)
157	Paragraph 34(1)(a)
158	Subsection 34(2)
159	Subsection 34(2)
160	Subsection 34(3)
161	Subsection 34(4)
162	Paragraph 34(4)(a)
164	Paragraph 34(4)(b)
165	Paragraph 34(5)(a)
167	Paragraph 34(5)(b)
169	Section 34A

<i>Item</i> <sup>86</sup>	<i>Provision</i>
170	Part 4 (heading)
171	Section 35 (heading)
172	Paragraph 35(1)(a)
174	Subsection 35(1)
176	Section 36 (heading)
177	Subsection 36(1)
179	Section 37 (heading)
180	Subsections 37(1) and (2)
181	Subsection 37(3)
183	Subsections 37(6) to (8)
184	Section 38 (heading)
185	Subsection 38(1)
187	Section 39 (heading)
188	Subsection 39(1)
190	Subsection 39(3)
191	Paragraph 39(3)(a)
192	Paragraph 39(3)(a)
194	Subsection 40(1)
196	Subsections 40(3) and (4)
197	Subsection 40(5)
198	Subsection 40(5)
199	Subsections 40(6) and (7)
200	Section 41 (heading)
201	Subsection 41(1)
202	Subsection 41(2)
203	Subsections 42(1) and (2)
204	Subsection 42(3)
205	Subsection 42(3)
206	Section 43 (heading)
207	Subsection 43(1)
208	Paragraphs 43(1)(a), (b) and (c)
209	Subsection 43(2)
210	Paragraphs 43(2)(a) and (b)
211	Subsection 44(1)
212	Subsection 44(1)

<b><i>Item</i><sup>86</sup></b>	<b><i>Provision</i></b>
213	Subsection 44(2)
215	Paragraphs 44(2)(a) and (b)
216	Subsection 45(1)
217	Subsection 45(2)
219	Paragraph 45(2)(b)
220	Subsection 46(1)
221	Subsection 46(2)
223	Paragraphs 46(2)(a) and (b)
224	Subsection 47(1)
225	Paragraphs 47(1)(a) and (c)
226	Subsection 47(2)
228	Paragraph 47(2)(a)
229	Paragraph 47(2)(b)
230	Subsection 48(1)
231	Subparagraphs 48(1)(a)(i) and (ii)
232	Paragraph 48(1)(b)
233	Paragraph 48(1)(b)
234	Paragraph 48(1)(c)
235	Subsection 48(2)
236	Subsection 48(2)
237	Paragraphs 48(2)(a) and (b)
238	Subsection 49(1)
240	Subsection 49(2)
241	Subsection 49(3)
242	Subsection 49(4)
243	Section 50
244	Section 50
245	Subsection 51(2)
246	Paragraphs 51(2)(a) and (b)
247	Subsection 51(3)
248	Section 52
249	Subsections 53(1) to (4)
250	Subsection 54(1)
251	Paragraph 54(2)(b)
252	Subsections 54(3) and (4)



<i>Item</i> <sup>86</sup>	<i>Provision</i>
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263	Subsection 57(1)
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276	Subsection 58(1)
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279	Paragraph 58(4)(a)
282	Subsection 65(1)
283	Subsection 65(1)
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289	Subsection 69(1) (heading)
290	Subsection 69(1)
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342	Item 14 of Schedule 1
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349	Paragraph 22(2)(a) of Schedule 1
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356	Item 28A of Schedule 1
357	Subitem 29(1) of Schedule 1
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361	Subsection 5H(3)
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363	Section 9 (definition of ARBN)
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369	Section 9 (paragraph (a) of the definition of extract of particulars)
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373	Section 9 (definition of profile statement)
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377	Section 9 (paragraph (a) of the definition of return of particulars)
378	Subparagraph 88A(1)(a)(i)
379	Subsection 100(1)
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383	Section 106
384	Paragraphs 109X(1)(c) and (d)
385	Subsection 109X(2)
386	Paragraph 111AF(1)(a)
387	Paragraph 1.1 of the small business guide in Part 1.5
388	Paragraph 1.10 of the small business guide in Part 1.5
389	Paragraph 3.2 of the small business guide in Part 1.5
391	Paragraph 3.2 of the small business guide in Part 1.5
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395	Paragraph 4.2 of the small business guide in Part 1.5
396	Paragraph 4.2 of the small business guide in Part 1.5
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398	Paragraph 4.3 of the small business guide in Part 1.5
399	Paragraph 4.4 of the small business guide in Part 1.5 (heading)
400	Paragraph 4.4 of the small business guide in Part 1.5
401	Paragraph 4.4 of the small business guide in Part 1.5 (table, heading to column headed "the company must notify ASIC of the change...")
402	Paragraph 4.4 of the small business guide in Part 1.5 (table item 4, column headed "the company must notify ASIC of the change...")
403	Paragraph 5.1 of the small business guide in Part 1.5
404	Paragraph 5.1 of the small business guide in Part 1.5
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406	Paragraph 6.1 of the small business guide in Part 1.5

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408	Paragraph 12.6 of the small business guide in Part 1.5
409	Paragraph 12.6 of the small business guide in Part 1.5
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411	Subsection 111L(1) (table item 2, column 2)
412	Subsection 111L(1) (table item 4, column 2)
413	Subsection 111L(1) (table item 11, column 2)
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431	Paragraph 136(1)(a)
432	Subsection 136(5)
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435	Subsection 142(1) (note 2)
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474	Subsection 159(2)
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507	Subsection 178C(1)
508	Section 178D (heading)
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510	Section 178D (table heading)
511	Section 178D (table, heading to column headed "The company must notice ASIC within this time...")
512	Section 178D (table items 1, to 3, column headed "The company must notice ASIC within this time...")
514	Section 178D (table item 4, column headed "The company must notice ASIC within this time...")
515	Paragraphs 188(1)(f), (h) and (i)
516	Subsection 199A(3)
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518	Section 201L (heading)
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552	Subsection 235(1)
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563	Subsection 254B(1) (note 1)
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610	Section 302 (note 2)
611	Division 5 of Part 2M.3 (heading)
612	Section 319 (heading)
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742	Paragraph 470(2)(a)
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751	Paragraph 489EA(1)(b)
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911	Paragraph 601CTA(b)
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917	Subsection 601CU(1)
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920	Paragraph 601CX(2)(b)
921	At the end of subsection 601CX(4)
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985	Section 632 (diagram)
986	Subsection 633(1) (table items 2, 4, 6, 9 and 13, column headed “Steps”)
988	Paragraph 633(4)(b)
990	Section 634 (diagram)
992	Subsection 635(1) (table items 5, 7 and 12, column headed “Steps”)
993	Paragraph 636(1)(e)
994	Paragraph 636(1)(e)
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997	Subsections 637(1) and (2)
999	Paragraph 638(5)(c)
1000	Subsections 639(1) and (2)
1001	At the end of subparagraphs 643(1)(c)(i) and 644(1)(c)(i)
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1007	Subsection 648G(9)
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1012	Paragraph 650D(4)(a)
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1017	Paragraph 654C(3)(b)
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1023	Subsection 661B(1) (note)



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1028	Paragraph 662B(1)(b)
1029	Subparagraph 662B(1)(c)(i)
1030	Paragraph 662B(1)(d)
1031	Subsection 662B(1) (note)
1032	Paragraph 662B(2)(b)
1035	Paragraph 663B(1)(b)
1036	Paragraph 663B(1)(d)
1037	Subsection 663B(1) (note 2)
1038	Paragraph 663B(2)(b)
1039	Section 664AA
1042	Paragraphs 664C(2)(a) and (b)
1043	Subsection 664C(2) (note)
1044	Subsections 664C(3) and 664E(2)
1046	Paragraph 664E(3)(b)
1050	Paragraphs 665B(1)(b), (c) and (e)
1051	Subsection 665B(1) (note 2)
1053	Paragraph 665B(2)(b)
1054	Paragraph 666A(2)(a)
1055	Subparagraphs 670A(1)(j)(i) and 670C(1)(c)(i)
1056	Subsection 670D(6)
1057	Paragraphs 672DA(2)(d) and (3)(d)
1058	Subsection 672DA(4)
1059	Subsection 672DA(4) (note)
1061	Subparagraph 675(2)(c)(ii)
1062	Subsection 675(2)
1063	Section 705 (table item 2, column headed “Type”)
1064	Section 705 (table item 3, column headed “Type”)
1065	Subparagraphs 708A(11)(b)(i) and (ii)
1067	Subsections 709(1) and (1B)
1068	Subsection 711(7) (heading)
1069	Paragraph 711(7)(a)
1070	Paragraph 711(7)(b)
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1073	Section 712(1A)
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1078	Subsection 713B(5)
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1082	Paragraphs 713C(4)(a) and 713D(1)(b)
1084	Subsection 713D(3)
1085	Section 713E (at the end of the heading)
1086	Subsection 713E(1)
1087	Subsection 713E(4)
1089	At the end of section 713E
1090	Subparagraph 714(1)(e)(i)
1091	Subparagraph 714(1)(e)(ii)
1093	Subparagraph 715(1)(f)(i)
1094	Subparagraph 715(1)(f)(ii)
1096	Subsections 716(1) and (1B)
1097	Paragraph 716(2)(c)
1098	Section 717 (table item 2, column headed “Action required”)
1099	Section 717 (table item 4, column headed “Action required”)
1100	Subsection 718(1)
1101	Subsection 718(1) (note 3)
1103	Subsections 719(1) and (1A)
1104	Paragraph 719(2)(c)
1105	Subsection 719(2)
1106	Subsection 719(2)
1108	Subsections 719(3) to (5)
1109	Subparagraphs 719A(1)(c)(i) and (1)(d)(ii)
1110	Paragraph 719A(1)(e)
1111	Subsections 719A(2) and (3)
1112	Paragraph 719A(4)(c)
1114	Subsection 719A(4)
1116	Subsection 719A(5)
1118	Subsection 719A(6)

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1119	Section 720
1120	Subparagraph 724(1)(d)(i)
1121	Subsection 727(1)
1122	Subparagraphs 728(1)(c)(i) and 730(1)(c)(i)
1123	Subsection 733(4)
1124	Subsection 734(4)
1125	Subparagraph 738ZG(9)(b)(i)
1126	Paragraphs 739(1)(a) and (b)
1129	subsection 792B(6)
1130	Section 792C (heading)
1131	Subsections 792C(1) and (2)
1135	At the end of section 821B(4)
1139	At the end of section 904C (after the note)
1142	Section 916F (heading)
1143	Subsection 916F(1)
1145	Subsection 916F(3)
1147	Subsection 921J(2) (heading)
1150	Subdivision A of Division 9 of Part 7.6
1152	Sections 922D to 922G
1153	Section 922H (heading)
1154	Subsection 922H(1)
1156	Paragraph 922H(1)(b)
1158	Subsections 922L(1) and (2)
1159	Section 922M (at the end of the heading)
1162	Section 922Q
1163	Section 922R
1165	Subsection 990B(6)
1166	Paragraph 990L(3)(b)
1167	Subparagraphs 1012DA(11)(b)(i) and (ii)
1168	Subparagraphs 1013FA(2)(a)(i) and (ii)
1169	Paragraph 1013G(a)
1170	Paragraph 1013I(2)(b)
1171	Subparagraphs 1013I(3)(a)(i) and (ii)
1172	Section 1013J (heading)
1173	Section 1013J

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1174	Paragraph 1013J(b)
1175	Sections 1014J and 1014L
1176	Section 1015B (heading)
1177	Subsections 1015B(1) and (2) and 1015D(1)
1178	Subsection 1015D(2)
1180	Subparagraph 1015E(1)(b)(i)
1181	Subsection 1015E(2)
1182	Section 1016B (heading)
1183	Paragraph 1016B(1)(a)
1184	Subparagraphs 1018A(4)(c)(i) and (d)(i)
1185	Subparagraphs 1021M(1)(a)(i) and (3)(a)(i)
1186	Paragraph 1072E(10)(a)
1187	Section 1100A (heading)
1188	Subsections 1100A(1) and (2)
1189	Subsection 1100A(2)
1190	Subsection 1200C(5)
1193	Paragraph 1200C(6)(b)
1194	Subsection 1200C(6)
1201	Subsections 1200D(2) and (3)
1203	Subsection 1200G(9)
1205	Subsection 1200G(9) (table, heading to column headed “the offeror must lodge with ASIC.”)
1208	Paragraph 1200G(11)(b)
1209	Subsection 1200H(2)
1211	Paragraph 1200H(3)(b)
1212	Paragraph 1200L(1)(a)
1213	Paragraph 1200L(3)(a)
1214	Subsection 1200N(1) (table item 1, column headed “If, in relation to:”, paragraph (c))
1215	Paragraph 1200R(2)(b)
1216	Section 1200S (heading)
1217	Section 1200S
1219	At the end of section 1200S
1222	Subparagraph 1274(2)(a)(iaa)
1223	Subparagraph 1274(2)(a)(ia)
1224	Subparagraph 1274(2)(a)(ii)

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1225	Subparagraph 1274(2)(a)(ii)
1226	Subparagraph 1274(2)(a)(iva)
1227	Paragraph 1274(2)(b)
1229	Subsection 1274(8)
1230	Paragraph 1274(8)(h)
1231	Subsection 1274(9)
1232	Paragraph 1274(11)(a)
1233	Subsection 1274(11)
1234	Section 1274(15A)
1235	Subsection 1274(16)
1236	At the end of subsection 1274(16)
1237	Before section 1274AA
1238	Section 1274AA (heading)
1239	Subsection 1274AA(1)
1242	Section 1285
1243	Paragraph 1287(1)(b)
1244	Subsection 1287(1)
1246	Subsection 1287(4)
1247	Paragraph 1289(5)(b)
1248	Paragraph 1296(1)(b)
1249	At the end of subsection 1296(1)
1250	Section 1299E
1251	Subsection 1299F(3)
1252	Paragraph 1299F(4)(c)
1254	Paragraph 1299F(5)(a)
1255	Paragraph 1301(1)(d)
1257	Paragraph 1301(4)(b)
1258	Subsection 1304(1)
1259	Subsection 1308(2)
1260	Subsections 1308(4) and (6)
1261	Subparagraphs 1308(1)(a)(ii), (3)(a)(ii), (4)(a)(ii) and (5)(a)(ii)
1262	Section 1310 (heading)
1263	Section 1310
1264	At the end of subparagraph 1317AA(1)(b)(i)
1265	Paragraph 1317AAE(2)(ab)

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1266	Paragraph 1317AAE(3)(a)
1267	Paragraph 1317B(1)(ba)
1268	Paragraphs 1317C(d) and (e)
1269	Paragraph 1317C(k)
1270	Subsection 1317D(1)
1271	Paragraph 1317DAA(2)(b)
1272	Paragraph 1317DAE(1)(j)
1273	Paragraph 1317DAE(6)(b)
1274	Subparagraph 1317DAE(7)(a)(ii)
1275	Subparagraph 1317DAF(3)(b)(ii)
1276	Subsection 1317DAG(2) (table item 3, column headed “If the disclosing entity fails to:”)
1277	Paragraph 1322(4)(b)
1278	Subparagraph 1325B(1)(b)(iii)
1279	Section 1344
1280	At the end of subsection 1345A(1A)
1281	Subparagraph 1351(4)(a)(i)
1282	At the end of paragraph 1354(1)(a)
1283	Section 1355
1284	Section 1360
1285	Paragraph 1362(ab)
1286	At the end of paragraph 1364(2)(m)
1287	Paragraph 1366(a)
1288	Paragraph 1366(b)
1289	Section 1367
1290	Subsection 1389(1)
1291	Section 1392
1292	Section 1392
1293	Subsections 1465(3) and 1470(1)
1294	Section 1501B (note)
1295	Section 1546A
1296	At the end of section 1546A
1297	Subsection 1546B(3) (note 2)
1298	Subsection 1546E(5)
1300	Sections 1546J to 1546N

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1301	Sections 1546P, 1546Q, 1546R and 1546W (heading)
1302	Subsection 1546W(1)
1303	Subsection 1546W(1)
1305	Section 1546X (heading)
1306	Subsection 1546X(1)
1308	Section 1546Y (heading)
1309	Subsection 1546Y(1)
1313	Subsection 1562(1)
1314	Section 1599 (heading)
1317	Division 15 of Part 2 of Schedule 2
1318	Subsection 20-30(1) (at the end of the note)
1319	Subsection 20-30(2) of Schedule 2
1320	Subsection 20-75(2) of Schedule 2
1321	Subsection 30-1(1) of Schedule 2
1322	Subsection 30-1(3A) of Schedule 2
1323	Subsection 35-5(1) of Schedule 2
1324	Section 40-1 of Schedule 2
1325	Section 40-1 of Schedule 2
1326	Section 40-1 of Schedule 2
1327	At the end of subsections 40-5(1) and (6) of Schedule 2
1328	Subsection 40-10(1) of Schedule 2
1329	Paragraph 40-10(2)(a) of Schedule 2
1330	Paragraph 40-15(6)(a) of Schedule 2
1331	Subsection 40-15(7) of Schedule 2
1332	Subsection 40-35(3A) of Schedule 2
1333	Subsection 40-35(4) of Schedule 2 (heading)
1334	Subsection 40-35(4) of Schedule 2
1335	At the end of subsection 40-55(1) of Schedule 2
1336	Section 40-65 of Schedule 2
1337	Section 40-95 of Schedule 2
1338	At the end of section 40 95 of Schedule 2
1339	Subparagraph 50-35(2)(b)(v) of Schedule 2
1340	Section 55-1 of Schedule 2
1341	Section 70-1 of Schedule 2
1342	Subsection 70-5(2) of Schedule 2 (note)

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1343	Subsection 70-5(3) of Schedule 2
1345	Paragraph 70-5(4)(b) of Schedule 2
1346	Subsection 70-5(6) of Schedule 2
1347	Subsection 70-6(2) of Schedule 2
1349	Paragraph 70-6(3)(b) of Schedule 2
1350	Subsection 70-6(3) of Schedule 2 (note 2)
1351	Subsection 70-6(4) of Schedule 2
1352	Subdivision F of Division 70 of Part 3 of Schedule 2 (at the end of the heading)
1353	Section 70-60 of Schedule 2 (at the end of the heading)
1354	At the end of subsection 70-60(1) of Schedule 2
1355	Paragraphs 70-60(2)(a) and (b) of Schedule 2
1356	At the end of paragraph 70-60(2)(c) of Schedule 2
1357	Subsection 70-60(2A) of Schedule 2
1358	Subsection 70-60(3) of Schedule 2 (note)
1359	Subclause 4(2) of Schedule 4 (heading)
1360	Subclause 4(2) of Schedule 4
1361	Subclause 4(2) of Schedule 4
1362	Subclause 27(2) of Schedule 4
1364	Subparagraph 29(4)(a)(ii) of Schedule 4
1365	Subsection 32(1) of Schedule 4
1366	Paragraph 36(2)(d) of Schedule 4
1367	Subparagraph 36(2)(m)(i) of Schedule 4
1368	Subparagraph 36(2)(m)(iii) of Schedule 4
<b>Income Tax Assessment Act 1997</b>	
1369	Subsection 30-5(4AA) (note)
1370	Paragraph 30-5(4AB)(b)
1371	Section 30-226
1372	Section 30-229 (heading)
1373	Subsection 30-229(1)
1375	Subsection 30-229(3)
1376	Subsection 30-229(4)
1381	Section 30-315 (after table item 94B)
1384	Subsection 995-1(1)
1385	Subsection 995-1(1) (at the end of the definition of taxation law)



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<b>Credit Act</b>	
1386	Section 71 (heading)
1387	Subsection 71(1) (heading)
1388	Subsection 71(1)
1395	Subsection 71(4)
1397	Subsection 72(1)
1398	Subsection 72(2)
1400	Sections 213 and 214
1401	Subparagraph 227(4)(b)(ii)
1402	Section 233
1403	Section 236
1404	Paragraph 237(a)
1405	Section 240 (heading)
1406	Subsection 240(1)
1407	Paragraph 240(2)(b)
1408	Subsection 281(1)
1409	Section 323 (paragraph relating to Division 3)
1410	Division 3 of Part 7-1 (heading)
1411	Section 327 (heading)
1412	Subsection 327(1)
1413	Section 328
<b>SIS Act</b>	
1415	Subsection 10(1)
1416	Subsection 10(1) (paragraph (rg) of the definition of reviewable decision)
1417	At the end of Division 2 of Part 1
1418	Section 128H
1419	Paragraph 128H(c)
1420	Section 128H
1423	Subdivision C of Division 1A of Part 16
1430	Section 285
<b>Taxation Administration Act 1953</b>	
1431	Subsection 6B(6A)
1432	Subsection 8(1A)
1433	Subsections 16-147(5) in Schedule 1

<i>Item</i> <sup>86</sup>	<i>Provision</i>
1434	Subsection 16-147(7) in Schedule 1
1435	Subsection 16-148(7) in Schedule 1
1436	Subsection 16-148(8) in Schedule 1
1437	Section 426-1 in Schedule 1
1440	Subsection 426-65(1) in Schedule 1
1441	Subsection 426-65(1) in Schedule 1
1443	Subsection 426-65(2) in Schedule 1
1444	Subsection 426-65(2A) in Schedule 1
1445	Subsection 426-65(2B) in Schedule 1
1446	Subsection 426-65(3) in Schedule 1
1451	Section 426-104 in Schedule 1 (heading)
1452	Subsection 426-104(1) in Schedule 1
1454	Subsection 426-104(1) in Schedule 1 (note 2)
1455	Subsection 426-104(2) in Schedule 1
1458	Section 426-115 in Schedule 1 (heading)
1459	Subsection 426-115(1) in Schedule 1
1461	Subsection 426-115(1) in Schedule 1 (note 2)
1462	Subsection 426-115(2) in Schedule 1

**Table A2 – Amendments removing prescriptive requirements from registry provisions**

<i>Item</i> <sup>87</sup>	<i>Provision</i>
<b>ABN Act</b>	
25	Subsection 9(2)
26	Subsection 9(3)
27	Subsection 9A(1)
28	Subsection 9A(2)
30	Subsection 10(1)
31	Paragraph 10(1)(ca)
32	Paragraph 10(1)(d)
33	Subsection 10A(1)

<sup>87</sup> Item refers to the item number of the relevant amendment in schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019.

<i>Item</i> <sup>87</sup>	<i>Provision</i>
34	Paragraph 10A(1)(d)
35	Paragraph 11(1)(b)
36	Subsection 11(3)
37	Paragraph 11(3)(d)
38	Subsection 11(3) (note)
39	Section 11A
40	Section 12
41	Subsection 13(1)
42	Subsection 13(2)
43	Subsection 13(3)
44	Subsection 13(3)
45	Subsections 13(4) and (5)
46	Section 14 (heading)
47	Paragraph 14(1)(b)
48	Subsection 14(1) (note 1)
49	Subsection 14(2)
50	Subsection 15(1) (table item 1, column headed "These entities...")
51	Subsection 15(1) (table item 1, column headed "can be requested to give this information...", paragraph (c))
52	Subsection 15(1) (table item 2, column headed "These entities...")
53	Subsection 15(1) (table item 3, column headed "These entities...")
54	Subsection 15(1) (table item 3, column headed "can be requested to give this information, paragraph (b))
55	Subsections 15(2) and (3)
56	Paragraph 17(1)(a)
57	Paragraph 17(1)(b)
58	Subsection 17(1) (note)
59	Subsection 17(2)
60	Subsection 17(3)
61	Subsection 18(1)
62	Subsection 18(1) (note 1)
63	Subsection 18(1A)
64	Subsection 18(2)
65	Paragraph 18(3)(a)
66	Paragraph 18(3)(c)
67	Paragraph 18(4)(a)

<i>Item</i> <sup>87</sup>	<i>Provision</i>
68	Paragraph 18(4)(b)
69	Subsection 18(4A)
70	Subsection 18(5)
71	Paragraph 18(6)(a)
72	Paragraph 18(6)(c)
73	Subsection 19(1)
74	Subsection 19(2)
75	Subsection 21(2) (table item 7)
76	Division 10 of Part 3 (heading)
77	Section 24
78	Section 25
82	Section 41
84	Section 41
86	Section 41
<b>A New Tax System (Goods and Services Tax) Act 1999</b>	
90	Subsection 25-10(2)
91	Subsection 25-60(2)
<b>Australian Prudential Regulation Authority Act 1998</b>	
101	Subsection 56(7C)
<b>BNR Act</b>	
109	Section 3
112	Section 3 (definition of notified successor)
115	Subsection 16(2)
116	Paragraph 18(1)(b)
120	Subsections 23(2) and (3)
124	Subsection 24(2)
136	Subsection 31(1)
137	Subsection 31(2)
141	Subsection 31(5)
142	Subsection 31(6) (note 2)
143	Subsection 32(3)
146	Subsection 33(1)
149	Paragraph 33(3)(a)
151	Paragraph 33(4)(a)
153	Subsection 33(8)

<i>Item</i> <sup>87</sup>	<i>Provision</i>
154	Paragraph 33(8)(c)
157	Paragraph 34(1)(a)
159	Subsection 34(2)
160	Subsection 34(3)
161	Subsection 34(4)
163	Paragraph 34(4)(a)
166	Paragraph 34(5)(a)
168	Paragraph 34(5)(b)
174	Subsection 35(1)
175	Subsection 35(2)
178	Subsection 36(2)
180	Subsections 37(1) and (2)
182	Subsection 37(5)
183	Subsections 37(6) to (8)
186	Subsection 38(2)
188	Subsection 39(1)
189	Subsection 39(2)
193	Paragraph 39(3)(b)
194	Subsection 40(1)
195	Subsection 40(2)
196	Subsections 40(3) and (4)
199	Subsections 40(6) and (7)
201	Subsection 41(1)
203	Subsections 42(1) and (2)
205	Subsection 42(3)
214	Subsection 44(2)
218	Subsection 45(2)
222	Subsection 46(2)
227	Subsection 47(2)
241	Subsection 49(3)
248	Section 52
255	Subsection 55(3)
258	Section 56 (table item 11, column 1)
260	Section 56 (table item 12, column 1)
265	Subsection 57(1)

<i>Item</i> <sup>87</sup>	<i>Provision</i>
267	Subsection 57(2)
268	Subsection 57(3)
269	Paragraph 57(3)(c)
270	Subsection 57(4)
271	Subsection 57(5)
272	Subsection 57(6)
273	Subsection 57(8)
274	Subsection 57(9)
275	Subsection 57(9)
277	Subsection 58(2)
291	Paragraph 69(1)(c)
293	Subsection 69(1) (note)
297	Subsection 69(3) (heading)
298	Subsection 69(3)
302	Subsection 69(4) (heading)
303	Subsection 69(4)
305	Subsection 69(5) (heading)
306	Subsection 69(5)
314	Paragraph 73(a)
315	Paragraph 73(b)
325	Subsection 82(1)
326	Subsection 82(4)
327	Subsection 82(5)
328	Subsection 84(1)
329	Subsection 84(4)
330	Subsection 84(5)
331	Subsection 86(2)
332	Subsection 86(5)
333	Subsection 86(6)
334	Subsection 87(6)
335	Subsection 87(8)
336	Subsection 87(9)
339	Subsection 88(4)
<b>BNR (Transitional and Consequential Provisions) Act 2011</b>	
345	Items 15 and 16 of Schedule 1

<i>Item</i> <sup>87</sup>	<i>Provision</i>
346	Items 18 to 20 of Schedule 1
347	Item 21 of Schedule 1
350	Subitem 22(2A) of Schedule 1
<b>Corporations Act</b>	
360	Subsection 5H(2)
369	Section 9 (paragraph (a) of the definition of extract of particulars)
377	Section 9 (paragraph (a) of the definition of return of particulars)
390	Paragraph 3.2 of the small business guide in Part 1.5
396	Paragraph 4.2 of the small business guide in Part 1.5
417	Subsection 117(2)
419	Subsection 117(5)
422	Paragraph 118(1)(c)
425	Subparagraph 119A(2)(a)(i)
426	Subparagraph 119A(2)(a)(ii)
433	Subsection 136(5A)
437	Subsection 142(2)
445	Subsection 145(3)
447	Subsection 146(1)
450	Section 146A
454	Subsection 150(2)
456	Subsection 151(2AAA)
457	Subsection 151(2AA)
460	Subsection 152(1)
462	Subsection 152(2)
465	Subsection 152(3)
466	Paragraph 157(1)(b)
479	Subsection 161A(6A)
483	Subsection 163(2)
488	Subsection 164(3)
506	Subsection 178A(1)
513	Section 178D (table item 3, column headed "The company must notice ASIC within this time...")
525	Subsection 205A(1)
526	Subsection 205A(1)
530	Subsection 205B(1)

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532	Subsection 205B(2)
535	Subsection 205B(4)
537	Subsection 205B(5)
539	Subsection 205D(3)
547	Subsection 206G(2)
549	Subsection 206G(6)
556	Subsection 246F(1)
557	Subsection 246F(1)(b)
559	Subsection 246F(3)
563	Subsection 254B(1) (note 1)
567	Subsection 254X(1)
571	Subsection 254Y(1)
575	Subsection 256C(6)
579	Subsection 257C(4)
582	Subsection 257D(3)
585	Section 257E
587	Paragraph 257F(2)(b)
592	Subsection 260B(6)
593	Subsection 260B(6A)
595	Subsection 260B(8)
598	Paragraph 283BC(1)(b)
600	Subsection 283BC(3)
601	Section 283BCA
604	Subsection 283BF(1)
608	Subsection 289(2)
614	Subsection 319(1)
617	Subsection 320(1)
620	Subsection 322(1)
622	Paragraph 324BB(6)(b)
624	Section 324DAC
625	Subsection 329(2)
629	Section 329
630	Subsection 331AC(7)
632	Subsection 332A(3)
634	Subparagraph 345A(1)(a)(ii)



<b>Item<sup>87</sup></b>	<b>Provision</b>
635	Paragraph 345A(1A)(b)
645	Section 346B
647	Paragraphs 346C(3)(b) and (c)
648	Subsection 346C(4)
652	Subsection 347B(1)
653	Subsection 347B(1)
654	Subsection 347B(2)
655	Subsection 347B(2A)
668	Paragraphs 348D(2)(b) and (c)
669	Subsection 348D(3)
672	Subsection 349A(1)
673	Subsection 349A(1)
675	Section 349B
677	Section 349C
679	Section 349D
681	Subsection 411(10A)
688	Subsection 413(3)
690	Subsection 415(1)
696	Subsection 422A(4)
697	Subsection 422B(3)
700	Subsection 427(2)
701	Subsection 427(3)
703	Section 427
704	Subsections 429(4) and (5)
710	Subsection 436DA(4B)
711	Subsection 438B(2A)
715	Subsection 445FA(2)
717	Subsection 446AA(4A)
719	Subsection 446C(7)
720	Subsection 449CA(4A)
721	Subsection 449CA(4B)
722	Subsection 449CA(6A)
723	Subsection 449CA(6B)
725	Subsection 450A(1AA)
726	Section 450B

<b>Item<sup>87</sup></b>	<b>Provision</b>
728	Section 450B
729	Section 450C
731	Subsection 450C(2)
732	Section 450D
734	Section 450D
736	Subsection 461(2)
738	Subsection 465A(1A)
743	Subsection 470(3)
745	Subsection 474(3)
747	Subsection 481(5)
750	Subsection 482(5)
753	Paragraph 489EA(6)(a)
754	Subsection 496(7)
755	Subsection 496(7A)
757	Subsection 497(1A)
758	Subsection 497(6)
760	Subsection 506(1B)
762	Subsection 506A(3A)
764	Subsection 506A(6A)
766	Subsection 507(11)
773	Subsection 509(3)
775	Subsection 510(1A)
777	Subsections 537(1) and (2)
778	Section 537
781	Subsection 568A(1A)
785	Subsection 573(1) and (2)
787	Subsection 579A(3)
789	Subsection 579B(3)
791	Subsection 579C(5)
793	Subsection 579C(6)
795	Subsection 579C(7)
796	Subsections 579E(13), 579F(3), 579G(8) and 579H(5) and (6)
797	Paragraph 589(3)(a)
798	Paragraph 589(3)(a)
800	Subsection 601AA(1A)

<b>Item<sup>87</sup></b>	<b>Provision</b>
806	Paragraph 601AA(4)(d)
825	Paragraph 601AB(3)(ab)
826	Paragraph 601AB(3)(b)
846	Subsection 601AH(4)
850	Subsection 601AJ(2)
858	Subsections 601BC(2) to (4)
859	Subsection 601BC(5)
860	Subsections 601BC(6) to (9)
863	Paragraph 601BD(1)(c)
865	Subsection 601BD(2)
868	Subsection 601BL(1)
870	Section 601CB
872	Subsections 601CC(2) to (4)
876	Subsection 601CC(10)
877	Subsection 601CC(11)
881	Section 601CE
884	At the end of subsection 601CG(1)
885	Subsection 601CG(2)
886	Section 601CG(2A)
887	Subsection 601CG(4)
890	Subsection 601CK(1)
891	Section 601CK(1A)
895	At the end of subsection 601CK(9)
896	Subsection 601CK(10)
900	Subsections 601CL(3) to (5)
904	Subsection 601CL(11)
905	Subsection 601CL(12)
913	At the end of subsection 601CT(2)
915	At the end of subsection 601CT(3)
916	Subsection 601CT(4)
917	Subsection 601CU(1)
919	Subsection 601CV(1)
924	Section 601CZC(2A)
927	Subsection 601DA(1A)
931	At the end of section 601DA

<b>Item<sup>87</sup></b>	<b>Provision</b>
937	Section 601DH(1AA)
951	Subsection 601FL(2A)
953	Subsection 601FM(2A)
955	Section 601FP(3A)
959	Section 601FQ(4A)
961	Section 601GC(2A)
962	Section 601GC(3A)
964	At the end of section 601HE
966	Section 601HF(1A)
968	At the end of subsection 601HG(7)
973	At the end of section 601HI
974	Subsection 601KB(5)
975	Subsection 601KE(3)
977	Section 601NC(2A)
982	Section 601PB(2A)
984	Subsection 630(5A)
987	Section 633(1A) and (1B)
989	Section 633(4A)
991	Subsection 635(1)
995	Section 636(1A)
998	Subsection 638(1AA)
1006	Subsection 647(3A)
1007	Subsection 648G(9)
1009	Subsection 649C(2A)
1011	Section 650D(1A)
1015	Subsection 650F(3A)
1018	Subsection 654C(3A)
1020	Paragraph 661B(1)(a)
1021	At the end of paragraph 661B(1)(a)
1026	Paragraph 662B(1)(a)
1027	At the end of paragraph 662B(1)(a)
1033	Paragraph 663B(1)(a)
1034	At the end of paragraph 663B(1)(a)
1040	Subsection 664C(1)
1041	At the end of subsection 664C(1)

<b>Item<sup>87</sup></b>	<b>Provision</b>
1045	At the end of subsection 664E(2)
1047	At the end of subsection 664E(3)
1048	Paragraph 665B(1)(a)
1049	At the end of paragraph 665B(1)(a)
1052	Section 665B(1A)
1060	Subsection 672DA(4)
1062	Subsection 675(2)
1066	At the end of subsection 708A(11)
1075	At the end of subsection 712(4)
1079	At the end of subsection 713B(5)
1081	Section 713C(1A)
1083	Section 713D(1A)
1088	At the end of subsection 713E(4)
1092	Section 714(1A)
1095	Subsection 715(1A)
1102	Subparagraph 719(1)(c)(i)
1107	Subsection 719(3)
1113	Subsection 719A(4)
1115	Subsections 719A(5)
1117	Subsection 719A(6)
1127	Subsection 792B(5) (note 1)
1128	Subsection 792B(5) (note 2)
1132	Subsection 792C(3)
1133	Subsection 821B(4) (note 1)
1134	Subsection 821B(4) (note 2)
1137	Subsection 904C(3) (note 1)
1138	Subsection 904C(3) (note 2)
1140	Section 910A (definition of recent advising history)
1143	Subsection 916F(1)
1144	Section 916F(1A)
1145	Subsection 916F(3)
1146	At the end of subsection 916F(3) (before the note)
1150	Subdivision A of Division 9 of Part 7.6
1152	Sections 922D to 922G
1156	Paragraph 922H(1)(b)

<b>Item<sup>87</sup></b>	<b>Provision</b>
1157	Subsection 922H(2)
1160	Subsection 922M(2)
1162	Section 922Q
1164	Section 922S
1165	Subsection 990B(6)
1178	Subsection 1015D(2)
1179	Paragraph 1015D(2)(ca)
1191	Paragraph 1200C(5)(a)
1192	At the end of subsection 1200C(5)
1195	At the end of section 1200C
1196	Paragraph 1200D(1)(b)
1197	Paragraph 1200D(1)(e)
1198	Paragraph 1200D(1)(g)
1199	Paragraph 1200D(1)(h)
1200	Paragraph 1200D(1)(i)
1202	Section 1200E
1204	At the end of subsection 1200G(9)
1206	Subsection 1200G(9) (table items 5 to 7, column headed “the offeror must lodge with ASIC”)
1207	Subsection 1200G(9A)
1209	Subsection 1200H(2)
1210	At the end of subsection 1200H(2)
1217	Section 1200S
1218	Section 1200S
1220	Subparagraph 1213B(5)(a)(iv)
1221	Subsection 1274(1)
1230	Paragraph 1274(8)(h)
1242	Section 1285
1243	Paragraph 1287(1)(b)
1245	Section 1287(1A)
1249	At the end of subsection 1296(1)
1250	Section 1299E
1251	Subsection 1299F(3)
1253	At the end of subsection 1299F(4)
1256	At the end of paragraph 1301(1)(d)

<i>Item</i> <sup>87</sup>	<i>Provision</i>
1257	Paragraph 1301(4)(b)
1300	Sections 1546J to 1546N
1302	Subsection 1546W(1)
1304	Subsection 1546W(2)
1306	Subsection 1546X(1)
1307	Subsection 1546X(2)
1309	Subsection 1546Y(1)
1310	Subsection 1546Y(2)
1312	Section 1554
1313	Subsection 1562(1)
1344	Paragraph 70-5(4)(a) of Schedule 2
1348	Paragraph 70-6(3)(a) of Schedule 2
1357	Subsection 70-60(2A) of Schedule 2
1363	At the end of subclause 27(2) of Schedule 4
<b>Income Tax Assessment Act 1997</b>	
1374	Subsection 30-229(1) (note 1)
1377	Subsection 30-229(4)
1384	Subsection 995-1(1)
<b>Credit Act</b>	
1389	Subsection 71(1)
1390	Subsection 71(1)
1391	Subsection 71(2)
1392	Subsection 71(3) (at the end of the heading)
1393	Subsection 71(4) (heading)
1394	Subparagraph 71(4)(b)(i)
1396	Subsection 71(5)
1400	Sections 213 and 214
<b>SIS Act</b>	
1415	Subsection 10(1)
1420	Section 128H
1421	Section 128H (note)
1422	Section 128H
1423	Subdivision C of Division 1A of Part 16

**Table A3 – Amendments to repeal redundant provisions and harmonise registry provisions**

<i>Item</i> <sup>88</sup>	<i>Provision</i>
<b>ABN Act</b>	
21	Subsection 3(3)
79	Sections 26, 27, 28, 29A and 30
80	Section 41
81	Section 41 (definition of ABN (Australian Business Number))
83	Section 41 (definition of approved form)
85	Section 41 (definition of Australian Business Register)
87	Section 41
<b>A New Tax System (Goods and Services Tax) Act 1999</b>	
94	Paragraph 146-20(3)(b)
95	Subsection 146-20(3) (note)
96	Section 195-1 (definition of Australian Business Register)
97	Section 195-1 (definition of Australian Business Registrar)
<b>Australian Prudential Regulation Authority Act 1998</b>	
100	Subsection 56(7C)
101	Subsection 56(7C)
<b>ASIC Act</b>	
102	Paragraph 12A(1)(k)
<b>BNR Act</b>	
104	Section 3 (definition of ABN)
105	Section 3
106	Section 3 (definition of application fee)
107	Section 3 (definition of ASIC Act)
108	Section 3 (definition of ASIC member)
110	Section 3 (definition of Australian Business Register)
111	Section 3 (definition of Business Names Register)
113	Section 3 (definition of staff member)
118	Section 22

<sup>88</sup> Item refers to the item number of the relevant amendment in schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019.



<i>Item</i> <sup>88</sup>	<i>Provision</i>
121	Subsections 23(5) and (6)
144	Subsection 32(4)
146	Subsection 33(1)
152	Subsection 33(7)
173	Paragraph 35(1)(b)
175	Subsection 35(2)
178	Subsection 36(2)
183	Subsections 37(6) to (8)
189	Subsection 39(2)
193	Paragraph 39(3)(b)
196	Subsections 40(3) and (4)
239	Subsection 49(1)
259	Section 56 (table item 11, column 1)
261	Section 56 (table item 12, column 1)
262	Section 56 (table item 16)
280	Part 8
281	Sections 63 and 64
287	Sections 66 to 68
296	Subsection 69(2A)
300	Paragraphs 69(3)(a) and (b)
316	Section 74
319	Section 75
321	Sections 76 and 77
323	Section 79
<b>BNR (Transitional and Consequential Provisions) Act 2011</b>	
340	Item 13 of Schedule 1
344	Item 14 of Schedule 1
345	Items 15 and 16 of Schedule 1
346	Items 18 to 20 of Schedule 1
351	Item 26 of Schedule 1
352	Item 27 of Schedule 1 (table item 3, column 2)
353	Item 27 of Schedule 1 (table item 4, column 2)
354	Item 27 of Schedule 1 (cell at table item 5, column 1)
<b>Corporations Act</b>	
364	Section 9 (definition of ASIC database)

<b><i>Item</i></b> <sup>88</sup>	<b><i>Provision</i></b>
365	Section 9 (definition of Business Names Register)
369	Section 9 (paragraph (a) of the definition of extract of particulars)
418	Subsection 117(4)
427	Subsection 119A(2) (note 1)
451	Paragraph 147(1)(b)
481	Subparagraph 163(2)(c)(i)
488	Subsection 164(3)
505	Subsection 178A(1)
533	Subsection 205B(3)
592	Subsection 260B(6)
601	Section 283BCA
621	Paragraph 324BB(6)(a)
642	Subsection 346A(2)
660	Subsection 348A(1)
661	Subsection 348A(2)
662	Subsection 348A(2A)
805	Paragraph 601AA(4)(c)
806	Paragraph 601AA(4)(d)
824	Subparagraph 601AB(3)(a)(iv)
865	Subsection 601BD(2)
867	Subsection 601BL(1)
868	Subsection 601BL(1)
869	Subsection 601BL(2)
873	Subsection 601CC(5)
874	Subsection 601CC(6)
875	Subsections 601CC(7) to (9)
876	Subsection 601CC(10)
899	Subsection 601CL(2)
901	Subsection 601CL(6)
902	Subsection 601CL(7)
903	Subsections 601CL(8) to (10)
904	Subsection 601CL(11)
932	Paragraph 601DC(1)(b)
934	Subsection 601DD(3)
978	Subsection 601PA(3)

<b>Item<sup>88</sup></b>	<b>Provision</b>
981	Paragraph 601PB(2)(c)
1016	Section 654B
1073	Section 712(1A)
1076	Paragraph 713(3)(b)
1089	At the end of section 713E
1136	Paragraph 853A(c)
1141	Section 910A (definition of Register of Relevant Providers)
1148	Paragraph 921J(2)(b)
1149	Division 9 of Part 7.6 (heading)
1150	Subdivision A of Division 9 of Part 7.6
1151	Subdivision B of Division 9 of Part 7.6 (heading)
1152	Sections 922D to 922G
1155	Paragraph 922H(1)(a)
1156	Paragraph 922H(1)(b)
1161	Subdivision C of Division 9 of Part 7.6 (heading)
1162	Section 922Q
1164	Section 922S
1170	Paragraph 1013I(2)(b)
1228	Subsections 1274(2A) to (2C)
1238	Section 1274AA (heading)
1239	Subsection 1274AA(1)
1240	Subsections 1274AA(2) and (3)
1241	Sections 1274A to 1275
1242	Section 1285
1243	Paragraph 1287(1)(b)
1250	Section 1299E
1251	Subsection 1299F(3)
1254	Paragraph 1299F(5)(a)
1292	Section 1392
1299	Subsection 1546G(5) (including the note)
1300	Sections 1546J to 1546N
1311	Section 1551 (definition of Register of Liquidators)
1312	Section 1554
1316	Section 5-5 of Schedule 2 (definition of Register of Liquidators)
1317	Division 15 of Part 2 of Schedule 2

<b>Item<sup>88</sup></b>	<b>Provision</b>
<b>Income Tax Assessment Act 1997</b>	
1371	Section 30-226
1374	Subsection 30-229(1) (note 1)
1375	Subsection 30-229(3)
1377	Subsection 30-229(4)
1378	Subsection 30-229(4)
1379	Paragraphs 30-229(4)(a) to (c)
1380	Section 30-315 (table item 17A)
1382	Subsection 995-1(1) (definition of Australian Business Register)
1383	Subsection 995-1(1) (definition of Australian Business Register)
1385	Subsection 995-1(1) (at the end of the definition of taxation law)
<b>Credit Act</b>	
1399	Division 2 of Part 5-1 of Chapter 5 (heading)
1400	Sections 213 and 214
<b>SIS Act</b>	
1419	Paragraph 128H(c)
1423	Subdivision C of Division 1A of Part 16
1427	Subsection 128L(5)
1429	Section 128M
<b>Taxation Administration Act 1953</b>	
1431	Subsection 6B(6A)
1432	Subsection 8(1A)
1433	Subsections 16-147(5) in Schedule 1
1435	Subsection 16-148(7) in Schedule 1
1437	Section 426-1 in Schedule 1
1438	Subdivision 426-C of Part 5-35 in Schedule 1 (heading)
1439	Section 426-65 in Schedule 1 (heading)
1441	Subsection 426-65(1) in Schedule 1
1442	Subsection 426-65(1) in Schedule 1 (note 1)
1443	Subsection 426-65(2) in Schedule 1
1444	Subsection 426-65(2A) in Schedule 1
1445	Subsection 426-65(2B) in Schedule 1
1446	Subsection 426-65(3) in Schedule 1
1447	Paragraph 426-65(3)(a) in Schedule 1
1448	Paragraph 426-65(3)(b) in Schedule 1

<i>Item</i> <sup>88</sup>	<i>Provision</i>
1449	Paragraph 426-65(3)(c) in Schedule 1
1450	Subsection 426-65(4) in Schedule 1
1451	Section 426-104 in Schedule 1 (heading)
1452	Subsection 426-104(1) in Schedule 1
1453	Subsection 426-104(1) in Schedule 1 (note 1)
1454	Subsection 426-104(1) in Schedule 1 (note 2)
1455	Subsection 426-104(2) in Schedule 1
1456	Paragraph 426-104(2)(a) in Schedule 1
1457	Paragraph 426-104(2)(b) in Schedule 1
1458	Section 426-115 in Schedule 1 (heading)
1459	Subsection 426-115(1) in Schedule 1
1460	Subsection 426-115(1) in Schedule 1 (note 1)
1461	Subsection 426-115(1) in Schedule 1 (note 2)
1462	Subsection 426-115(2) in Schedule 1
1463	Paragraph 426-115(2)(a) in Schedule 1
1464	Paragraph 426 115(2)(b) in Schedule 1

**Table A4 – Amendments that make the registrar responsible for collecting fees**

<i>Item</i> <sup>89</sup>	<i>Provision</i>
<b>BNR Act</b>	
253	Subsection 55(1)
255	Subsection 55(3)
<b>Corporations Act</b>	
1150	Subdivision A of Division 9 of Part 7.6
1283	Section 1355
1285	Paragraph 1362(ab)
<b>SIS Act</b>	
1424	Subsection 128L(1) (table items 6 to 8)
1425	Subsections 128L(2) and (4)
1426	Subsection 128L(4)

<sup>89</sup> Item refers to the item number of the relevant amendment in schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019.

<b><i>Item</i></b> <sup>89</sup>	<b><i>Provision</i></b>
1428	Subsection 128L(6)