



Commonwealth Registers Act 2020

No. 65, 2020

**An Act relating to a government registry regime,
and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	2
3 Object of this Act	2
4 Simplified outline of this Act	2
5 Definitions	3
Part 2—The Registrar	6
6 Appointment of the Registrar	6
7 Functions	6
8 Powers	6
9 Directions by Minister	7
10 Delegation	7
11 Assisted decision making	8
12 Liability for damages	8
Part 3—How the Registrar is to perform and exercise functions and powers	10
13 Data standards	10
14 Giving information to the Registrar	11
15 How the Registrar is to perform and exercise functions and powers	11
Part 4—Disclosure of information	13
16 Disclosure framework	13
17 Protection of confidentiality of protected information	14
18 Authorisation of recording or disclosure	15
19 Preventing disclosure of particular protected information	15
20 Authorisation for purposes of Privacy Act	16
21 Disclosure to a court	16
Part 5—Miscellaneous	17
22 Review of decisions	17
23 Extracts of information to be admissible in evidence	17
24 Annual report	18
25 Rules	18



Commonwealth Registers Act 2020

No. 65, 2020

**An Act relating to a government registry regime,
and for related purposes**

[Assented to 22 June 2020]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *Commonwealth Registers Act 2020*.

Section 2

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	23 June 2020

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Object of this Act

The object of this Act is to facilitate a modern government registry regime that:

- (a) is flexible, technology neutral and governance neutral; and
- (b) facilitates timely and efficient access to information (including, where appropriate, on a real time basis) by regulators and other users of the information.

4 Simplified outline of this Act

This Act provides for the Registrar's role relating to a government registry regime.

The Minister appoints an existing Commonwealth body to be the Registrar under Part 2, with the functions and powers of the Registrar largely set out in other Commonwealth laws. (Different

Registrars can be appointed for different functions or powers of the Registrar). The Minister can give directions to the Registrar.

The Registrar performs those functions and exercises those powers in accordance with the data standards (and other Commonwealth laws) under Part 3. The data standards are disallowable instruments made by the Registrar. They may deal with such matters as how information is given to the Registrar (including electronically).

Disclosure of information that the Registrar has is governed by Part 4. Broadly speaking:

- (a) information can be disclosed to government agencies for the performance of their functions; and
- (b) other disclosures (such as by public access to information) are dealt with by the disclosure framework, which is a disallowable instrument made by the Registrar.

Certain decisions made by the Registrar are reviewable by the Administrative Appeals Tribunal.

5 Definitions

In this Act:

Australian business law means 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.

Commonwealth body means:

- (a) an Agency (within the meaning of the *Public Service Act 1999*); or
- (b) a body, whether incorporated or not, established for a public purpose by or under a law of the Commonwealth; or
- (c) a person:
 - (i) holding or performing the duties of an office established by or under a law of the Commonwealth; or
 - (ii) holding an appointment made under a law of the Commonwealth.

Section 5

data standards means standards made by the Registrar under section 13.

designated secrecy provision has the meaning given by subsection 18(3).

disclosure framework means the disclosure framework made by the Registrar under section 16.

excluded law means:

- (a) the Corporations legislation (within the meaning of the *Corporations Act 2001*); or
- (b) the Commonwealth credit legislation (within the meaning of the *National Consumer Credit Protection Act 2009*); or
- (c) the *Business Names Registration Act 2011* and the *Business Names Registration (Transitional and Consequential Provisions) Act 2011*; or
- (d) any other law of the Commonwealth in respect of which the Commonwealth Parliament has been referred matters:
 - (i) by the Parliament or Parliaments of any State or States for the purposes of paragraph 51(xxxvii) of the Constitution; and
 - (ii) to the extent of the making of laws with respect to those matters by making express amendments of that other law.

government entity has the meaning given by section 41 of the *New Tax System (Australian Business Number) Act 1999*.

official employment means:

- (a) appointment or employment by the Commonwealth, or the performance of services for the Commonwealth; or
- (b) the exercise of powers or performance of functions under a delegation by the Registrar.

protected information means information:

- (a) obtained by a person in the course of the person's official employment; and
- (b) disclosed to the person or another person, or obtained by the person or another person:

- (i) under, or in relation to, this Act; or
- (ii) under another law of the Commonwealth in connection with particular functions or powers of the Registrar.

Registrar means a Commonwealth body appointed under section 6.

rules means the rules made under section 25.

secrecy provision has the meaning given by subsection 18(2).

taxation law has the same meaning as in the *Income Tax Assessment Act 1997*.

Part 2—The Registrar

6 Appointment of the Registrar

- (1) The Minister may, by notifiable instrument, appoint a Commonwealth body to be the Registrar.
- (2) The Minister may, by notifiable instrument, appoint a Commonwealth body to be the Registrar in relation to one or more functions or powers of the Registrar.
- (3) If more than one appointment under this section is in force, a reference in this Act to the Registrar is taken to be a reference to each Registrar in relation to the functions or powers for which it is the Registrar.

7 Functions

The Registrar's functions are:

- (a) such functions as are conferred on the Registrar by or under this Act or any other law of the Commonwealth (other than an excluded law); and
- (b) such functions as are prescribed by rules made for the purposes of this paragraph; and
- (c) such functions as are incidental to the functions mentioned in paragraph (a) or (b).

8 Powers

The Registrar's powers include:

- (a) such powers as are conferred:
 - (i) on the Registrar in relation to the functions mentioned in section 7; and
 - (ii) by or under this Act or any other law of the Commonwealth (other than an excluded law); and
- (b) the power to do all things necessary or convenient to be done for or in connection with the performance of those functions.

9 Directions by Minister

- (1) The Minister may, by legislative instrument, give written directions to the Registrar about the performance of its functions and the exercise of its powers.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) Without limiting subsection (1), a direction under that subsection may relate to any of the following:
- (a) matters to be dealt with in the data standards or disclosure framework;
 - (b) consultation processes to be followed prior to making data standards or the disclosure framework.
- (3) A direction under subsection (1) must be of a general nature only.
- (4) Subsection (3) does not prevent a direction under subsection (1) from relating to a particular matter to be dealt with in the data standards or disclosure framework. However, the direction must not direct the Registrar how to apply the data standards or disclosure framework in a particular case.
- (5) The Registrar must comply with a direction under subsection (1).

10 Delegation

- (1) The Registrar may, in writing, delegate all or any of the Registrar's functions or powers under this Act (other than the power to make data standards or the disclosure framework) to:
- (a) any person to whom it may delegate any of its other functions, as a Commonwealth body, under a law of the Commonwealth; or
 - (b) any person of a kind specified in the rules.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

Section 11

- (2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Registrar.

11 Assisted decision making

- (1) The Registrar may arrange for the use, under the Registrar's control, of processes to assist decision making (such as computer applications and systems) for any purposes for which the Registrar may make decisions in the performance or exercise of the Registrar's functions or powers, other than decisions reviewing other decisions.
- (2) A decision the making of which is assisted by the operation of such a process under an arrangement made under subsection (1) is taken to be a decision made by the Registrar.
- (3) The Registrar may substitute a decision for a decision (the *initial decision*) the making of which is assisted by the operation of such a process under an arrangement under subsection (1) if the Registrar is satisfied that the initial decision is incorrect.

12 Liability for damages

None of the following:

- (a) the Minister;
- (b) the Registrar;
- (c) if the Registrar is a Commonwealth body that has members—
a member of the Registrar;
- (d) a member of the staff of the Registrar;
- (e) a person who is, or is a member of or a member of the staff of, a delegate of the Registrar;
- (f) a person who is authorised to perform or exercise a function or power of, or on behalf of, the Registrar;
- (g) an APS employee, or an officer or employee of a Commonwealth body, whose services are made available to the Registrar in connection with the performance or exercise of any of the Registrar's functions or powers;

Section 12

is liable to 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 or purported performance of any function, or in exercise or purported exercise of any power, conferred or expressed to be conferred by or under this Act.

Part 3—How the Registrar is to perform and exercise functions and powers

13 Data standards

- (1) The Registrar may, by legislative instrument, make data standards on matters relating to the performance of the Registrar's functions and the exercise of the Registrar's powers.
- (2) Without limiting subsection (1), the data standards may provide for any of the following:
 - (a) what information may be collected for the purposes of the performance of the Registrar's functions and the exercise of the Registrar's powers;
 - (b) how such information may be collected;
 - (c) the manner and form in which such information is given to the Registrar;
 - (d) when information is to be given to the Registrar;
 - (e) how information held by the Registrar is to be authenticated, verified or validated;
 - (f) how information held by the Registrar is to be stored;
 - (g) correction of information held by the Registrar;
 - (h) 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;
 - (i) integrating or linking information held by the Registrar.
- (3) Without limiting subsection (1), the data standards may provide differently in relation to different functions or powers of the Registrar.
- (4) If:
 - (a) a Commonwealth body (the *new Registrar*) is appointed as the Registrar with particular functions or powers; and

- (b) immediately before that appointment, another Commonwealth body was the Registrar with those functions or powers; and
 - (c) the new Registrar does not have data standards that would apply to those functions or powers;
- any data standards applying to those functions or powers immediately before that appointment continue to apply until the new Registrar makes data standards that apply to those functions or powers, or amends its existing data standards to apply to those functions or powers.

14 Giving information to the Registrar

- (1) Without limiting section 13, the data standards may provide that information is to be given to the Registrar in electronic form, or any other specified form.
- (2) 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:
 - (a) that the information is to be “lodged” or “furnished”; and
 - (b) that the information is to be “written” or “in writing”; and
 - (c) that a “copy” of a document containing the information is to be provided;

is not taken to restrict by implication what the data standards may provide under subsection (1) in relation to that information.

15 How the Registrar is to perform and exercise functions and powers

- (1) The Registrar must perform its functions and exercise its powers in accordance with:
 - (a) the data standards; or
 - (b) if there are no data standards that apply to particular functions or powers—any requirement relating to those functions or powers as in force immediately before those functions or powers became functions or powers of the Registrar.

Section 15

- (2) This section does not affect the application to the Registrar of any other law of the Commonwealth.

Part 4—Disclosure of information

16 Disclosure framework

- (1) The Registrar may, by legislative instrument, make a disclosure framework relating to disclosing protected information.
- (2) Without limiting subsection (1), the disclosure framework may provide for any of the following:
 - (a) circumstances in which protected information must not be disclosed without the consent of the person to whom it relates;
 - (b) circumstances in which de-identified protected information may be disclosed;
 - (c) circumstances in which protected information may be disclosed to the general public;
 - (d) circumstances in which confidentiality agreements are required for the disclosure of protected information;
 - (e) imposing conditions on disclosure of protected information.
- (3) Without limiting subsection (1), the disclosure framework may provide differently in relation to different functions or powers of the Registrar.
- (4) A person commits an offence if:
 - (a) the person is a party to a confidentiality agreement of a kind mentioned in paragraph (2)(d); and
 - (b) the person fails to comply with the confidentiality agreement.

Penalty: 100 penalty units or imprisonment for 2 years, or both.
- (5) The disclosure framework must not provide for disclosure of protected information unless the Registrar is satisfied that the benefits of the disclosure would outweigh the risks of the disclosure (taking into account any mitigation of those risks in accordance with the disclosure framework).

Section 17

- (6) However, subsection (5) does not apply to the extent that the disclosure framework deals with a matter in accordance with a direction under section 9.
- (7) If:
- (a) a Commonwealth body (the *new Registrar*) is appointed as the Registrar with particular functions or powers; and
 - (b) immediately before that appointment, another Commonwealth body was the Registrar with those functions or powers; and
 - (c) the new Registrar does not have a disclosure framework that would apply to those functions or powers;
- the disclosure framework applying to those functions or powers immediately before that appointment continues to apply until the new Registrar makes a disclosure framework that applies to those functions or powers, or amends its existing disclosure framework to apply to those functions or powers.

17 Protection of confidentiality of protected information

- (1) A person (the *first person*) commits an offence if:
- (a) the first person is, or has been, in official employment; and
 - (b) the first person makes a record of information, or discloses information to another person; and
 - (c) the information was obtained by the first person in the course of the first person's official employment.

Penalty: Imprisonment for 2 years.

- (2) However, subsection (1) does not apply if the recording or disclosure is authorised by subsection (3).
- (3) The recording or disclosure is authorised by this subsection if:
- (a) the recording or disclosure is for the purposes of this Act; or
 - (b) the recording or disclosure happens in the course of the performance of the duties of the first person's official employment; or
 - (c) in the case of a disclosure—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 or exercise of the functions or powers of a government entity; or

- (d) in the case of a disclosure—each person to whom the information relates consents to the disclosure; or
- (e) in the case of a disclosure—the disclosure is in accordance with the disclosure framework.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

18 Authorisation of recording or disclosure

- (1) A person is not liable to any proceedings for contravening a secrecy provision in respect of a recording or disclosure authorised by subsection 17(3), unless the secrecy provision is a designated secrecy provision.
- (2) A **secrecy provision** is a provision that:
 - (a) is a provision of a law of the Commonwealth (other than this Act); and
 - (b) prohibits or regulates the use or disclosure of information.
- (3) A **designated secrecy provision** is any of the following:
 - (a) sections 18 to 18B and 92 of the *Australian Security Intelligence Organisation Act 1979*;
 - (b) section 34 of the *Inspector-General of Intelligence and Security Act 1986*;
 - (c) sections 39 to 41 of the *Intelligence Services Act 2001*;
 - (d) section 8WB of the *Taxation Administration Act 1953*;
 - (e) a provision of a law of the Commonwealth prescribed by the rules for the purposes of this paragraph;
 - (f) a provision of a law of the Commonwealth of a kind prescribed by the rules for the purposes of this paragraph.

19 Preventing disclosure of particular protected information

- (1) If:
-

Section 20

- (a) a person applies to the Registrar for particular protected information relating to the person not to be disclosed; and
 - (b) the Registrar is satisfied that it is not appropriate to disclose that information;
- a disclosure of that information is taken, for the purposes of this Act, not to be in accordance with the disclosure framework.
- (2) Without limiting section 16, the disclosure framework may provide for:
- (a) how applications referred to in paragraph (1)(a) are to be made; and
 - (b) how those applications are to be decided.

20 Authorisation for purposes of Privacy Act

A disclosure of personal information (within the meaning of the *Privacy Act 1988*) is taken to be authorised by law for the purposes of paragraph 6.2(b) of Schedule 1 to that Act if:

- (a) the information is protected information; and
- (b) the disclosure is authorised by subsection 17(3) of this Act.

21 Disclosure to a court

A person is not to be required:

- (a) to produce to a court any document that:
 - (i) contains protected information; and
 - (ii) was made or given under, or for the purposes of, this Act; and
 - (iii) the person obtained in the course of the person's official employment; or
- (b) to disclose to a court any protected information that the person obtained in the course of the person's official employment;

unless the production or disclosure is necessary for the purpose of giving effect to a taxation law or an Australian business law.

Part 5—Miscellaneous

22 Review of decisions

- (1) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Registrar made under this Act, or under the data standards or disclosure framework.
- (2) Subsection (1) does not apply to a decision to make, amend or repeal a data standard or the disclosure framework.

23 Extracts of information to be admissible in evidence

- (1) In any proceedings, a document, or a copy of a document, that purports (irrespective of the form of wording used) to be an extract of information held by the Registrar:
 - (a) is proof, in the absence of evidence to the contrary, of information that is stated in it and that purports to be held by the Registrar; and
 - (b) is admissible without any further proof of, or the production of, the original;if it does not appear to the Court to have been revised or tampered with in a way that affects, or is likely to affect, the information.
- (2) The Registrar may give a person a certified copy of, or extract from, the information held by the Registrar on payment of the fee (if any) prescribed by the rules.
- (3) In any proceedings, the certified copy:
 - (a) is prima facie evidence of information that is stated in it and that purports to be held by the Registrar; and
 - (b) is admissible without any further proof of, or the production of, the original.
- (4) This section does not limit the manner in which evidence may be adduced, or the admissibility of evidence, under the *Evidence Act 1995*.

Section 24

24 Annual report

Each annual report by the Registrar for a period must include information about the performance of the Registrar's functions and exercise of the Registrar's powers during that period.

25 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.

*[Minister's second reading speech made in—
House of Representatives on 4 December 2019
Senate on 13 February 2020]*

(240/19)
