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## Explanatory Statement

# Corporations (Aboriginal and Torres Strait Islander) (Transitional) Director Identification Number Extended Application Period 2021

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### General Outline of Instrument

1. This legislative instrument is made under subsection 308-30(2) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the CATSI Act).
2. This legislative instrument extends the application period in which new eligible officers are required to apply for a director identification number (director ID) if the individual becomes an eligible officer in the period starting when the director ID legislation commences and ending 31 October 2022.
3. Under section 33(3) of the *Acts Interpretation Act 1901* where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

### Date of effect

4. This instrument commences on the later of:
  - (a) the day after it is registered on the Federal Register of Legislation; and
  - (b) the day on which 6-7A of the CATSI Act commences.
5. By way of clarity, this legislative instrument applies from the day the Commonwealth Registrar is appointed.

### Background

6. The introduction of a director ID requirement is one of the Commonwealth Government initiatives to promote good corporate conduct, and to deter and penalise illegal phoenixing in order to protect those who are negatively affected by such fraudulent behaviour.
7. The new director ID regime will also offer benefits beyond combating illegal 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.
8. The director ID will require all directors to establish their identity with the Commonwealth Registrar and it will be a unique identifier for each individual who consents to being appointed a director. The individual will keep that unique identifier permanently, even if they cease to be a director. An individual's director ID will not be re-issued to someone else and generally only one director ID will be issued to an individual.
9. The director ID will provide traceability of a director's relationships across companies, enabling better tracking of directors and preventing 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.

10. The director ID requirements in relation to the *Corporations Act 2001* (Corporations Act) commences in 2021 however, the requirement for a director appointed under the CATSI Act to get a director ID will not commence until Corporations Act directors have been fully onboarded (to occur broadly over a 12-month period)
11. Individuals applying for a director ID under the Corporations Act are a separate group to those individuals applying for a director ID under the CATSI Act. If an individual has applied for or received a director ID under one Act, that individual does not need to apply for a director ID under the other Act.
12. The provisions introducing the director ID regime for the CATSI Act and the Corporations Act are contained in Schedule 2 of the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020*. This means the director ID provision under the CATSI Act will commence at the same time as the director ID provisions in the Corporations Act.
13. In order to ensure that the requirement for director ID under the CATSI Act commences as intended the Commonwealth Registrar will extend the time in which new directors are required to have a director ID.
14. Specifically, this instrument provides that new directors appointed between the commencement of the director ID provision under the CATSI Act and 31 October 2022 will not be required to get a director ID until 30 November 2023.
15. Subsection 308-30(2) of the CATSI Act allows the Commonwealth Registrar to specify a longer time period to apply for a director ID number for a class of person by legislative instrument.
16. Individuals who were a director immediately before the commencement of the director ID provisions in the CATSI Act will not be required to obtain a director ID until the Minister specifies the transitional application period in accordance with item 9(3) of Schedule 2 of the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020*.

### **Compliance Cost Impact**

17. Compliance cost impact: The instrument is minor or machinery in nature. It implements certain procedural elements of a decision that has already be made by Government

### **Consultation**

18. Subsection 17(1) of the *Legislation Act 2003* requires that the rule-maker undertake an appropriate level of consultation that is reasonably practicable to undertake before making a legislative instrument.
19. For this instrument, broad consultation was undertaken for a period of 3 weeks commencing on 29 March 2021. The draft instrument and draft explanatory statement were published on the Treasury website.
20. There were 7 written submissions received from:
  - (a) Australian Charities and Not-for-profits Commission
  - (b) Australian Financial Markets Association
  - (c) Australian Institute of Company Directors
  - (d) Chartered Accountants Australia and New Zealand
  - (e) CPA Australia
  - (f) Digital Service Providers Australia New Zealand
  - (g) Governance Institute of Australia

21. Comments were supportive of the instrument and director ID initiative.

**Legislative references**

*Acts Interpretation Act 1901*

*Corporations (Aboriginal and Torres Strait Islander) Act 2006*

*Human Rights (Parliamentary Scrutiny) Act 2011*

*Legislation Act 2003*

*Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020*

## **Statement of compatibility with Human Rights**

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

### **Corporations (Aboriginal and Torres Strait Islander) (Transitional) Director Identification Number Extended Application Period 2021**

This Legislative Instrument is 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 of the Legislative Instrument**

This disallowable legislative instrument provides additional time for new directors to apply for a director identification number (director ID). For new directors appointed during the period specified this instrument extends the application period to ensure that new directors are not disadvantaged or exposed to the offence provision.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms. The purpose of this instrument is to provide additional time for which new directors appointed during the specified period are required have a director ID. This will not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.