



Explanatory Statement

Corporations (Transitional) Director Identification Number Extended Application Period 2021

General Outline of Instrument

1. This legislative instrument is made under subsection 1272E(2) of the *Corporations Act 2001* (the 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 2021.
3. In accordance with section 5C of the Act, the relevant version of the *Acts Interpretation Act 1901* that applies to the Act is the version as at 1 November 2005. 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:
 - the day after it is registered on the Federal Register of Legislation; and
 - the day on which Part 9.1A of the Act commences.
5. By way of clarity, this legislative instrument applies from the day the 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 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 Digital Transformation Agency (DTA) digital service standards provides that government agencies are required to test systems from end to end in an environment that replicates the live environment prior to a system/service becoming available to the public in order to identify and resolve any issues.
11. To this end the Registrar will conduct testing of the director ID system in the live environment to ensure the new platform delivers a robust, reliable and consistent user experience. During this testing period the director ID application system will not be available publicly and a controlled number of existing directors will be invited by the Registrar to participate in testing the director ID application system.
12. For the purpose of this instrument the testing period will:
 - begin on the commencement of the director ID provision in the Act, and
 - end 31 October 2021.
13. To conduct the end to end testing of director ID in a live environment it is essential that the director ID provisions in the Act have commenced in order for the Registrar to have legislative basis to process applications and issue a valid director ID to those participating.
14. However, the commencement of the director ID provisions in the Act starts the timeframe for when existing directors or newly appointed directors must have a director ID. These timeframes are:
 - **Transitional period for existing directors:** for individuals who are a director prior to commencement of the director ID provisions (existing directors) – within the period the Minister specifies by legislative instrument (transitional application period) under subsection 1653(3) of the Act; and
 - **Transitional period for new directors** for individuals who are not a director prior to commencement of the director ID provisions but are appointed as a director after commencement (new directors) – within 28 days of being appointed a director for the first 12 months after the legislation commences.
 - **After the transitional period:** all individuals must have a director ID prior to their appointment as a director or such later period as may be allowed under the regulations or the Registrar.
15. In order to ensure that new directors are not disadvantaged or exposed to the offence provision (for not having a director ID within the required timeframe) during the testing period the Registrar will extend the time in which these individuals are required to have a director ID.
16. Specifically, this instrument provides that new directors appointed in testing period have until 30 November 2022 to obtain a director ID.
17. Subsection 1272E(2) of the Act allows the Registrar to specify a longer time period to apply for a director ID number for a class of person by legislative instrument.

Compliance Cost Impact

18. 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

19. 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.

20. 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.
21. There were 7 written submissions received from:
- Australian Charities and Not-for-profits Commission
 - Australian Financial Markets Association
 - Australian Institute of Company Directors
 - Chartered Accountants Australia and New Zealand
 - CPA Australia
 - Digital Service Providers Australia New Zealand
 - Governance Institute of Australia
22. Comments were supportive of the instrument and director ID initiative.

Legislative references

Acts Interpretation Act 1901

Administrative Appeals Tribunal Act 1975

Corporations Act 2001

Human Rights (Parliamentary Scrutiny) Act 2011

Legislation Act 2003

Statement of compatibility with Human Rights

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

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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 ID during the testing period. The Registrar will conduct testing of the director ID application system in the live environment in compliance with DTA digital service standards to ensure it delivers a robust, reliable and consistent user experience. For new directors appointed during this testing period 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 testing 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.