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## Explanatory Statement

### Director Identification Number Laws (Application) Data Standard 2022

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#### General outline of instrument

1. This instrument is made under:
  - (a) section 1270G of the *Corporations Act 2001* (Corporations Act) for the purposes of Part 9.1A of the Corporations Act; and
  - (b) section 13 of the *Commonwealth Registers Act 2020* (Registers Act) for the purposes of Part 6-7A of *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).
2. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).
3. Under subsection 33(3) of the *Acts Interpretation Act 1901* (Acts Interpretation Act), where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall 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.
4. In accordance with section 5C of the Corporations Act, the relevant version of the Acts Interpretation Act that applies to the Corporations Act is the version as at 1 January 2005.

#### Date of effect

5. This instrument commences on the day after it is registered on the Federal Register of Legislation.

#### What is the effect of this instrument

6. The effect of this instrument is to set out the following matters as part of an individual's application for a director ID:
  - (a) what information may be requested and collected for the purposes of the performance of the Registrar's functions and exercise of the Registrar's powers;
  - (b) how such information may be collected;
  - (c) how an application is made;
  - (d) when information is given to the Registrar;
  - (e) how the Registrar authenticates, verifies or validates information;
  - (f) how the Registrar records, uses and stores information;
  - (g) correcting information held by the Registrar; and
  - (h) the manner and form of communication by persons who give information to or seek to access information from the Registrar.

### **Compliance cost impact**

7. Minor – there will be no additional regulatory impacts as the instrument is minor and machinery in nature.

### **Data standards – background**

8. 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 under:
  - (a) Part 9.1A of the Corporations Act; and
  - (b) Part 6-7A of the CATSI Act.
9. The Registrar must perform its functions and exercise its powers in accordance with the data standards that apply to particular functions or powers.

### **Director ID – background**

10. The introduction of a director ID requirement is a Commonwealth Government initiative to facilitate confidence, promote good corporate conduct, and to deter and penalise illegal phoenixing to protect those who are negatively affected by such fraudulent behaviour.
11. Illegal 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 illegal phoenixing to the Australian economy is estimated to be between \$2.9 billion and \$5.1 billion annually.<sup>1</sup>
12. The director ID regime offers a simpler, more effective tracking of directors and their corporate history. It will also improve the efficiency of the insolvency process by reducing the time and cost for administrators and liquidators. In addition, the new regime will improve data integrity and security.
13. The director ID 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.
14. The director ID will provide traceability of a director's relationships across companies and over time. This will enable better tracking of directors and prevent the use of fictitious identities. This will also assist regulators and external administrators to investigate a director's involvement in what may be repeated unlawful activity (e.g. illegal phoenix activity).
15. This instrument applies to individuals applying for a director ID under the Corporations Act and the CATSI Act. An individual is only required to apply for a director ID under one of these Acts. If an individual has applied for or received a director ID under one Act, that individual must not apply for a second director ID under the other Act, unless directed by the Registrar.

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<sup>1</sup> Explanatory Memorandum to the Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019, at paragraph 1.4.

## **What information may be required, requested and collected**

16. The Registrar is required to give a person, who has applied under section 1272A of the Corporations Act or section 308-10 of the CATSI Act, a director ID if the Registrar is satisfied that the person's identity has been established.
17. For the purposes of establishing an individual's identity and providing the individual with a director ID or to update that individual's details, the Registrar may require and collect an individual's names and former names, addresses and former addresses, contact details, and date and place of birth.
18. The Registrar may request, but not compel, the individual to give their tax file number (TFN) to the Registrar to establish the individual's identity.
19. For the purpose of establishing an individual's identity the Registrar may request and collect identity documents or information evidencing the individual's identity.
20. If the Registrar is not satisfied that the individual's identity has been established from the information provided by that individual, section 5(4) of the instrument clarifies that the Registrar may request and collect from the individual other information necessary to establish the individual's identity.
21. There may be circumstances where individuals are not able to meet the identity requirements of the electronic or paper application process. If the individual is unable to meet these requirements and the Registrar considers it is reasonable in the individual's circumstances, the Registrar may establish the individual's identity in another manner. This other manner may include verifying the individual's identity by third parties.
22. In order to ensure sufficient flexibility in allowing individuals to confirm their identity, it is not possible to provide an exhaustive list of identity information that may be requested by the Registrar.
23. A key objective of the registries system is flexibility, and the Registrar is provided with powers to administer the director ID requirement including how directors are to establish their identity. Having the ability to request alternative documents or to establish an individual's identity in another manner provides that flexibility to the benefit of both the individual and the Registrar.

## **How the Registrar may collect information**

24. Individuals applying through the electronic platform will be required to verify their identity digitally, this will require a digital identity credential.
25. Individuals applying for a digital identity credential are required to prove their identity using Australian identity documents and provide these documents electronically (if they do not already have one) to confirm their identity.
26. An individual who wishes to apply for a director ID will visit the website maintained by the Registrar and be directed to an accredited digital identity provider for authentication
27. Individuals will be informed about the collection of their personal information through a privacy notification at the time of application.

## **How to apply for a director ID**

28. The preferred means of applying for a director ID is electronically through the electronic platform approved by the Registrar.
29. For digital applications, an accredited digital identity provider will be the main proof of identity solution used for director IDs. Currently, individuals applying for a digital identity credential are

required to prove their identity using Australian identity documents. Individuals may apply for a digital identity through myGovID at no cost to the individual.

30. Individuals are responsible for completing the director ID application form themselves. An agent or other third party cannot apply for a director ID on behalf of a director unless the Registrar is satisfied that an exception applies.
31. Exceptions to this requirement include situations where an individual applicant may require assistance to apply for a director ID if they are unable to prepare the application themselves. The Registrar will assess an individual's circumstances on a case-by-case basis.
32. If an individual is unable to apply electronically, the Registrar may provide alternative methods of applying for a director ID. Individuals unable to obtain a digital identity credential will establish their identity through other processes, which may include providing certified copies of identity documents, assistance through shop fronts, use of an apostille or attending an Australian consulate.

### When information is given to the Registrar

33. The law presently provides the following timeframes for individuals to apply for a director ID.
  - (a) **Transitional period for existing eligible officers defined under the Corporations Act:** for individuals who were eligible officers prior to 31 October 2021 – no later than 30 November 2022;
  - (b) **Transitional period for existing eligible officers defined under the CATSI Act:** for individuals who were eligible officers prior to 31 October 2022 – no later than 30 November 2023
  - (c) **Transitional period for new eligible officers defined under the Corporations Act:** for individuals who become eligible officers from 1 November 2021 to 4 April 2022 (new eligible officers) – within 28 days of becoming an eligible officer; and
  - (d) **After the transitional period:** all individuals must have a director ID prior to their appointment as an eligible officer or such later period as may be allowed under law.
34. It is within the Registrar's discretion to allow an extension of the period within which to apply for a director ID, on application by an individual. If an extension is granted, it may be for a period the Registrar considers reasonable.
35. If an individual anticipates that they will become an eligible officer within the next 12 months, they may apply for a director ID.
36. The Registrar can direct an individual who is a director to apply for a director ID whether or not that individual already has a director ID.
37. For the purposes of giving an individual a director ID an individual is required to provide to the Registrar the information requested under section 5 of the instrument at the time of application.
38. If the Registrar is not satisfied as to the identity of an individual, the Registrar will not provide an individual with a director ID until the individual supplies additional information which will enable the Registrar to be satisfied as to the identity of the individual.
39. An individual who has a director ID may request the Registrar to update any of their details listed in section 5 of the instrument (this may include requests through authorised agents).
40. Directors of Aboriginal and Torres Strait Islander corporations have an obligation under section 304-10 of the CATSI Act to provide any changes in their personal details to their Aboriginal and Torres Strait Islander corporations. Subsection 304-10(3) of the CATSI Act makes non-compliance with this requirement an offence. Directors of companies have similar obligations and a similar offence under section 205C of the Corporations Act, as modified by section 111L

of the Corporations Act for companies registered under the *Australian Charities and Not-for-profits Commission Act 2012*.

### **How the Registrar uses the information**

41. Data collected through an accredited digital identity provider will be used to authenticate the details provided by the individual and pass this to the Registrar's secure platform.
42. The Registrar may use the director ID information collected under sections 5 and 7 of the instrument to establish the identity of an individual for the purpose of giving the individual a director ID and maintaining the accuracy of director ID information.
43. The Registrar may make a record of information collected or generated in the course of processing the individual's director ID application, including any updates or corrections of director ID information.
44. Information collected under this instrument by the Registrar is protected information within the meaning of section 9 of the Corporations Act and section 5 of the Registers Act.
45. Protected information may be disclosed by the Registrar to other government agencies in accordance with the secrecy and disclosure provisions in Part 9.1 of the Corporations Act and Part 4 of the Registers Act.
46. Where possible the Registrar will validate information provided by the director in real-time, such as email, mobile and addresses using data validation software. If the information provided is not validated, the form will prompt the individual to re-enter the correct information in the field. If information is not validated, the form cannot be submitted.
47. Where an individual submits a paper form of application, and the Registrar is unable to validate the individual's identity, the Registrar will be unable to provide a director ID until the individual provides further information.
48. The Registrar will verify information provided by an individual to ensure it is correct by comparing that information with information from other sources.
49. The Registrar may authenticate the information provided by an individual to link the individual to an ATO client record. This will facilitate the use of ATO systems and shared services and provide additional certainty around the individual's identity.
50. The Registrar may provide a TFN to the Commissioner of Taxation (Commissioner) for verification purposes. Upon receipt of a TFN, the Commissioner may confirm the TFN is correct, provide the relevant individual's correct TFN, or inform the Registrar that the relevant individual does not have a TFN. The Registrar may also request from the Commissioner the TFN of an individual who has applied for a director ID for the purposes of verifying the identity of the individual.
51. Where relevant, the Registrar will cross-check director ID information received from an individual with information contained in registries maintained by other government agencies to aid in ensuring integrity of the data received.

### **How the Registrar must record and store information**

52. The Registrar must record and store information given to, or otherwise obtained or generated by, the Registrar. The data from the director ID application will be stored in a secure platform controlled and maintained by the Registrar.
53. The Registrar will take steps to protect the information held about individuals against loss, unauthorised access, use, modification or disclosure and other misuse. The Registrar will apply industry-best security methods, including information technology and physical security

audits, penetration testing and industry best practice risk management and system security technologies to protect the personal information held.

54. The National Archives of Australia publishes Records Authorities which are developed in accordance with the *Archives Act 1983*. The Registrar will maintain records according to Records Authorities to manage the retention and disposal of Commonwealth Agency records. Records Authorities are available to be accessed at [naa.gov.au](http://naa.gov.au).

### **How the Registrar may correct information held by the Registrar**

55. The Registrar may update the director ID information of an individual if the Registrar reasonably believes the information (including any personal information) is incorrect, for example a company informs the Registrar of changed details for a director(s).
56. An individual will be able to request updates to their details electronically. Although the online method is the preferred approach, a paper and/or telephone option may also be provided. It should be noted that name and date of birth are linked to the individual's digital identity, so changes to these items will have to be made via an accredited digital identity provider. These updates will be synchronised with the secure platform and previous details will be retained for historical registry purposes.
57. In accordance with Australian Privacy Principles (APPs) under the *Privacy Act 1988*, an APP entity must take reasonable steps to ensure the personal information it collects is accurate, up to date and complete. An entity must also take reasonable steps to ensure the personal information it uses or discloses is accurate, up to date, complete and relevant, having regard to the purpose of the use or disclosure. The Registrar is complying with obligations under APP 10 (Quality of personal information). This aligns with the policy intent of the legislation, which is to gain greater certainty as to the identity of the individuals operating as directors in our community.

### **Communication**

58. The Registrar will communicate with holders and individual applicants for a director ID electronically unless the individual's circumstances prevent electronic communication.
59. An individual may be contacted by other means such as a letter or phone call if they are not able to be contacted via electronic means.
60. An individual may be contacted and asked additional questions about their director ID or their application, to be provided with a director ID, to be informed that their director ID has been compromised or cancelled, or to be directed to apply or apply again for a director ID. An individual may also be contacted where the Registrar suspects that an individual has provided false or misleading information or has applied for more than one director ID.
61. An individual who has applied for a director ID can access information provided to the Registrar in relation to their director ID. Other persons (for example government bodies) who are permitted by law to access information in relation to a director ID must access this information electronically.

### **Signed Declaration**

62. An individual applying for a director ID will be required to provide a signed declaration that
  - (a) confirms they are the applicant in the director ID application;
  - (b) any information provided in the application is true and correct;

- (c) they are an eligible officer or intend to become one within 12 months after their application; and
  - (d) they do not already have a director ID or have been directed by the Registrar to apply or apply again for a director ID
63. In the electronic application this signed declaration will be made by way of the individual confirming their declaration.
64. If an individual applicant does not provide the signed declaration (for example, because they have been banned from being a director due to fraud and, as such, cannot be an eligible officer or intend to be an eligible officer), the application will not progress further.
65. A declaration for an application made via paper form will be confirmed by way of the individual signing the paper form to confirm the declaration.
66. If an individual applicant provides the signed declaration, and the Registrar is satisfied that the individual's identity has been confirmed, then the individual will be provided with a director ID.

### **Substantial compliance with data standard**

67. Where an individual's application for a director ID substantially meets the requirements set out in this instrument or the application for a director ID only contains variations that are required as a result of the individual's circumstances, the Registrar may accept that application as an application that meets the requirements of the data standard in section 1272A(4) of the Corporations Act and section 308-10(4) of the CATSI Act.

### **Review of decisions**

68. Decisions made under this instrument are reviewable by the Administrative Appeals Tribunal pursuant to section 1317B of the Corporations Act and section 22 of the Registers Act.

### **Repeal of Corporations Director Identification Number Data Standard 2021**

69. The *Corporations Director Identification Number Data Standard 2021* provided details on the application for and the giving of a director ID under the *Corporations Act* only. This instrument includes this and expands the scope to also include applications for and the giving of a director ID under the CATSI Act.
70. Therefore, *Corporations Director Identification Number Data Standard 2021* is not necessary.

### **Consultation**

71. Subsection 17(1) of the *Legislation Act 2003* requires, before the making of a legislative instrument, that the Registrar is satisfied that appropriate and reasonably practicable consultation has been undertaken.
72. For this instrument, broad consultation was undertaken for a period of 30 days, commencing on 9 November 2021. The draft instrument and draft explanatory statement were published on the Australian Taxation Office (ATO) website.
73. Four written submissions were received from:
- (a) Australian Charities and Not-for-profits Commission
  - (b) Chartered Accountants Australia and New Zealand
  - (c) CPA Australia
  - (d) Equifax

74. Comments were generally supportive of the instrument, with suggestions for minor edits to provide further clarity for registered charities and authorised agents. Submissions also discussed matters that have been raised in prior submissions and other related matters that were out of scope for this instrument.

***Legislative references***

*Acts Interpretation Act 1901*

*Archives Act 1983*

*Commonwealth Registers Act 2020*

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

*Corporations Act 2001*

*Human Rights (Parliamentary Scrutiny) Act 2011*

*Income Tax Assessment Act 1936*

*Legislation Act 2003*

*Privacy Act 1988*

*Taxation Administration Act 1953*

*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*.

### ***Director Identification Number Laws (Application) Data Standard 2022***

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 instrument sets out the information the Registrar will require to be able to establish the identity of an individual and give a director identification number (director ID), to an individual who has applied for a director ID under the *Corporations Act 2001* (Corporations Act) or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

This instrument addresses the following matters as part of the director ID application:

- (a) what information may be requested and collected for the purposes of the performance of the Registrar's functions and exercise of the Registrar's powers
- (b) how such information may be collected;
- (c) how an application is made;
- (d) when information is given to the Registrar
- (e) how the Registrar authenticates, verifies or validates information
- (f) how the Registrar records, uses and stores information;
- (g) correcting information held by the Registrar; and
- (h) the manner and form of communication by persons who give information to or seek to access information from the Registrar.

### **Human rights implications**

The instrument may engage two applicable rights or freedoms – to presumption of innocence, and to privacy and reputation. This instrument does not engage any other applicable rights or freedoms. The *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020* provides for the director ID regime by amending the Corporations Act and the CATSI Act, as well as including offences in relation to a director ID.

The director ID requirement promotes good corporate conduct and deters and penalises illegal phoenixing in order to protect those who are negatively affected by such fraudulent behaviour. Illegal 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 illegal phoenixing to the Australian economy is estimated to be between \$2.9 billion and \$5.1 billion annually.

In addition, the director ID requirement, will improve data integrity and security, result in the simpler more effective tracking of directors and their corporate history and will reduce time and cost for administrators and liquidators thereby improving the efficiency of the insolvency process.

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

The new director ID requirement engages the presumption of innocence because it creates several new strict liability offences.

The presumption of innocence is contained in article 14 of the International Covenant on Civil and Political Rights. Paragraph 2 of Article 14 protects the right of an individual charged with a criminal offence to be presumed innocent until proven guilty according to law. The presumption of innocence is not an absolute right. It generally requires the prosecution to prove each element of a criminal offence beyond reasonable doubt. An offence provision that requires a defendant to carry an evidential burden may be considered to engage the right to the presumption of innocence.

The following offences contain offence specific defences for which the defendant carries an evidential burden:

- (i) requirement to have a director ID; and
- (ii) applying for an additional director ID.

There are two defences in relation to the requirement to have a director ID:

- (i) The individual applied for a director ID: before appointment; within a period specified in regulations (if such regulations are made); or within a period allowed by the Registrar.
- (ii) The individual was appointed as an eligible officer (which triggers the requirement to have a director ID) without their knowledge.

There are two defences in relation to applying for additional director IDs:

- (i) The individual was directed by the Registrar to make the application.
- (ii) The individual made an application under Part 6-7A of the CATSI Act or under Part 9.1A of the Corporations Act.

The evidential burden for the above defences has been reversed because the subject matter of the defence is:

- (i) peculiarly within the knowledge of the defendant (for example, when the individual applied for a director ID, when the individual was appointed director, the fact that the individual became an eligible officer without their knowledge, the details of being directed by the Registrar to apply for a director ID); and
- (ii) significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

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. The strict liability nature of the offences is also consistent with existing offences in the Corporations Act and CATSI Act.

The offences are directed at proving the identity of directors to assist regulators to better detect, deter and disrupt illegal 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 director ID requirement and ensure the integrity of information about companies and their officers.

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. 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.

In relation to the director ID requirement, the strict liability offences above relating to failure to apply for a director ID 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*.

The Registrar does have the power to issue infringement notices if a person fails to comply with director ID provisions. Infringement notices can be issued when an infringement officer reasonably believes that the offence provisions have been contravened and give the option of paying a stated penalty as an alternative to court proceedings.

Because the obligations to apply for a director ID 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.

Although infringement notices may be intrusive, they are necessary to ensure a level playing field for all directors. Without these, some directors may choose not to comply with the obligation to apply for a director ID, knowing there will be no serious consequences for doing so.

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

Article 17 of the International Covenant on Civil and Political Rights provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation. The right to privacy is not an absolute right. In some circumstances, it must be weighed against the equally justified right of others and against matters that benefit society as whole.

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 phoenix activity in order to protect those who are negatively affected by such fraudulent behaviour. The new director ID regime will also offer benefits beyond combating illegal phoenixing. For instance, simpler more effective tracking of individuals 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 individuals to be identified by a number rather than by other more personally identifiable information.

The director ID requirement will engage the right to privacy because it provides for the collection and disclosure of information including personal information within the meaning of the *Privacy Act 1988*. The director ID regime requires the provision of information including name information, address information, contact information, and the applicant's date of birth. The Registrar can also request, but not compel, the individual to provide their tax file number. The Registrar may also disclose protected information to other government agencies and may make a disclosure framework relating to disclosing protected information to entities other than government agencies. The instrument in relation to the director ID requires personal information be given for the purposes of authenticating, validating and verifying an individual's identity.

To any extent to which the provision of this information constitutes a limitation on the individual's right to be protected from interference with their privacy, the limitation is justified because the provision of information is in pursuit of the legitimate objective identified and is rationally connected and proportionate to the objective sought, as the information is required to establish identity, provide assurances and to ensure that the director ID regime is administered according to the intent of the legislation and community expectations. The instrument only requires personal information to the extent required for authenticating, validating and verifying an individual's identity, so that the director ID regime can be effectively administered.

Further, providing greater certainty as to the identity of the individuals operating as directors in our community involves a positive privacy change, noting that the APPs in the *Privacy Act 1988* requires an APP entity to take reasonable steps to ensure the personal information it collects is accurate, up

to date and complete and to ensure the personal information it uses or discloses is accurate, up to date, complete and relevant, having regard to the purpose of the use or disclosure.

The new regime will improve data integrity and security. For example, it would be possible to allow individuals to be identified by a number rather than by other more personally identifiable information. The introduction of a director ID aims to deter and penalise illegal phoenix activity and provide for a single, efficient platform providing traceability, addressing registry fragmentation and reducing the regulatory burden of having to provide the same information more than once.

### **Handling of information**

Information given to, or otherwise obtained or generated by the Registrar as a result of a director ID application may be stored in a secure platform controlled and maintained by the Registrar. The Registrar will take steps to protect the personal information held about individuals against loss, unauthorised access, use, modification or disclosure and other misuse. The Registrar will apply industry-best security methods, including information technology and physical security audits, penetration testing and industry best practice risk management and system security technologies to protect the personal information held.

To the extent that information collected is personal information there are safeguards to protect an individual's right to privacy. In particular, the Registrar is complying with obligations under the Australian Privacy Principles under the *Privacy Act 1988*, Records authorities issued by the National Archives of Australia and a privacy impact assessment has been conducted in accordance with the *Privacy (Australian Government Agencies – Governance) Australian Privacy Principles Code 2017* to ensure legislative requirements and community expectations regarding privacy are met.

The instrument itself will be a disallowable instrument and therefore subject to proper Parliamentary oversight and the consultation requirements contained in the *Legislation Act 2003*.

For these reasons, the instrument does not unnecessarily and unreasonably restrict an individual's right to privacy. Information is only collected and disclosed to the extent required to achieve the legitimate objective of administering the director ID requirement, with the limitation reasonable, necessary and proportionate.

### **Review of decisions**

An individual adversely affected by a decision made under this instrument may apply for review of a decision in accordance with section 1317B of the Corporations Act and section 22 of the *Commonwealth Registers Act 2020*.

### **Conclusion**

This Legislative Instrument is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Accordingly, while the presumption of innocence and the right to privacy are engaged, the limitations are:

- (a) aimed at achieving a legitimate objective;
- (b) rationally connected with the objective; and
- (c) reasonable, necessary and proportionate.

The objective of introducing a director ID requirement is to promote good corporate conduct, and to deter and penalise illegal phoenix activity. The Registrar must provide an eligible officer with a director ID if the Registrar is satisfied that the individual can be uniquely identified. The Registrar

requires certain information from the eligible officer to uniquely identify that individual in accordance with this objective. Therefore, this request for information represents a lawful interference with an individual's human rights that is rationally connected with the objective. This interference is justified from the viewpoint of being reasonable, necessary and proportionate to provide the assurance for administering the director ID regime.