



Explanatory Statement

Director Identification Number Laws (Other Government Bodies) Disclosure Framework 2022

General outline of instrument

1. This instrument is made under:
 - (a) section 1270K of the *Corporations Act 2001* (Corporations Act) for the purposes of Part 9.1A of the Corporations Act; and
 - (b) section 16 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 authorise the disclosure of director ID information to these other government bodies in the same way as government entities authorised in the Corporations Act or Registers Act.

Compliance cost impact

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

Disclosure framework – background

8. The Corporations Act and the Registers Act authorise disclosure of protected information (director ID information) to certain government entities in relation to the performance or

exercise of their functions and powers. For example, the Office of the Registrar of Indigenous Corporations (ORIC) and the Australian Taxation Office (ATO) are government entities.

9. There are other government bodies, such as PGPA bodies, courts and tribunals, State or Territory government entities (including local government) and multi-agency taskforces (other government bodies) who are a part of the workings of government but are not authorised under the primary law to receive director identification number (director ID) information.

Director ID – background

10. The Australian Government has committed to simplifying its interactions with business to support growth, innovation and employment. As part of this initiative, the Government is developing a modern approach to managing Commonwealth registers to provide more flexible, user-friendly and streamlined registry services.
11. *The Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020* inserts disclosure provisions into the Corporations Act which largely mirror those provisions included within the Registers Act and includes provisions designed to replace existing registry law secrecy provisions, serving to protect information held by the Registrar. Broadly, the new law provides that a recording or disclosure is authorised in the following circumstances:
 - (a) 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;
 - (b) 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;
 - (c) 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, under an intergovernmental agreement with the Commonwealth;
 - (d) each person to whom the information relates consents to the disclosure; or
 - (e) the disclosure is in accordance with the disclosure framework made by the Registrar.

Note: The Registers Act does not include (c) above, that paragraph is exclusive to the Corporations Act only.
12. Government entity is defined at section 9 of the Corporations Act and section 5 of the Registers Act as having the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*. 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.
13. Explicit authorisations to disclose protected information in accordance with intergovernmental agreements to State or Territory officials for the performance of their official duties are contained in section 1270L of the Corporations Act.
14. There are a number of bodies that do not fall within the definition of government entity or within the disclosure provisions of the primary law. While disclosures to these other government bodies are not authorised by the primary law, this would appear to be an unintended consequence.

15. This instrument uses terms defined in section 4 of this instrument. Subparagraph 13(1)(b) of the Legislation Act has the effect that expressions have the same meaning in this instrument as in the Registers Act, Corporations Act and the CATSI Act as in force from time to time.

Director ID (other government bodies) disclosure framework

16. The Registrar may make a disclosure framework that provides, among other things, for the disclosure of protected information under the Corporations Act and the Registers Act, in this case for director ID information, where the Registrar is satisfied that the benefits of disclosure would outweigh the risks of disclosure (taking into account any mitigation of risks). The disclosure of director ID information under paragraph 1270L(3)(f) of the Corporations Act and paragraph 17(3)(e) of the Registers Act must meet the requirements of this instrument.
17. A person, who is or has been in official employment is prohibited from disclosing protected information if the protected information was obtained by the person in the course of their official employment unless one of the exceptions in subsection 1270L(3) of the Corporations Act or subsection 17(3) of the Registers Act applies.
18. Subsection 1270L(3) of the Corporations Act and subsection 17(3) of the Registers Act authorise disclosure of protected information to a person in official employment with a government entity in relation to the performance or exercise of its functions or powers. However, there are bodies, being Commonwealth entities and Commonwealth companies within the meaning of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which do not fall within the meaning of government entity within section 9 of the Corporations Act.
19. PGPA bodies include, but are not limited to, non-corporate Commonwealth entities, corporate Commonwealth entities and Commonwealth companies. PGPA bodies may include, but are not limited to:
 - (a) Australian Securities and Investment Commission (ASIC);
 - (b) Australian Prudential Regulation Authority (APRA);
 - (c) Reserve Bank of Australia;
 - (d) Commonwealth Scientific and Industrial Research Organisation (CSIRO);
 - (e) Australian Institute of Health and Welfare (AIHW)
 - (f) Australian Postal Corporation;
 - (g) Defence Housing Australia.
20. It is appropriate to ensure that director ID information may be disclosed to PGPA bodies to enable those bodies to exercise their functions or powers. This instrument provides the ability to disclose director ID information to PGPA bodies. The disclosure of director ID information is authorised by this instrument and under paragraph 1270L(3)(f) of the Corporations Act and paragraph 17(3)(e) of the Registers Act if the disclosure is:
 - (a) made to a person in the course of the performance of duties of the person's official employment by a PGPA body; and
 - (b) in relation to the performance or exercise of the functions and powers of that PGPA body.
21. The PGPA Act is a framework covering governance, accountability, performance and the use of resources across Commonwealth bodies. Commonwealth entities and companies are government bodies that are subject to the PGPA Act. As at 1 July 2020 the Department of

Finance identified a list of 187 Commonwealth entities and companies whose financial governance was found under the PGPA Act. This list forms the starting point for identifying Commonwealth entities and companies for the purpose of providing director ID information collected under the Corporations Act.

22. Subject to section 1270Q of the Corporations Act and section 21 of the Registers Act, the disclosure of director ID information to a court or tribunal is authorised by this instrument. Section 1270Q of the Corporations Act and section 21 of the Registers Act exempts a person from being required to provide protected information to a court or tribunal except where the disclosure is necessary for giving effect to a taxation law or an Australian business law.
23. Subsection 1270L(3) of the Corporations Act authorises disclosure of protected information to a person who is an employee of a State or Territory or an authority of a State or Territory in relation to the performance or exercise of their functions or powers and the disclosure is in accordance with a corporate regulation agreement with the Commonwealth. However, this does not include director ID information as there is no corporate regulation agreement between the States and Territories and the Commonwealth in respect of director ID. In addition, the Registers Act does not authorise disclosure to a person who is an employee of a State or Territory or authorities of States or Territories.
24. It is appropriate that director ID information collected under the Corporations Act and the CATSI Act can be disclosed to an employee of a State or Territory (including a local government body) to enable those bodies to exercise their functions and powers. This instrument provides the ability to disclose director ID information to an employee of a State or Territory (including a local government body) for the performance or exercise of the functions or powers in relation to a State or Territory government entity (including a local government body).
25. Disclosure of director ID information to a taskforce officer of a multi-agency taskforce which are not otherwise authorised will be authorised by this instrument. In particular, director ID information can be disclosed to a multi-agency taskforce if the record or disclosure is for or in connection with a purpose of the multi-agency taskforce for law enforcement and related purposes. The *Taxation Administration Regulations 2017* prescribe taskforces for the purposes of this disclosure.
26. The disclosure of director ID information to other government bodies will not require payment of a fee and will generally be provided electronically.
27. While this instrument permits and authorises the disclosure of director ID information to other government bodies, nothing in the instrument requires or compels such a disclosure.

Other matters

28. Subsection 1270N(1) of the Corporations Act and subsection 19(1) of the Registers Act provides that an individual may request their director ID information is not disclosed under the disclosure framework.
29. This instrument provides that individuals making such a request must provide information to demonstrate how the detrimental consequence to the individual of disclosure outweighs the benefit of the disclosure to other government bodies for performing their functions. Requiring individuals to establish this is necessary as it is generally not appropriate to suppress any director ID information from other government bodies given the importance of these bodies to the function of government and to the Australian community.

Risks and benefits

30. Subsection 1270K(5) of the Corporations Act and subsection 16(5) of the Registers Act provides that the disclosure framework must only provide for the disclosure of protected information if 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).
31. 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.
32. The director ID regime will also offer benefits beyond combating illegal phoenix activity. 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.
33. This instrument authorises the disclosure of director ID information to other government bodies, to allow these bodies to continue to undertake their functions and powers. Each body will have their own mechanisms for the prevention of misuse of this information which addresses any risk of the misuse of director ID information by these bodies or individuals they employ.
34. Broader public benefits include reduced operating costs because each individual body will not be required to determine if they are a government entity or other government body. This will provide for greater efficiency of other government bodies and enhancements to regulation and community support activities which includes the detection of fraud and business misconduct which will result in a level playing field for individuals and businesses.
35. On balance, the benefits of the disclosure of Director ID information to enable other government bodies to undertake their functions and powers are significant and outweigh potential risks of the misuse of director ID information.

Repeal of *Corporations (Director Identification Number) Disclosure Framework (PGPA Bodies, Courts and Tribunals) 2021*

36. This instrument repeals the *Corporations (Director Identification Number) Disclosure Framework (PGPA Bodies, Courts and Tribunals) 2021* (F2021L00455) registered on 16 April 2021. This instrument expands on the government bodies the Registrar can disclose protected information to and has been written to include director ID information collected under the CATSI Act in addition to the Corporations Act.
37. Therefore, *Corporations (Director Identification Number) Disclosure Framework (PGPA Bodies, Courts and Tribunals) 2021* is not necessary.

Consultation

38. Subsection 17(1) of the Legislation Act requires, before the making of a legislative instrument, that the Registrar is satisfied that appropriate and reasonably practicable consultation has been undertaken.
39. 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.

40. 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
41. 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

A New Tax System (Australian Business Number) Act 1999
Acts Interpretation Act 1901
Business Names Registration Act 2011
Commonwealth Registers Act 2020
Corporations (Aboriginal and Torres Strait Islander) Act 2006
Corporations Act 2001 Human Rights (Parliamentary Scrutiny) Act 2011
Legislation Act 2003
National Consumer Credit Protection Act 2009
Parliamentary Services Act 1999
Public Governance, Performance and Accountability Act 2013
Public Service Act 1999
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 (Other Government Bodies) Disclosure Framework 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

The introduction of a director ID requirement is a Commonwealth Government initiative 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 director ID will require all directors to confirm their identity, and a unique identifier will be assigned for each individual who consents to being appointed a director.

The *Corporations Act 2001* (Corporations Act) and *Commonwealth Registers Act 2020* (Registers Act) authorise disclosure of protected information (director ID information) to government entities in relation to the performance or exercise of their functions and powers.

There are other government bodies, such as PGPA bodies, courts and tribunals, employees of State or Territory government entities (including local government) and multi-agency taskforces (other government bodies) who are a part of the workings of government but are not authorised under the primary law to receive director identification number (director ID) information.

This instrument provides the Registrar with the discretion to disclose director identification number (director ID) information to these other government bodies in the same way as government entities authorised in the Corporations Act or Registers Act.

It is appropriate to ensure that relevant government bodies have access to the director ID information they require to exercise their functions or powers.

Human rights implications

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 to protect those who are negatively affected by such fraudulent behaviour. The director ID regime will allow simpler more effective tracking of individuals and their corporate history. It will also reduce time and cost for administrators and liquidators, thereby improving the efficiency of the insolvency process. In addition, the 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 disclosure of director ID information as authorised by this instrument will engage the right to privacy because it provides for the disclosure of information including personal information within the meaning of the *Privacy Act 1988*.

To any extent to which the disclosure 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 disclosure of information is in pursuit of the legitimate objective identified and is rationally connected and proportionate to the objective sought, being the administration of the director ID regime and the functioning of government.

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, this instrument authorising the disclosure of director ID information to other government bodies does not unnecessarily and unreasonably restrict an individual's right to privacy. Information is only disclosed to the extent required to achieve the legitimate objective of administering the director ID requirement or the functioning of government, with the limitation reasonable, necessary and proportionate.

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 right to privacy is 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. Therefore, the disclosure of director ID information to other government bodies 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 and the functioning of government.