



Explanatory Statement

National Consumer Credit Protection – Transitional Registry Operations Data Standard 2022

General Outline of Instrument

1. This instrument is made under subsection 212H(1) of the *National Consumer Credit Protection Act 2009*.
2. This instrument provides data standards relating to the functions and powers of the Registrar in respect of registry operations under the *National Consumer Credit Protection Act 2009* and for the continued operation of registry services under current practices (that is through Australian Investment Securities Commission (ASIC) forms and systems) after the commencement of this instrument.
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, 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.

Date of effect

5. This instrument commences on 22 June 2022.

What is the effect of this instrument

6. The effect of this instrument is to provide for data standards that ensure the continued operation of registry services in accordance with current practices under the *National Consumer Credit Protection Act 2009* from the date of effect. This includes:
 - a) how actions may be taken by the Registrar or another person,
 - b) how the Registrar holds, records and stores registry information, and
 - c) how the Registrar will use registry information.
7. To ensure the continued operation of registry services in accordance with current practices this instrument authorises actions in relation to registry provisions being taken using notices, forms or systems or any other means available to or in relation to ASIC that was available immediately before the commencement of this instrument.

Compliance cost assessment

8. Minor - There will be no additional regulatory impacts as the instrument is minor and machinery in nature.

Background – The need for transitional instruments

9. The *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020* (Registries Modernisation Act) provides for the transfer of registry functions and powers from ASIC to the Registrar, as well as other changes to modernise the registry law. The amendments in the Registries Modernisation Act commence from a date fixed by proclamation or, if not commenced prior to 22 June 2022, from 22 June 2022 (auto-commencement).
10. The inclusion of an auto-commencement date in the Registries Modernisation Act was a technical requirement designed to ensure that laws passed by Parliament are not left un-commenced because the amendments were never commenced by proclamation.
11. However, it was intended that the Registrar would assume legal responsibility for registry functions and power with the progressive transfers of the registers onto the new Australian Business Registry Services (ABRS) platform in line with the Modernising Business Registers (MBR) program delivery.
12. *Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022* (Bill) was introduced in the previous parliament to defer the auto-commencement date until 1 July 2024 (or an earlier date specified by proclamation) and enable the progressive transfer of registers. However, the Bill lapsed when the federal election of 2022 was called.
13. To ensure business continuity, this transitional data standard allows actions to be taken through ASIC notices, forms, or systems or any other means by which the action would have been done by ASIC prior to the commencement of this instrument.
14. It is intended that this instrument will be transitional, as consideration is given to legislative options to align the commencement of relevant law with the delivery of the MBR program. It is expected to only operate until legislative changes to support the delivery of the MBR program are in place, at which time it is anticipated that this instrument will be repealed.

Definitions

15. The instrument defines a number of terms for the purpose of ensuring that registry practices that operated before the commencement of this instrument will continue to operate in the same way under this instrument.
16. This includes the definition of old NCPP Act and old NCCP instrument, being the *National Consumer Credit Protection Act 2009* or any instrument made under the *National Consumer Credit Protection Act 2009*, as in force immediately before the commencement of this instrument.
17. Registry provision is also defined to identify registry functions and powers of ASIC under the old NCCP Act or an old NCCP instrument which transferred to the Registrar under the Registries Modernisation Act.

How Actions relating to matters relating to functions and powers of the Registrar may be taken by the Registrar or another person

18. After the commencement of this instrument, as outlined in paragraph 5, the Registrar or a person meets the requirements of this instrument in relation to registry provisions if the action is taken in accordance with the requirements (if any) of the old NCCP Act or an old NCCP instrument.
19. The instrument makes clear that taking an action in accordance with a requirement under the old NCCP Act or an old NCCP instrument includes taking an action in accordance with the manner, form, or practice in which such a requirement could be complied with prior to the commencement of this instrument.
20. To avoid doubt, action includes the doing or omission of:
 - (a) deciding, notifying, issuing, publishing, giving; or
 - (b) asking, requesting, requiring, directing; or
 - (c) applying, responding, providing, lodging; or
 - (d) accepting, recording, holding, maintaining; or
 - (e) certifying, providing extracts; or
 - (f) accepting payment or making payment.
21. The instrument makes clear that the taking of an action may be done using notices, forms or systems, or any other means available to ASIC under the old NCCP Act or an old NCCP instrument.
22. This ensures that a person making an application, providing information, or lodging information may continue to use the forms or systems in place immediately prior to commencement of this instrument. The collection of associated fees will also continue to be done through ASIC's systems and in the manner in place immediately prior to commencement.
23. Further, under this instrument a document or a copy of a document that purports to be an extract of information held by ASIC in relation to registry operations will be an extract of information held by the Registrar for evidentiary purposes under section 212S of the *National Consumer Credit Protection Act 2009*.
24. This also ensures that the Registrar may continue to make decisions and issue notices using the forms or systems in place immediately prior to commencement of this instrument. This includes that decisions made through ASIC's computer systems will satisfy section 212F of the *National Consumer Credit Protection Act 2009* (which relates to assisted decision making) where the Registrar has control over the processes for assisting decision making in ASIC's computer systems.

How the Registrar will hold, record and store registry information

25. During the transitional period the Registrar may hold, record and store registry information on ASIC's systems. This ensures that there is no disruption in current registry practices and that users of registry services may continue to use ASIC systems to lodge documents and requests.

26. A records authority is a legal instrument which allows agencies to make decisions about keeping, destroying or transferring Australian Government Records. Records Authorities are used to determine how long to keep records and provide permission for the destruction of records once this time has passed. During the transitional period Records Authorities may be issued by the National Archives of Australia in accordance with the *Archives Act (1983)*.

How the Registrar uses registry information

27. The Registrar may use information, provided generated or held in accordance with this instrument:
- (a) to make a record of the information collected or generated; or
 - (b) to maintain the accuracy of information held by the Registrar; or
 - (c) for the performance of the Registrar's functions and the exercise of the Registrar's powers.
28. The Registrar may use ASIC's systems during the transitional period for the purpose of performing these functions and powers under the *National Consumer Credit Protection Act 2009*.
29. Information collected under this instrument is 'protected information' within the meaning of subsection 5(1) of the *National Consumer Credit Protection Act 2009* and is subject to secrecy and disclosure provisions in Division 1A, Subdivision C of the *National Consumer Credit Protection Act 2009*.

Consultation

30. 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.
31. Targeted consultation on the draft legislative instrument and explanatory statement was undertaken for a period of 2 weeks with the Modernising Business Registers Business Advisory Group.¹
32. Targeted consultation was undertaken to ensure that the instrument could be made prior to 22 June 2022 and was reasonable and appropriate in the timeframe available as the instrument is machinery in nature. Further the MBR Program has also been subject to extensive public consultation and has received broad support from industry and government stakeholders.
33. Comments from Modernising Business Registers Business Advisory Group members were supportive of the instrument, with suggestions for minor edits to the explanatory statement to provide further clarity.

¹ See [Modernising Business Registers Business Advisory Group | Australian Taxation Office \(ato.gov.au\)](#) for complete list.

Legislative references

Acts Interpretation Act 1901

Archives Act 1983

Human Rights (Parliamentary Scrutiny) Act 2011

Legislation Act 2003

National Consumer Credit Protection Act 2009

Privacy Act 1988

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*

National Consumer Credit Protection—Transitional Registry Operations 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 provides data standards relating to the functions and powers of the Registrar in respect of registry operations under the *National Consumer Credit Protection Act 2009* and for the continued operation of registry services under current practices. This includes:

- a) how actions may be taken by the Registrar or another person,
- b) how the Registrar holds, records and stores registry information, and
- c) how the Registrar will use registry information.

To ensure the continued operation of registry services in accordance with current practices this instrument authorises actions in relation to registry provisions being taken using notices, forms or systems or any other means available to ASIC that was available immediately before the commencement of this instrument.

Human rights implications

This data standard potentially engages the right to privacy.

Engagement on the right of 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.

This instrument will engage the right to privacy because it provides for the collection of information, including personal information within the meaning of the *Privacy Act 1988*. The Registrar can also make a record of the information collected or generated, maintain the accuracy of information held by the Registrar; and perform the Registrar's functions and the exercise of the Registrar's powers. This instrument may use personal information to maintain the accuracy of the information held by the Registrar or in the performance of the Registrar's functions and the exercise of the Registrar's powers.

Further, allowing the Registrar to collect information to maintain the register is a positive, noting that the Australian Privacy Principles (APP) in the *Privacy Act 1988* requires an APP entity (of which the Registrar is one) 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.

Handling of information

Information given to, or otherwise obtained or generated by the Registrar as a result this instrument may be stored in a secure platform, being ASIC's systems. The Registrar will take steps to protect the personal information held about individuals against loss, unauthorised access, use, modification or disclosure and other misuse.

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 to ensure legislative requirements and community expectations regarding privacy are met.

There will be no change in how information is collected and used after the commencement of this instrument to how it was collected or used previously.

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 *National Consumer Credit Protection Act 2009*, 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 this instrument is ensure the continued operation of registry services in accordance with current practices and authorises actions in relation to registry provisions being taken using notices, forms or systems or any other means available to ASIC that was available immediately before the commencement of this instrument.