
COMMONWEALTH REGISTERS BILL 2018
TREASURY LAWS AMENDMENT (REGISTRIES MODERNISATION AND OTHER MEASURES)
BILL 2018

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ABN Act	<i>A New Tax System (Australian Business Number) Act 1999</i>
ASIC	Australian Securities and Investments Commission
Business Names Act	<i>The Business Names Registration Act 2011 and the Business Names Registration (Transitional and Consequential Provisions) Act 2011</i>
Commissioner	Commissioner of Taxation
Corporations Act	<i>Corporations Act 2001</i>
Corporations Regulations	<i>Corporations Regulations 2001</i>
Credit Act	<i>National Consumer Credit Protection Act 2009</i>
Credit Regulations	<i>National Consumer Credit Protection Regulations 2010</i>
Fees Acts	<i>Business Names Registration (Fees) Act 2011; Business Names Registration (Fees) Act 2011; National Consumer Credit Protection (Fees) Act 2009; Superannuation Auditor Registration Imposition Act 2012</i>
new Act	The provisions of the <i>Commonwealth Registers Bill 2018</i> together with the amendments in Part 1 of Schedule 1 of the <i>Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2018</i> ¹
registrar	The Commonwealth body appointed to administer the new registry regime under the new Act
SMSF	Self-managed superannuation fund

¹ These amendments replicate the provisions of the Commonwealth Registers Bill in the Corporations Act, Credit Act, and Business Names Act.

SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
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Chapter 1

Modernisation of Commonwealth registers

Outline of chapter

1.1 The legislative package creates a new Act called the *Commonwealth Registers Act 2018* (the new Act) and makes related amendments² to a suite of existing laws to create a new Commonwealth business registry regime. It sets out:

- what information is subject to the new regime;
- who may be appointed to administer the new regime as its registrar;
- the functions and powers of the registrar;
- how the registrar performs its functions and exercises its powers;
- the framework for protecting and disclosing information held by the registrar; and
- other matters that support the new regime.

Context of amendments

1.2 The Australian Government has committed to simplifying its interactions with business to support growth, innovation and employment.

1.3 The National Business Simplification Initiative, announced in 2016, aims to reduce the time that businesses spend complying with regulations and interacting with government so that they can focus on growing their business, creating more jobs, and developing new products and market opportunities. The Initiative is a Commonwealth led agreement between federal, state and territory governments to work together to make it simpler to do business in Australia.

1.4 As part of the Initiative, the Government is developing a modern approach to managing Commonwealth registers to provide more user-friendly and streamlined registry services. The initial focus of this modernisation process is on the registers kept by ASIC as well as the Australian Business Register, which is kept by the Commissioner of Taxation (Commissioner).

Summary of new law

1.5 The new law facilitates a modern government registry regime that is flexible, technology neutral and governance neutral. The regime initially applies to the business registers administered by ASIC and the Australian Business Register. Additional government registers may be brought into the regime by future legislative reforms.

² These related amendments fall into two categories. First, amendments to the Corporations Act, the Credit Act and the Business Names Act that replicate the new Act almost in its entirety with no substantive differences. These replications are included for constitutional reasons related to the terms upon which the states referred power to the Commonwealth for relevant matters. These terms require amendments relying on the referrals to be made to the Commonwealth Acts that were tabled in state parliaments in connection with each respective referral. All references in this memorandum to the 'the new Act' include the replicated provisions in the Corporations Act, Credit Act and the Business Names Act unless indicated otherwise. Second, amendments made to a number of Acts as a result, or in support, of the new regime. These amendments are referred to as 'consequential amendments' in this memorandum.

1.6 Under the new regime the Minister appoints an existing Commonwealth body to be the registrar. Different registrars can be appointed for different functions or powers of the registrar.

1.7 The functions and powers of the registrar are largely set out in existing Commonwealth laws. In particular, most powers and functions are set out in the Commonwealth acts that contain the registers being brought into the new regime. These acts include the: Corporations Act; the ABN Act; the Business Names Act; the Credit Act; and, the SIS Act.

1.8 The registrar performs its functions and exercises its powers in accordance with the data standards and other Commonwealth laws. The data standards are disallowable instruments made by the registrar. They may deal with a variety of matters including what information may be collected for the purposes of performing the registrar's functions, how such information is to be given to the registrar, and how information held by the registrar is to be stored.

1.9 The new law provides for the protection and disclosure of information held by the registrar. It is an offence for an official to disclose information held by the registrar unless the disclosure is authorised. A disclosure is authorised where: it is for the purposes of the new registry regime; it happens in the course of the performance of an official's duties; each person to whom the information relates consents to the disclosure; the information is disclosed to a government agency for the performance of its functions; or, the benefits associated with the disclosure outweigh the risks (including privacy risks) after those risks have been mitigated.

1.10 All decisions made by the registrar under the new Act are reviewable by the Administrative Appeals Tribunal except those made by disallowable instrument.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Registry information is held by the Government body which is appointed by the Minister as registrar. The information is subject to uniform rules that are flexible, technology neutral and governance neutral.	There are a series of specific registers held by ASIC and the Commissioner. The rules applying to these registers are prescriptive and are not uniform, technology neutral or governance neutral.

Detailed explanation of new law

1.11 The legislative package creates the new Act and makes consequential amendments to a suite of existing laws to create a new Commonwealth business registry regime. It sets out:

- what information is subject to new regime;
- who may be appointed to administer the new regime as its registrar;
- the functions and powers of the registrar;
- how the registrar performs its functions and exercises its powers;
- the framework for protecting and disclosing information held by the registrar; and
- other matters that support the new regime.

1.12 The objective of the new regime is to facilitate a modern government registry regime that is flexible, technology neutral and governance neutral. The new Act includes a simplified outline of its contents to assist readers understand the new regime. *[Clauses 3 and 4 of the Commonwealth Registers Bill 2018]*

What information is subject to the new regime?

1.13 Initially, information related to 35 existing business registers would be subject to the new registry regime. The existing business registers comprise 34 registers currently kept by ASIC and the Australian Business Register, which is currently kept by the Commissioner. Table 1.1 lists the registers being brought into the new regime and the current legislative provision(s) that establish the register.

Table 1.1 – Registers being brought into the new regime

<i>No.</i>	<i>Current provision(s)</i>	<i>Register</i>
Entity name/identifier/information registers		
1.	Section 24 of the ABN Act	Australian Business Register
2.	Sections 118, 601DB and 1378 of the Corporations Act	ACN register
3.	Section 22 of the Business Names Act	Business Names Register
4.	Section 601CB of the Corporations Act	Australian registrable bodies register – Australian bodies
5.	Section 601CE of the Corporations Act	Australian registrable bodies register – Foreign companies
6.	Section 152 of the Corporations Act	Reserved names register
7.	Section 601EB of the Corporations Act	Managed investment scheme register
8.	Part 10.13 of the Corporations Act (preserving the operation of the repealed Chapter 2K of that Act) ³	Company charges register*
9.	Section 213 of the Credit Act and subregulation 29(1) of the Credit Regulations	Credit registers – Licensees
10.	Section 213 of the Credit Act and subregulation 29(3) of the Credit Regulations	Credit registers – Credit representatives
11.	Section 213 of the Credit Act and subregulation 29(4) of the Credit Regulations	Credit registers – Registered persons
12.	Section 213 of the Credit Act and Regulation 30A of the Credit Regulations	Credit register of unlicensed carried over instrument lenders
Registers of banned or disqualified persons		
13.	Section 1274AA of the Corporations Act 2001	Register of disqualified company directors and other officers
14.	Section 92AA of the Corporations Act and subregulation 7.6.06(1) of the Corporations Regulations	Register of banning orders under Division 8 of Part 7.6 of the Corporations Act
15.	Section 92AA of the Corporations Act and subregulation 7.6.06(2) of the Corporations Regulations	Register of disqualification orders under Division 8 of Part 7.6 of the Corporations Act

³ The transitional arrangement ends on 30 January 2019. The registrar may continue to hold historical data after this date.

16.	Regulation 10.2.96 of the Corporations Regulations ⁴	Banned securities representatives register*
17.	Regulation 10.2.96 of the Corporations Regulations ⁵	Banned futures representatives register*
18.	Section 213 of the Credit Act and subregulation 30(1) of the Credit Regulations	Credit register of persons against whom a banning order is made
19.	Section 213 of the Credit Act and subregulation 30(2) of the Credit Regulations	Credit register of persons against whom a disqualification order is made
20.	Section 213 of the Credit Act and subregulation 30(3) of the Credit Regulations	Credit register of persons who are banned under a law of a State or Territory
21.	Section 128K of the SIS Act	Register of Disqualified self-managed superannuation fund (SMSF) auditors
Professional registers		
22.	Section 922A of the Corporations Act and subregulation 7.6.05(1) of the Corporations Regulations	Register of financial services licensees
23.	Section 922A of the Corporations Act and subregulation 7.6.05(2) of the Corporations Regulations	Register of authorised representatives of financial services licensees
24.	Section 922Q of the Corporations Act	Register of financial advisers ⁶
25.	Section 1285 of the Corporations Act	Register of auditors
26.	Section 15-1 of Schedule 2 to the Corporations Act ⁷	Register of liquidators
27.	Section 283BCA of the Corporations Act	Register relating to trustees for debenture holders
28.	Section 128J of the SIS Act	Register of approved SMSF auditors
29.	Section 1274 of the Corporations Act and regulation 7.6.02AGA of the Corporations Regulations	Carbon registrants register
30.	Regulation 10.2.96 of the Corporations Regulations ⁸	Register of futures licensees*
31.	Regulation 10.2.96 of the Corporations Regulations ⁹	Register of licence holders*
32.	Regulation 10.2.96 of the Corporations Regulations ¹⁰	Register of securities representatives*

⁴ Register originally kept by virtue of section 789 of Corporations Act (repealed by Act No. 122) of 2001 and before that by section 789 of the Corporations Law (as set out in section 82 of the *Corporations Act 1989*).

⁵ Register originally kept by virtue of section 789 of Corporations Act (repealed by Act No. 122) of 2001 and before that by section 789 of the Corporations Law (as set out in section 82 of the *Corporations Act 1989*).

⁶ Described as the 'relevant provider' register in the regulations.

⁷ Formally kept under section 1286 of the Corporations Act. Section 1286 was repealed in 2016 by the *Insolvency Law Reform Act 2016*, which inserted section 15-1 of Schedule 2 to the Corporations Act.

⁸ Regulation 10.2.96 preserves the operation of subsection 1155(1) of the Corporations Act as originally enacted.

⁹ Regulation 10.2.96 preserves the operation of subsection 789(1) of the Corporations Act as originally enacted.

33.	Regulation 10.2.96 of the Corporations Regulations ¹¹	Register of foreign insurance agents*
34.	Regulation 10.2.96 of the Corporations Regulations ¹²	Register of general insurance brokers*
35.	Regulation 10.2.96 of the Corporations Regulations ¹³	Register of life insurance brokers*

* Historical register. Registrar holds the information contained in the register and may exercise any functions and powers preserved by transitional arrangements.

1.14 Additional registers may be brought into the new regime by future legislative reforms.

Who may be appointed registrar?

1.15 Under the new regime the Minister may, by notifiable instrument, appoint any existing Commonwealth body to be the registrar. **Commonwealth body** is a defined term. It is defined as meaning:

- an Agency (within the meaning of the *Public Service Act 1999*)¹⁴;
- a body, whether incorporated or not, established for a public purpose by or under a law of the Commonwealth; and
- a person: holding or performing the duties of an office established by or under a law of the Commonwealth; or holding an appointment made under a law of the Commonwealth. [*Definition of ‘Commonwealth body’, Clause 5, and subclause 6(1) of the Commonwealth Registers Bill 2018, items 1, 5, 8, 10, 14, 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, section 3 and paragraphs 62A(a) of the Business Names Act, section 9 and subsection 1250(1) of the Corporations Act, and section 5 and paragraph 16A(a) of the Credit Act*]

1.16 Only a Commonwealth body can be appointed as the registrar. Other bodies, such as a state government body or a private body, cannot be appointed as the registrar.

1.17 Different Commonwealth bodies can be appointed registrar for different functions of the registrar. Where this occurs, a reference to ‘registrar’ in the new regime that does not relate to particular functions or powers of the registrar is taken to be a reference to each body appointed as registrar. This enables a shared services approach to be adopted where such an approach would facilitate the efficient and effective administration of the new regime. [*Subclauses 6(2) and 6(3) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, paragraphs 62A(b) and (c) of the Business Names Act, subsections 1250(2) and (3) of the Corporations Act, and paragraphs 16A(b) and (c) of the Credit Act*]

What are the functions and powers of the registrar?

1.18 The new law sets out the functions and powers of the registrar.

1.19 A body’s functions comprise those actions or activities that are properly performed by the body. The new law provides that the functions of the registrar are:

¹⁰ Regulation 10.2.96 preserves the operation of a register kept for the purposes of maintaining information obtained under section 791 of the Corporations Act as originally enacted.

¹¹ Regulation 10.2.96 preserves the operation of section 31E of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement.

¹² Regulation 10.2.96 preserves the operation of subsection 22(1) of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement.

¹³ Regulation 10.2.96 preserves the operation of subsection 22(1) of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement.

¹⁴ Section 7 of the *Public Service Act 1999* defines Agency to mean: a Department, an Executive Agency; or a Statutory Agency. Section 4A of the *Taxation Administration Act 1953* provides that for the purposes of the Public Service Act, the Commissioner and the APS employees assisting the Commissioner together constitute a Statutory Agency.

- such functions as are conferred on the registrar by a law of the Commonwealth;
- such functions as may be prescribed by rules made by the Minister; and
- such functions as are incidental to the functions mentioned above. [*Clause 7 of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, section 62B of the Business Names Act, section 1251 of the Corporations Act and section 211B of the Credit Act*]

1.20 A power is something a body can do. The new law ties the powers of the registrar to its functions. In particular, it provides that the powers of the registrar include:

- such powers as are conferred on the registrar in relation to its functions by a law of the Commonwealth; and
- the power to do all things necessary or convenient to be done for or in connection with the performance of those functions. [*Clause 8 of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, section 62C of the Business Names Act, section 1252 of the Corporations Act and section 211C of the Credit Act*]

Most functions and powers are set out in existing laws

1.21 The functions and powers of the registrar are largely set out in existing Commonwealth laws. In particular, most are set out in the existing provisions of primary and subordinate legislation that relate to the registers being brought into the new regime (see Table 1.1). These provisions are contained in various parts of the Corporations Act, the Corporations Regulations, the ABN Act, the Business Names Act, the Credit Act, the Credit Regulations, and the SIS Act.

1.22 It is not practicable to comprehensively list all of the functions and the powers that have been transferred to the registrar through amendments to existing legislation. They are set out in hundreds of consequential amendments that are made to support the new regime. However, the amended functions and powers relate to registry matters such as:

- the subject matters for which the registrar can collect information;
- how persons make applications to the registrar for certain things (for example, the allocation of an Australian Business Number);
- the ability of the registrar to assess those applications; and
- the ability of the registrar to hold information.

1.23 The consequential amendments do not create new functions and powers. Rather, they transfer existing functions and powers, which are currently allocated to specific regulators, to the registrar. Paragraphs 1.88 to 1.100 of this explanatory memorandum provide further information in relation to the consequential amendments.

Core functions and powers are set out in the new Act

1.24 Functions and powers of the registrar are also set out in the new Act which contains the core provisions of the new regime. These functions and powers apply to all information subject to the new regime. They are designed to enable the regime to apply in a holistic, consistent and flexible manner regardless of the information it contains. Examples of such functions and powers include: the registrar's ability to make data standards relating to the performance of its functions and powers; and the Registrar's ability to make a disclosure framework relating to the disclosure of protected information.

1.25 Several benefits derive from the functions and powers contained in the new Act. In particular, they overcome several undesirable features of the current registries regime. These features include:

- registers being maintained separately from each other despite sometimes holding similar information – resulting in clients having to provide the same information several times in relation to different registers;
- regulators having limited abilities to determine what information is required for each register – resulting in registers becoming outdated;
- regulators having varying abilities to determine the manner and form in which registry information is collected and the business rules associated with such collections – resulting in inefficiencies, including an inability to make full use of technology (for example, email and the internet) and to consistently and flexibly deal with incomplete or defective applications; and
- different and sometimes inconsistent rules applying to the management and use of registers – resulting in Government failing to make best use of registry data.

Additional functions may be prescribed by the rules

1.26 The Minister may prescribe additional functions for the registrar by rules made for this purpose. This ability is supported by a rule making power that enables the Minister, by legislative instrument, to make rules prescribing matters: required or permitted by the new Act to be prescribed by the rules; or, necessary or convenient to be prescribed for carrying out or giving effect to the new Act. *[Paragraph 7(c) and subclause 25(1) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, paragraph 62B(b) and subsection 62U(1) of the Business Names Act, paragraph 1251(b) and subsection 1268(1) of the Corporations Act and paragraph 211B(b) and subsection 211U(1) of the Credit Act]*

1.27 This power is intended to provide flexibility for the new regime, particularly with respect to the registrar's functions. Examples of additional functions that could be prescribed by the Minister include functions regarding the management of Commonwealth data or functions around educating the public about data resources and data security. While functions permitting the collection of additional data could be prescribed, such collections could only proceed on a voluntary basis as there is no provision for penalties for non-compliance.

1.28 Further information regarding the new rule making power more generally is contained in paragraphs 1.82 to 1.87 of this memorandum. For present purposes, it is noted that any rules made using this power (including rules prescribing additional functions for the registrar) are legislative instruments and are subject to parliamentary oversight through the disallowance process set out in the *Legislation Act 2003*.

How does the registrar perform its functions and powers?

1.29 The registrar performs its functions and powers in accordance with the data standards and other Commonwealth laws. *[Clause 15 of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, section 62K of the Business Names Act, section 1259 of the Corporations Act and section 211K of the Credit Act]*

Data standards

1.30 The new law allows the registrar to make data standards on matters relating to the performance of the registrar's functions and the exercise of the registrar's powers. The data standards may deal with a variety of registry related matters that are currently dealt with by prescriptive rules in primary legislation that are not uniform, technology neutral or governance neutral. *[Subclause 13(1) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62H(1) of the Business Names Act, subsection 1257(1) of the Corporations Act and subsection 211H(1) of the Credit Act]*

1.31 To assist readers to understand the role of the data standards, the new Act provides examples of what the data standards may cover. These examples clarify that the data standards may provide for matters such as the following:

- what information may be collected for the purposes of the performance of the registrar's functions and the exercise of the registrar's powers;

- how such information may be collected;
- the manner and form in which such information is given to the registrar;
- when information is to be given to the registrar
- how information held by the registrar is to be authenticated, verified or validated;
- how information held by the registrar is to be stored;
- the correction of information held by the registrar;
- the manner and form of communication between the registrar and persons who give information to the registrar or seek to access to information held by the registrar; and;
- integrating or linking information held by the registrar.¹⁵ [*Subclause 13(2) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62H(2) of the Business Names Act, subsection 1257(2) of the Corporations Act and subsection 211H(2) of the Credit Act*]

1.32 These examples are just an inclusive list of the matters that may be dealt with by the data standards. Their inclusion in the new Act is not intended to limit the matters that may properly be dealt with by the data standards. [*Subclause 13(2) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62H(2) of the Business Names Act, subsection 1257(2) of the Corporations Act and subsection 211H(2) of the Credit Act*]

1.33 The new Act clarifies that the data standards may include different provisions relating to different functions or powers of the registrar. This ensures that the data standards do not need to adopt a ‘one size fits all’ approach to the administration of registry functions and powers. The variety of functions and powers given to the registrar necessitates that the registrar be able to tailor data standards so that they are appropriate for the different purposes for which they may be made. [*Subclause 13(3) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62H(3) of the Business Names Act, subsection 1257(3) of the Corporations Act and subsection 211H(3) of the Credit Act*]

1.34 This approach of enabling the registrar to make data standards facilitates the efficient and effective administration of registry services. Data standards can be readily amended over time to keep up with changes in best practice, industry preference, the needs of those using registry services, and technology. The flexibility offered also enables a ‘tell us once’ approach to the collection of information, minimising the number of interactions clients have with the registrar. Currently, a reporting entity may have to provide the same information to multiple registers increasing regulatory burden and the cost of administering registry services.

1.35 To ensure these benefits can be realised the new law includes provisions that ensure the data standards may request information in a wide variety of ways that make best use of available technology. In particular, the new law expressly clarifies that:

- the data standards may provide that information is to be given to the registrar in electronic form, or any other specified form; and,
- a requirement under a law that information is to be provided to the registrar in a particular form or manner (however described), including a requirement that information is to be “lodged” or “furnished”, is not taken to restrict by implication what the data standards may provide in relation to that information. [*Clause 14 of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, section 62J of the Business Names Act, section 1258 of the Corporations Act and section 211J of the Credit Act*]

¹⁵ The ability to integrate and link information is important to the effective and efficient administration of the new registry regime given that the data being brought into the new regime is currently maintained on a number of discrete registers and includes historical data.

1.36 The new law includes provisions designed to promote the smooth transition of registry functions and powers from one registrar to another. As already noted, under the new regime the Minister may appoint any government body as registrar for particular functions and powers and may change the appointed body at any time. Should the body appointed as registrar for particular functions and powers change, the new law provides that any existing data standards continue to apply until the new registrar has prepared replacement standards. *[Subclauses 13(4) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62H(4) of the Business Names Act, subsection 1257(4) of the Corporations Act and subsection 211H(4) of the Credit Act]*

1.37 Data standards are disallowable instruments for the purposes of the *Legislation Act 2003*. Under that Act, legislative instruments and their explanatory statements must be tabled in both Houses of the Parliament within six sitting days after the date of registration of the instrument on the Federal Register of Legislation. Once tabled, the instruments will be subject to the same level of parliamentary scrutiny as regulations (including consideration by the Senate Standing Committee on Regulations and Ordinances), and notice of a motion to disallow the instruments may be given in either House of the Parliament within 15 sitting days after the date the instruments are tabled.

Other Commonwealth laws

1.38 The registrar must also perform its functions and exercise its powers in compliance with any other applicable law of the Commonwealth. These laws fall into two broad categories. *[Clause 15 of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, section 62K of the Business Names Act, section 1259 of the Corporations Act and section 211K of the Credit Act]*

1.39 The first category relates to current laws governing the registers being brought into the new regime. These laws will continue to apply in relation to functions and powers assigned to the registrar until such time as data standards are made in relation to them. This ensures the smooth transition of functions and powers into the new registry regime in circumstances where data standards in relation to those functions and powers do not yet exist. In particular, it avoids any possibility of a situation arising where there is an absence of law in relation to how registry functions and powers are performed. *[Subclause 15(1) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62K(1) of the Business Names Act, subsection 1259(1) of the Corporations Act and subsection 211K(1) of the Credit Act]*

1.40 The second category relates to other laws of the Commonwealth that properly apply to the registrar. These include laws of general application such as those relating to freedom of information, archiving of commonwealth records, good governance, and the management of financial resources. *[Subclause 15(2) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62K(2) of the Business Names Act, subsection 1259(2) of the Corporations Act and subsection 211K(2) of the Credit Act]*

How is information held by the registrar protected and disclosed?

1.41 The new law provides for the protection and disclosure of information held by the registrar, including disclosure via a disclosure framework made by the registrar.

Protection of registry information

1.42 It is an offence for an official to record or disclose information held by the registrar unless the recording or disclosure is authorised. In particular, unless authorised, a person commits an offence if:

- the person is, or has been, in official employment¹⁶;

¹⁶ **Official employment** is defined by the new law to capture persons who may have access to information under the new regime because they are employed by the Commonwealth or are a delegate of the registrar. In particular, a person is in official employment for the purposes of the new law if they are: appointed or employed by the

- the person makes a record of information, or discloses information to another person; and
- the information is protected information¹⁷ that was obtained by the person in the course of their official employment. [*Clause 5, definitions of ‘official employment’ and ‘protected information’, and subclause 17(1) of the Commonwealth Registers Bill 2018, items 1, 5, 8, 10, 14, 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, section 3 and subsection 62M(1) of the Business Names Act, section 9 and subsection 1261(1) of the Corporations Act, and section 5 and subsection 211M(1) of the Credit Act*]

1.43 The maximum penalty for disclosing registry information in breach of this offence provision is imprisonment for two years. The penalty is consistent with comparable provisions in other Acts, including the ASIC Act¹⁸, the ABN Act¹⁹ and the *Taxation Administration Act 1953*²⁰. The principles set out in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*²¹ were also considered in determining the applicable penalty. [*Subclause 17(1) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62M(1) of the Business Names Act, subsection 1261(1) of the Corporations Act and subsection 211M(1) of the Credit Act*]

Disclosure of registry information

1.44 As mentioned above, the prohibition against recording and disclosing registry information does not apply where the recording or disclosure is authorised. A recording or disclosure is authorised if:

- the recording or disclosure is for the purposes of the new Act or happens in the course of the performance of the duties of a person’s official employment;
- 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 entity²²;
- each person to whom the information relates consents to the disclosure; or
- the disclosure is in accordance with the disclosure framework. [*Clause 5, definition of ‘government entity’, and subclause 17(2) of the Commonwealth Registers Bill 2018, items 1, 5, 8, 10, 14, 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, section 3 and subsection 62M(2) of the Business Names Act, section 9 and subsection 1261(2) of the Corporations Act, and section 5 and subsection 211M(2) of the Credit Act*]

1.45 A defendant carries an evidential burden for establishing that a recording or disclosure of registry information was authorised. To satisfy this eventual burden the defendant must adduce or point to evidence that suggests a reasonable possibility that the recording or

Commonwealth; perform services for the Commonwealth (for example, as a contractor); or exercise powers or perform functions under a delegation by the registrar.

¹⁷ **Protected information** is defined in the new law so as to capture information disclosed or obtained by a person in the course of their duties in relation to the new registers regime. In particular, the new law defines protected information to mean information: obtained by a person in the course of the person’s official employment; and, disclosed to, or obtained by, any person under, or in relation to, the new registry regime (which includes the new Act or another Commonwealth law in connection with particular functions or powers of the Registrar).

¹⁸ See section 127 of the ASIC Act.

¹⁹ See section 30 of the ABN Act.

²⁰ See section 355-25 of Schedule 1 to the *Taxation Administration Act 1953*.

²¹ Attorney-General’s Department, September 2011 edition.

²² **Government entity** is defined in the new law as having the meaning given by section 41 of the ABN Act. 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.

disclosure was authorised.²³ Once this is done, the prosecution bears the burden of proof. [Subclause 17(2) of the *Commonwealth Registers Bill 2018*]

1.46 The new law expressly authorises disclosure to a government entity in relation to the performance or exercise of its functions or powers. The intent of this authorisation is to, for example, ensure ASIC has real-time access to all the registry information it requires in order to exercise its regulatory functions or powers. [Subclause 17(2) of the *Commonwealth Registers Bill 2018*, items 5, 10 and 16 of the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill*, subsection 62M(2) of the *Business Names Act*, subsection 1261(2) of the *Corporations Act* and subsection 211M(2) of the *Credit Act*]

1.47 The new law clarifies how its protection and disclosure regime relates to other secrecy provisions in Commonwealth law. The effect of the new law is that other Commonwealth secrecy provisions²⁴ do not apply in addition to the new law's protection and disclosure regime unless expressly designated. The following secrecy provisions have been designated for this purpose:

- sections 18, 18A, 18B and 92 of the *Australian Security Intelligence Organisation Act 1979*;
- section 34 of the *Inspector-General of Intelligence and Security Act 1986*;
- sections 39, 39A, 40, 40A to 40M and 41 of the *Intelligence Services Act 2001*;
- a provision of a law of the Commonwealth prescribed by the rules;
- a provision of a law of the Commonwealth of a kind prescribed by the rules; and,
- section 8WB of the *Taxation Administration Act 1953* (which contains special rules relating to the disclosure of tax file numbers)²⁵. [Clause 18 of the *Commonwealth Registers Bill 2018*, items 5, 10 and 16 of the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill*, section 62N of the *Business Names Act*, section 1262 of the *Corporations Act* and section 211N of the *Credit Act*]

1.48 The intent of the new law in this regard is to avoid unnecessary overlap in the operation of secrecy provisions in relation to registry information. It is not optimal for multiple secrecy provisions to unnecessarily apply to the same piece of information. For example, the Productivity Commission identified over 500 different secrecy provisions and found that they often interacted in a way that leads to undesirable complexity, resulting in unnecessary barriers to data access that stifles socially beneficial activities.²⁶

1.49 Similarly, the new regime's disclosure framework is expressly authorised for the purposes of paragraph 6.2(b) of the *Privacy Act 1988*. Paragraph 6.2(b) of the *Privacy Act 1988* allows disclosure of personal information where it is authorised by an Australian law. As the new disclosure framework is such an Australian law, this provision simply clarifies the operation of the current law. [Clause 20 of the *Commonwealth Registers Bill 2018*, items 5, 10 and 16 of the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill*, section 62Q of the *Business Names Act*, section 1264 of the *Corporations Act* and section 211Q of the *Credit Act*]

1.50 The new regime exempts a person from being required to provide registry information to a court except where the disclosure is necessary for giving effect to a taxation law or an Australian business law. What constitutes a **taxation law** is defined in section 995-1 of the *Income Tax Assessment Act 1997* to include: a provision of an Act for which the Commissioner has general administration; legislative instruments made under such a provision; or the *Tax Agent Services Act 2009* or regulations made under that Act. The new law defines **Australian business law** to mean a law of the Commonwealth, or of a State or Territory, that is a law that

²³ See subsection 13.3(3) of the *Criminal Code*.

²⁴ The new law defines **secrecy provision** for this purpose as a provision of a law of the Commonwealth (other than under the new regime) that prohibits or regulates the use or disclosure of information.

²⁵ The registrar may request and record tax file numbers only for the purposes of the director identification number regime (see Chapter 2 of this memorandum). The effect of designating section 8WB is that the Registrar is unable to disclose tax file information it holds unless otherwise authorised by law.

²⁶ See the Productivity Commission report *Data Availability and Use*, May 2017, at pp 33, 131 to 133 and 331.

regulates, or relates to the regulation of, business or persons engaged in business. This definition is based on the definition of ‘business law’ in section 3 of the *Mutual Assistance in Business Regulation Act 1992*.²⁷ [Clause 21 of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, section 62R of the Business Names Act, section 1265 of the Corporations Act and section 211R of the Credit Act]

1.51 The new law in this respect is based on existing subsection 30(5) of the ABN Act, which is being repealed by the new law. That subsection currently exempts a person from having to provide protected documents or information (as defined in the ABN Act) to a court except where the proceedings relate to a taxation law. The provision guards against registry information being required to be produced for purposes unrelated to its collection.

The disclosure framework

1.52 The new law provides that the registrar may make the disclosure framework referred to in the final dot point of paragraph 1.44. Under the disclosure framework the registrar may authorise the disclosure of registry information where it is satisfied that the benefits of disclosure outweigh the risks, after those risks have been mitigated. [Subclauses 16(1) and 16(4) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsections 62L(1) and 62L(4) of the Business Names Act, subsections 1260(1) and 1260(4) of the Corporations Act and subsections 211L(1) and 211L(4) of the Credit Act]

1.53 The disclosure framework may provide for any matter related to the disclosure of registry information. For example, the disclosure framework may provide for matters such as:

- the circumstances in which information must not be disclosed without the consent of the person to whom it relates;
- the circumstances in which de-identified information may be disclosed;
- the circumstances in which information may be disclosed to the general public;
- the circumstances in which confidentiality agreements are required for the disclosure of information; and
- the imposition of conditions on disclosure of information. [Subclause 16(2) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62L(2) of the Business Names Act, subsection 1260(2) of the Corporations Act and subsection 211L(2) of the Credit Act]

1.54 In addition, the new law clarifies that the disclosure framework may include different provisions relating to different functions or powers of the registrar. This ensures that the disclosure framework can be tailored to particular functions and powers of the registrar. [Subclause 16(3) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62L(3) of the Business Names Act, subsection 1260(3) of the Corporations Act and subsection 211L(3) of the Credit Act]

1.55 This approach to disclosure aligns with the Productivity Commission’s 2017 recommendation to take a more principled approach to the release of Government data. In particular, the Commission recommended that Government data be able to be released publicly where the benefits of the release outweigh the risks involved (including privacy risks) after those risks have been mitigated to the extent practicable. The intention of this recommendation was to capture the benefits of ‘big data’ while managing all risks of disclosure, not just those relating to personal information.

1.56 It is envisaged that the ability to make a disclosure framework will provide the registrar with flexibility regarding the release of registry information. For example, the framework could allow a trusted user (for instance a university whose IT systems, processes and staff have been vetted) to access information that may not be appropriate for wider dissemination where a social benefit exists and appropriate undertakings are made.

²⁷ However, note that the definition in the new regime is confined to only Australian business laws.

1.57 As is the case with respect to data standards, the new law includes provisions designed to promote the smooth transition of registry functions and powers from one registrar to another. Should the body appointed as registrar for particular functions and powers change, the new law provides that any existing disclosure framework continues to apply until the new registrar has prepared a replacement framework. *[Subclause 16(6) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62L(6) of the Business Names Act, subsection 1260(6) of the Corporations Act and subsection 211L(6) of the Credit Act]*

1.58 The disclosure framework is a disallowable instrument for the purposes of the *Legislation Act 2003*. Under that Act, legislative instruments and their explanatory statements must be tabled in both Houses of the Parliament within six sitting days after the date of registration of the instrument on the Federal Register of Legislation. Once tabled, the instruments will be subject to the same level of parliamentary scrutiny as regulations (including consideration by the Senate Standing Committee on Regulations and Ordinances), and notice of a motion to disallow the instruments may be given in either House of the Parliament within 15 sitting days after the date the instruments are tabled. In addition to parliamentary oversight, the disclosure framework is subject to a privacy impact assessment under the *Privacy Act 1988* and the consultation requirements contained in the *Legislation Act 2003*. *[Subclause 16(1) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62L(1) of the Business Names Act, subsection 1260(1) of the Corporations Act and subsection 211L(1) of the Credit Act]*

1.59 The new law also allows a person to apply to the registrar to prevent an inappropriate disclosure of registry information that relates to them. The data standards may provide for how such applications are to be made and decided. However, where the registrar is satisfied that the disclosure is not appropriate, the disclosure is taken to not be in accordance with the disclosure framework.²⁸ *[Clause 19 of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, section 62P of the Business Names Act, section 1263 of the Corporations Act and section 211P of the Credit Act]*

What other matters does the new law provide for?

1.60 The new law also provides for other matters designed to support the effectiveness and efficiency of the registry regime. In this respect, the new regime provides for:

- when the Minister can direct the registrar;
- the circumstances in which, and to whom, the registrar may delegate its functions and powers;
- the use of assisted decision making processes by the registrar;
- review rights with respect to decisions made by the registrar;
- the extent to which the registrar and associated persons may be liable for damages in connection with the new regime;
- the admissibility of registry information in court proceedings;
- the information that must be included in the registrar's annual report about the operation of the new regime; and
- what rules may be made by the Minister for the purposes of the new regime.

Directions by the Minister

1.61 The new law enables the Minister to give binding directions of a general nature to the registrar about the performance of its functions and powers. Similar directions powers exist in

²⁸ Note that the relevant information may still be recorded or disclosed: for the purposes of the new law (for example, storing the information in a register); or, in the course of the performance of the duties of a person's official employment in relation to the Registrar or any other government entity (for example, this may occur to assist an entity enforce a law of the Commonwealth).

current laws of the Commonwealth.²⁹ [Subclauses 9(1), 9(3) and 9(5) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsections 62D(1), 62D(3) and 62D(5) of the Business Names Act, subsection 1253(1), 1253(3) and 1253(5) of the Corporations Act and subsections 211D(1), 211D(3) and 211D(5) of the Credit Act]

1.62 This direction power promotes the effective and efficient operation of the new regime. In particular, the power ensures a coordinated approach to the performance of the registrar's functions and powers given that those functions and powers may be dispersed across several government bodies. For instance, where functions and powers are dispersed the Minister could direct that all registry information be stored on a central IT platform rather than on individual databases maintained by appointed bodies. The power could also be used, for example, to:

- make directions that promote business continuity and minimise disruption where there is a change in the body to which particular registry functions and powers are assigned;
- direct the registrar to comply with particular standards, for example this could include any current or future whole of government standards relating to data management;
- direct that forms are to include warnings or notices about certain things, for examples penalties for making false statements; or
- direct as to consultation processes that are to be followed prior to making data standards or the disclosure framework (any such requirements would be in addition to those required by the *Legislation Act 2003*). [Subclauses 9(1), 9(2), 9(3) and 9(5) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsections 62D(1), 62D(2), 62D(3) and 62D(5) of the Business Names Act, subsection 1253(1), 1253(2), 1253(3) and 1253(5) of the Corporations Act and subsections 211D(1), 211D(2), 211D(3) and 211D(5) of the Credit Act]

1.63 The new law also enables the Minister to direct the registrar as to particular matters to be dealt with in the data standards or disclosure framework. For example, the Minister could direct that the disclosure framework provide for the provision of specified information to a particular government body that requires the information. Where the Minister makes such a direction, the registrar must include the matter in its disclosure framework whether or not they are satisfied of the matters set out in paragraph 1.52 of this memorandum. However, the Minister cannot direct the registrar as to how they are to apply the data standards or disclosure framework in a particular case. [Subclauses 9(2), 9(4) and 9(5) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsections 62D(2), 62D(4) and 62D(5) of the Business Names Act, subsection 1253(2), 1253(4) and 1253(5) of the Corporations Act and subsections 211D(2), 211D(4) and 211D(5) of the Credit Act]

1.64 All directions by the Minister must be in writing and are disallowable instruments for the purposes of the *Legislation Act 2003*. Under that Act, legislative instruments and their explanatory statements must be tabled in both Houses of the Parliament within six sitting days after the date of registration of the instrument on the Federal Register of Legislation. Once tabled, the instruments will be subject to the same level of parliamentary scrutiny as regulations (including consideration by the Senate Standing Committee on Regulations and Ordinances), and notice of a motion to disallow the instruments may be given in either House of the Parliament within 15 sitting days after the date the instruments are tabled. [Subclause 9(1) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62D(1) of the Business Names Act, subsection 1253(1) of the Corporations Act and subsections 211D(1) of the Credit Act]

Delegation by the registrar

1.65 The new registers regime includes a delegation power that can be used by the registrar to assist them in the performance of their functions and powers. The power provides that the

²⁹ See, for example, section 29 of the *Competition and Consumer Act 2010* and section 12 of the *Australian Securities and Investments Commission Act 2001*.

registrar may delegate all or any of its functions or power (other than the power to make data standards or the disclosure framework) to any person to whom it may delegate any of its other functions, as a Commonwealth body, under Commonwealth law. *[Paragraph 10(1)(a) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, paragraph 62E(1)(a) of the Business Names Act, paragraph 1254(1)(a) of the Corporations Act and paragraph 211E(1)(a) of the Credit Act]*

1.66 The new law therefore effectively adopts the existing delegation regime (if any) applicable to the body appointed as Registrar. This should in practice allow any existing delegations, with respect to functions and powers being transferred to the Registrar, to remain in place should the registrar so desire. As already noted, these functions and powers may generally be described as registry in nature (as opposed to being regulatory in nature).

1.67 The new law also permits the registrar to delegate its functions and powers to any person of a kind specified in the rules. This allows the rules to rectify a situation where the above mentioned delegation arrangements are not sufficient to facilitate the effective and efficient administration of the new regime. Any such rules are legislative instruments and are therefore subject to requirements of the *Legislation Act 2003*, including parliamentary oversight through the disallowance process and appropriate consultation.³⁰ *[Paragraph 10(1)(b) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, paragraph 62E(1)(b) of the Business Names Act, paragraph 1254(1)(b) of the Corporations Act and paragraph 211E(1)(b) of the Credit Act]*

Assisted decision making

1.68 The new law allows the registrar to use processes to assist it to make decisions. In particular, the new law permits the registrar to arrange for the use, under the registrar's control, of a process to assist decision making for any purpose for which the registrar may make a decision, other than decisions reviewing other decisions. The new law enables the registrar to use a wide variety of process and technologies for this purpose (including computer applications and systems) and a decision made using such a process is taken to be a decision of the registrar *[Subclause 11(1) and 11(2) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62E(1) and 62E(3) of the Business Names Act, subsection 1253(1) and 1253(3) of the Corporations Act and subsections 211E(1) and 211E(3) of the Credit Act]*

1.69 The administration of functions and powers being transferred to the registrar requires it to make a large number of decisions. The use of assisted decision making processes, including computer automated and computer-assisted decision making, will improve the timeliness and accuracy of decision making and enable the registrar to deliver a high standard of service in an effective and efficient manner. The new law provides a sound legislative basis to ensure these benefits can be realised.

1.70 The new law includes provisions to promote the appropriate use of assisted decision making processes. For example:

- the use of such processes must be arranged by the Registrar and used under its control;
- any decision made by such processes must comply with all of the requirements of the legislative provisions under which the decision was made. This means, for instance, that any review mechanism applicable to the decision remains in place; and
- the registrar may change a decision made by an assisted decision making process if it is satisfied that the decision is wrong. In this circumstance, a person would not need to request a review of the incorrect decision because the registrar is able to change the decision on its own motion. *[Subclauses 11(1) and 11(3) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62F(1) and 62F(3) of the Business Names Act, subsection*

³⁰ As already noted, the use of rules as opposed to regulations reflects current drafting practice.

1255(1) and 1255(3) of the Corporations Act and subsections 211F(1) and 211F(3) of the Credit Act]

Review rights

1.71 All decisions made by the registrar under the new regime are subject to merits review by the Administrative Appeals Tribunal, except decisions made by legislative instrument. This includes decisions made by the registrar under the data standards or disclosure framework. Decisions made by legislative instrument are subject to the processes applicable to such instruments, including parliamentary oversight via the disallowance process, rather than merits review.³¹ [*Clause 22 of the Commonwealth Registers Bill 2018, items 4, 12 and 17 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 56(2) of the Business Names Act, subsection 1317B(1) of the Corporations Act and subsection 327(1) of the Credit Act]*

Statutory immunity

1.72 The new law provides statutory immunity for acts done in good faith in connection with the new registry regime. The provision operates with respect to persons who may be involved in the performance of functions and powers under the new regime. These include: the Minister; the registrar, including its staff and members; a delegate of the registrar, including its staff; and, employees and officers of Commonwealth bodies. Such persons are immune from an action or other proceeding for damages for or in relation to an act done, or omitted to be done, in good faith in performance of any function, or in the exercise or purported exercise of any power, under the new law. [*Clause 12 of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, section 62G of the Business Names Act, section 1256 of the Corporations Act and section 211G of the Credit Act]*

1.73 This immunity is necessary to ensure that persons involved in the performance of functions or powers of the registrar can carry out their duties in good faith without the risk of incurring personal liability. In the absence of this immunity such persons may be concerned that their duties, which may involve a large number of decisions (such as whether to register a company) and the maintenance of large amounts of data related to corporations and businesses, may expose them to undue personal liability.

1.74 This statutory immunity would not be absolute. It would only apply in relation to acts or omissions carried out in good faith in connection with the new regime. In addition, the new provision does not affect the ability of the registrar or an associated person to incur contractual liability. For example, the provision does not extend to contractual arrangements entered into by the registrar or an associated person.

1.75 Similar provisions currently existing in related laws. For example, subsection 246(1) of the ASIC Act provides for statutory immunity for particular persons, including ASIC, ASIC members, ASIC staff and delegates. In particular, it provides that relevant people are not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power, conferred or expressed to be conferred by or under the corporations legislation, or a prescribed law of the Commonwealth, a State or a Territory. ASIC and its members and staff are also provided with statutory immunity under section 78 of the Business Names Act on similar terms.

Admissibility of registry information

1.76 The new law inserts a provision dealing with the use in court proceedings of information held by the registrar. The purpose of the provision is to enable a document, or a copy of a document, that purports to be an extract of information held by the registrar, to be admissible as prima facie evidence of the information stated in it (without the need for certification or any further proof of, or the production of, the original). That is, the document, or copy of the document, is proof, in the absence of evidence to the contrary, of any information

³¹ See the *Legislation Act 2003*.

stated in it that purports to be held by the registrar. However, the document is not so admissible if it appears to the court to have been revised or tampered with in a way that affects, or is likely to affect the information. *[Subclause 23(1) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62S(1) of the Business Names Act, subsection 1266(1) of the Corporations Act and subsection 211S(1) of the Credit Act]*

1.77 This provision assists the administration of justice and reduces the administrative burden on the registrar. The provision means that any information held by the registrar can be taken as correct unless proven otherwise and can be relied upon as such in any court proceedings. It also minimises the circumstances in which the registrar must formally certify documents in support of proceedings.

1.78 Notwithstanding the above, the new law enables the registrar to give a person a certified copy of, or extract from, the information held by the registrar. Such a certified copy is also admissible as prima facie proof of the information that is stated in it and that purports to be held by the registrar. However, where both a certified copy and uncertified copy of information are inconsistent with each other, the certified copy prevails. *[Subclauses 23(2) and 23(3) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsections 62S(2) and 62S(3) of the Business Names Act, subsections 1266(1) and 1266(3) of the Corporations Act and subsections 211S(1) and 211S(3) of the Credit Act]*

1.79 The new law enables the rules to prescribe a fee for obtaining certified information from the registrar. Where a fee is prescribed it must be paid before the registrar can provide the certified information. *[Subclause 23(2) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62S(2) of the Business Names Act, subsection 1266(2) of the Corporations Act and subsection 211S(2) of the Credit Act]*

1.80 These new rules regarding the admissibility of registry information are not intended to otherwise affect the rules of evidence. In particular, the new rules do not limit the manner in which evidence may be adduced, or the admissibility of evidence, under the *Evidence Act 1995*. *[Subclause 23(4) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62S(4) of the Business Names Act, subsection 1266(4) of the Corporations Act and subsection 211S(4) of the Credit Act]*

Information to be included in the registrar's annual report

1.81 The new law provides that each annual report prepared by the registrar must include information about the performance of the registrar's functions and exercise of the registrar's power during that period. The new law does not itself require any government body appointed registrar to prepare an annual report. Any such requirement is specified by existing laws where appropriate. The new law simply requires that the annual report include information about the body's role as registrar. *[Clause 24 of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, section 62T of the Business Names Act, section 1267 of the Corporations Act and section 211T of the Credit Act]*

Rules made by the Minister

1.82 The new law provides the Minister with a rule making power. In particular, the Minister may, by legislative instrument, make rules prescribing matters: required or permitted by the new regime to be prescribed by the rules; or, necessary or convenient to be prescribed for carrying out or giving effect to the new Act. *[subclause 25(1) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62U(1) of the Business Names Act, subsection 1268(1) of the Corporations Act and subsection 211U(1) of the Credit Act]*

1.83 Dealing with these matters in instruments rather than regulations accords with the Office of Parliamentary Counsel's (OPC) Drafting Direction No. 3.8 – Subordinate legislation. That Drafting Direction states that 'OPC's starting point is that subordinate instruments should be made in the form of legislative instruments (as distinct from regulations) unless there is good reason not to do so'.

1.84 Consistent with the Drafting Direction, the approach of dealing with these matters in instruments (rather than regulations) has a number of advantages including:

- it facilitates the use of a single type of legislative instrument (or a reduced number of types of instruments) being needed for the Act;
- it enables the number and content of the legislative instruments under the Act to be rationalised;
- it simplifies the language and structure of the provisions in the Act that provide the authority for the legislative instruments; and
- it shortens the Act.

1.85 Due to these advantages, the Drafting Direction states that drafters should adopt this approach where appropriate with new Acts.

1.86 The Drafting Direction states that matters such as compliance and enforcement, the imposition of taxes, setting amounts to be appropriated, and amendments to the text of an Act, should be included in regulations unless there is a strong justification otherwise. The new Act does not enable instruments to provide for any of these matters. This is clarified by a provision that specifically prevents instruments from covering these types of matters. *[Subclause 25(2) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62U(2) of the Business Names Act, subsection 1268(2) of the Corporations Act and subsection 211U(2) of the Credit Act]*

1.87 The new law also clarifies that a rule made under this power is a legislative instrument for the purposes of the *Legislation Act 2003*. Under that Act, legislative instruments and their explanatory statements must be tabled in both Houses of the Parliament within 6 sitting days after the registration of the instrument on the Federal Register of Legislation. Once tabled, the instruments will be subject to the same level of parliamentary scrutiny as regulations (including consideration by the Senate Standing Committee on Regulations and Ordinances), and notice of a motion to disallow the instruments may be given in either House of the Parliament within 15 sitting days after the date the instruments are tabled. *[subclause 25(1) of the Commonwealth Registers Bill 2018, items 5, 10 and 16 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, subsection 62U(1) of the Business Names Act, subsection 1268(1) of the Corporations Act and subsection 211U(1) of the Credit Act]*

Consequential amendments

1.88 The 35 business registers are brought into the modernised regime through consequential amendments to the legislation under which those registers are administered.³² These consequential amendments:

- make the registrar responsible for administering the functions and powers that make up the registers;
- replace prescription of various matters with the requirements of the data standards and disclosure framework;
- remove other aspects of the registers that are displaced by the new regime; and
- allow the registrar to collect fees relating to the registers.

1.89 Each of these categories of consequential amendments is explained below.

1.90 It should be noted at the outset that only ‘registry’ aspects of the current law are brought into the new registry regime and therefore affected by the present amendments. ‘Regulatory’ functions and powers are not affected by the new law and continue to be administered by the body that currently administers those functions and powers. This means that for regulatory functions and powers there is no change to the way in which the present law

³² These consequential amendments are contained in Part 2 of Schedule 1 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2018.

operates, including how the relevant regulator interacts with the entities it regulates or how information flows between them.

1.91 Whether a provision of the relevant law is ‘registry’ or ‘regulatory’ depends on its nature. Relevant factors include the purpose of the provision and the extent to which it involves the exercise of discretion or regulatory powers (such as monitoring, investigation, and enforcement powers). While all relevant factors need to be considered and balanced, generally the greater the extent of discretion and regulatory powers involved the more likely a provision is regulatory. In practice registry provisions tend to relate to the establishment, maintenance and use of registers while regulatory provisions tend to relate to things such as monitoring and enforcing the law and licencing and registering market operators and financial service providers.³³

The registrar is now responsible for administering registry provisions

1.92 The consequential amendments change the registry provisions of the 35 business registers transferred into the new regime so that they are administered by the registrar rather than ASIC. To achieve this, the new law replaces relevant references to ASIC in the current law with references to the registrar. These changes make the registrar responsible for administering registry functions and powers instead of ASIC in the amended legislation that is currently administered by ASIC. Equivalent amendments are not required to transfer functions and powers from the Commission to the registrar under the ABN Act. That Act already allocates relevant functions and powers to a registrar, which is separately defined to be the Commissioner.

1.93 Key registry functions and powers that are being transferred to the registrar under this category of consequential amendments include:

- receiving registry information (including information contained in applications for registration) from registrants;
- recording that information (and telling the registrant when that record has been made);
- receiving updates of registry information from registrants, including through the initiation of processes, such as annual reviews, to update registry information; and
- making decisions about registry information, including the removing of records, and associated internal review of those decisions.

[See Appendix table A1]

Removal of prescriptive requirements from registry provisions

1.94 The consequential amendments repeal prescriptive requirements in registry provisions that relate to matters that are dealt with by the data standards under the new regime. For example, the laws under which the 35 business registers are currently administered typically prescribe matters such as: what information has to be provided by registrants to ASIC and the Australian Business Registrar (the Commissioner of Taxation); and, the manner and form in which such information has to be provided.

1.95 The consequential amendments remove such prescriptive requirements from registry provisions and replace them with an obligation to meet the requirements of the data standards. As discussed in paragraphs 1.30 to 1.37 of this memorandum, this allows the data standards to

³³ For example, ASIC retains the power to commence criminal proceedings for all offences under the Corporations Act (see section 1315 of that Act). There are also some key areas of regulatory function and power, which operate in tandem with register provision, that will remain with ASIC. These include: deciding whether an entity should be registered for the purposes of some professional registers and for the Managed Investment Scheme register; determining what information must be provided by administrators of insolvent companies; and using discretion to decide when entities should be deregistered on the basis of non-compliance with regulatory provisions.

flexibly provide for matters such as what information the registrar needs in relation to its functions and powers and how that information is to be provided. [See Appendix table A2]

Displaced registry provisions are repealed and registry function is harmonised

1.96 This category of consequential amendments repeals registry provisions in the current law that are made redundant by, or are inconsistent or duplicative of, provisions in the new law. These amendments ensure that where the new law deals with a matter it applies exclusively and uniformly to all functions and powers transferred to the registrar. Under the current law there are different rules applying to different registry functions and powers and in some instances there are multiple overlapping laws relating to the same matter.

1.97 The matters the new law is intended to cover exclusively, and apply uniformly across registry functions and powers, include:

- the use of assisted decision making process by the registrar;
- the extent to which the registrar and associated persons may be liable for damages in connection with the new regime;
- the admissibility of registry information in court proceedings;
- how registry information is to be collected and maintained;³⁴ and
- the protection and disclosure of registry information.

[See appendix table A3]

The registrar collects fees relating to registry functions and powers

1.98 This category of consequential amendments makes the registrar the entity responsible for collecting fees relating to its functions and powers under the new law. Currently, the Fees Acts provide for the recovery of fees by ASIC and the Australian Business Registrar for various activities related to administering the present regime of business registers. Under the new law, the registrar collects any fee related to the performance of a registry function or the exercise of a registry power.

1.99 As noted above, the Fees Acts currently permit fees to be charged in connection with certain registry services. Regulations made under these Acts prescribe the particular fees for chargeable matters. Common fees include:

- fees for applying for the registration of an entity;
- Fees for applying to deregister an entity;
- annual review fees;
- business name registration and renewal fees; and
- late fees.

1.100 These consequential amendments do not affect how the fee regime operates or the amount payable for particular fees. The amendments only affect the government body that collects the fees payable in connection with those functions and powers allocated to the registrar. [See Appendix table A4]

³⁴ In particular, the new law abolishes any subject matter specific registers in affected laws and replaces them with a regime in which all information related to those functions and powers is held by the registrar.

Commencement and application provisions

1.101 The *Commonwealth Registers Bill 2018* commences the day after Royal Assent. The remainder of the new registry regime commences on a date set by proclamation. This mechanism is used so that a commencement date can be set when administrative arrangements supporting the new regime are in place. These arrangements include the use of a new information technology platform and the development of systems and process to support the new regime's operation. However, if any provisions do not commence within 24 months of the Bills receiving Royal Assent, they automatically commence the day after the end of that period. Automatic commencement after a designated period is a standard feature of provisions that provide for commencement by proclamation. Automatic commencement ensures that laws do not sit dormant on the statute books indefinitely. [*Section 2 of the Commonwealth Registers Bill, Section 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill)*]

1.102 There are application rules that apply in relation to the consequential amendments made in support the new registry regime. In particular, each consequential amendment related to a particular function or power does not apply until a registrar is appointed with respect to that function or power. This ensures that a registry function or power continues to be administered under the current law until it is allocated by the Minister to the registrar under the new law. [*Schedule 1, items 359, 819, 870 and 871 of the of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill)*]

Chapter 2

Director identification number

Outline of chapter

2.1 Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2018 amends the Corporations Act and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) to introduce a director identification number (DIN) requirement. It sets out:

- the persons to which the new requirement applies;
- the obligations associated with the new requirement;
- how the new requirement is administered; and
- the consequences of contravening the new law.

Context of amendments

2.2 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 phoenixing to the Australian economy is estimated to be between \$2.9 billion and \$5.1 billion annually.

2.3 The Commonwealth Government currently has a number of initiatives underway to deter and penalise phoenix activity in order to protect those who are negatively affected by such fraudulent behaviour. One initiative is the introduction of a DIN, which the Government announced on 12 September 2017.

2.4 The DIN will require all directors to confirm their identity and it will be a unique identifier for each person who consents to being a director. The person will keep that unique identifier even if their directorship with a particular company ceases. As such, the DIN will provide traceability of a director's relationships across companies, enabling better tracking of directors of failed companies and will prevent 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.

2.5 To date, although the law has required that directors' details be lodged with ASIC, it has not required the regulator to verify the identity of directors. This verification aspect of the DIN will improve the integrity of the data and help with enforcement action associated with phoenixing.

2.6 The new DIN regime will also offer benefits beyond combating 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, including by allowing directors to be identified by a number rather than by other more personally identifiable information such as their name and address.

2.7 The introduction of a DIN was recommended by the Productivity Commission in its September 2015 final report into *Business Set-up, Transfer and Closure*.³⁵ In the report, the Productivity Commission noted its confidence that the introduction of a DIN would likely be of significant net benefit to the community as a whole.

Summary of new law

2.8 The new law amends the Corporations Act and the CATSI Act to introduce a DIN requirement. The new requirement assists regulators to better detect, deter and disrupt phoenixing and improves the integrity of corporate data maintained by the registrar.

2.9 Under the new requirement a person appointed as a director of a body corporate registered under the Corporations Act or the CATSI Act must apply to the registrar for a DIN. The person has 28 days to apply from the date they are appointed a director unless they are provided an exemption or extension by the registrar. After receiving an application, the registrar must provide the director with a DIN if the registrar is satisfied that the director's identity has been established.

2.10 The registrar is provided with powers to administer the new requirement. These include powers to: issue DINs; keep necessary records; cancel and reissue DINs; determine the numbering plan for the new requirement; and, determine how directors are to establish their identity. The registrar may make data standards, by way of legislative instrument, in relation to these and other matters.

2.11 There are civil and criminal penalties for directors that fail to apply for a DIN within the applicable timeframe. The registrar, or a senior

³⁵ See recommendation 15.6 of the Productivity Commission's report

member of its staff, may also issue infringement notices in relation to such conduct. There are also civil and criminal penalties which apply to conduct that would otherwise undermine the new DIN requirement. For example, there are criminal penalties for deliberately providing false identity information to the registrar, intentionally providing a false DIN to a Government body or relevant body corporate, and intentionally applying for multiple DINs.

2.12 The new requirement contains transitional provisions that apply in relation to a person that is currently appointed as a director at the time the new requirement starts to apply. Such a person has 15 months to apply for a DIN from the application day of the new requirement.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
A director of a body corporate registered under the Corporations Act or the CATSI Act must apply for a DIN within 28 days of becoming a director (existing directors have 15 months to apply from the date the new requirement starts).	No equivalent.
The registrar must give an applicant director a DIN if satisfied that their identity has been established.	No equivalent.
The registrar may exempt a person from needing to obtain a DIN or provide them with additional time in which to apply for a DIN.	No equivalent.
The registrar is provided with powers to administer the new requirement including powers to record DINs, cancel and reissue DINs, determine the numbering plan for the new requirement, and determine how directors are to establish their identity.	No equivalent.
A person must not engage in certain conduct that would undermine the new requirement including deliberately providing false information to the registrar, intentionally providing a false DIN to a Commonwealth body or registered body corporate, or intentionally	There are existing penalties in the Criminal Code that relate to providing false information to the Commonwealth. These offences are relied upon by the new law where appropriate.

applying for multiple DINs.	
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Detailed explanation of new law

2.13 Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2018 amends the Corporations Act and the CATSI Act to introduce a DIN requirement.

2.14 The objective of the new requirement is to promote good corporate conduct. In particular, the new requirement assists regulators to detect and address unlawful behaviour and, through doing so, deter such behaviour. It does so by requiring each appointed director of a registered body corporate to obtain a unique identification number.

2.15 To implement the DIN requirement, the Bill inserts a new part into both the Corporations Act and the CATSI Act. The new parts detail:

- the persons to which the new requirement applies;
- the obligations associated with the new requirement;
- how the new requirement is administered; and
- the consequences of contravening the new law.

To whom does the new requirement apply?

2.16 The new law is drafted so that the requirement to obtain a DIN applies in relation to body corporates registered under the Corporations Act or the CATSI Act (a registered body).

Who is an eligible officer?

2.17 The new law defines who is an **eligible officer** for the purposes of the new requirement. An eligible officer is a director of a registered body who:

- is appointed to the position of director, or is appointed to the position of an alternate director and is acting in that capacity (regardless of the name that is given to that position); or
- any other officer of the registered body who is an officer of a kind prescribed by the regulations. [*Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill, items 1 and 7, section 308-15 of the CATSI Act and section 1232 of the Corporations Act*]

2.18 The DIN requirement therefore initially operates with respect to only appointed directors and acting alternate directors. It does not, at least initially, extend to what are commonly referred to as de facto³⁶ or shadow directors³⁷. This reflects that the operation of the broader registry regime is applicable to registered bodies, which does not generally extend to de facto and shadow directors.

2.19 As noted above, the definition of eligible officer may be extended by regulation to any other officers of a registered body. The term ‘officer’ in relation to a registered body is defined in section 9 of the Corporations Act and section 683-1 of the CATSI Act. Those sections define the term to mean a director (including a de facto or shadow director), a secretary, and a range of other persons that may affect the business of a registered body, including administrators, receivers and liquidators.

2.20 The effect of this regulation making power is to allow the DIN to be extended to any such officer of a registered body if doing so is appropriate. This ability provides the flexibility necessary to future-proof the new requirement to ensure its ongoing effectiveness. Any such regulations will be subject to parliamentary scrutiny through the disallowance procedures of the *Legislation Act 2003*.

2.21 The new law also gives the registrar the power to exempt a person or class of person from being an eligible officer. This allows the registrar to respond where the imposition of the requirement would have unintended consequences or would otherwise be unsuitable for a particular person or class of persons. Any exemption that relates to a class of persons is a legislative instrument and is therefore subject to parliamentary scrutiny through the disallowance procedures of the *Legislation Act 2003*.³⁸ An exemption in relation to a particular person would not be by way of legislative instrument because any such decision would be of an administrative character – that is, determining particular cases in which the law is not to apply.³⁹ As these decisions are not made by legislative instrument, the registrar must notify the relevant person of the exemption. [*Schedule 2 of the Treasury Laws Amendment (Registries*

³⁶ A ‘de facto’ director is a person who is not validly appointed as a director but who acts in the position of a director. See the definition of ‘director’ in section 9 of the Corporations Act and section 683-1 of the CATSI Act.

³⁷ A ‘shadow director’ is a person who is not validly appointed as a director but the directors of the body are accustomed to act in accordance with the person’s instructions or wishes.

³⁸ The statement in the legislation that class exemptions are made by way of legislative instruments is inserted to assist readers. Such instruments are legislative in nature as they determine the law or alter the content of the law, rather than determine particular cases or particular circumstances in which the law is to apply or is not to apply.

³⁹ See section 8 of the *Legislation Act 2003*.

Modernisation and Other Measures Bill, items 1 and 7, section 308-15 of the CATSI Act and section 1232 of the Corporations Act

2.22 All references to ‘director’ are references to a person to which the new DIN requirement applies unless indicated otherwise.

What is a registered body?

2.23 For the new DIN requirement to apply to a person, the person must be a director of a registered body. For the purposes of the new law, a registered body is:

- a company, registered foreign company or registered Australian body (which are registered under the Corporations Act); or
- an Aboriginal and Torres Strait Islander corporation (which are registered under the CATSI Act).

Companies

2.24 The meaning of ‘company’ is defined in section 9 of the Corporations Act. That section defines company as meaning a company registered under the Corporations Act. Chapter 2A of the Act deals with the registration of companies, including what types of companies can be registered⁴⁰ and how a company is registered⁴¹.

2.25 Applying the DIN in relation to companies ensures that directors of all Australian companies are subject to the new DIN requirement. This includes directors of companies that are responsible for managed investment schemes⁴² and registered charities⁴³. It also includes directors of companies that are preserved by transitional provisions in Chapter 10 of the Corporations Act.⁴⁴

Registered foreign companies

2.26 Registered foreign company is defined in Section 9 of the Corporations Act as meaning a foreign company that is registered under Division 2 of Part 5B.2 of the Corporations Act. That division prohibits a

⁴⁰ See Part 2A.12 of the Corporations Act

⁴¹ See Part 2A.2 of the Corporations Act.

⁴² Under section 601FA of the Corporations Act a responsible entity for such a scheme must be a public company.

⁴³ The DIN requirement applies whether or not a company registered under the Corporations Act is also registered under another law for a particular purpose, for example as a not-for-profit entity under the *Australian Charities and Not-For Profits Commission Act 2012*.

⁴⁴ See section 1378 of the Corporations Act, which provides that companies registered under Part 2A.2 of the old Corporations Law of a State or Territory continue to be registered as if they were registered under Part 2A.2 of the Corporations Act.

foreign company from carrying on business⁴⁵ in Australia⁴⁶ unless it is registered or its application for registration is pending⁴⁷, and sets out the requirements for registration⁴⁸.

2.27 By virtue of the definition of ‘foreign company’⁴⁹, a registered foreign company may in some instances be an unincorporated body. However, the DIN requirement does not operate in relation to these unincorporated bodies as they cannot hold property in their own name and are therefore not prone to issues such as phoenixing activity. For this reason and for consistency with the new requirement’s operation with respect to Australian bodies, the requirement only operates with respect to registered foreign companies that are body corporates. *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, item 7, paragraphs 1232(1)(a) and 1232(1)(b) of the Corporations Act]*

2.28 Applying the DIN requirement to foreign companies that are body corporates ensures that the requirement operates in a jurisdictionally neutral manner. In particular, it ensures that the requirement applies to body corporates incorporated in an external territory or otherwise outside Australia, where those bodies carry on business in Australia. This ensures that the new requirement operates consistently, regardless as to where a registered body is incorporated. *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, item 7, subsection 1232(1) of the Corporations Act]*

Registered Australian Body

2.29 Registered Australian body is defined in section 9 of the Corporations Act as a ‘registrable Australian body’⁵⁰ that is registered under Division 1 of Part 5B.2 of the Corporations Act. Section 601CA of that Act provides that a registrable Australian body must not carry on business in a state or territory unless:

- that state or territory is its place of origin;

⁴⁵ Section 21 provides that a body corporate that has a place of business in Australia carries on business in Australia. The section (and Division 3 of Part 1.2 of the Act more generally) also provides some additional information to elucidate the concept of carrying on a business. However, the term is not comprehensively defined in the Act.

⁴⁶ ‘In Australia’ or ‘in this jurisdiction’ means within the geographic area of each state and territory in Australia, including the coastal sea and, for the purposes of Chapter 7, any prescribed external territory: see section 5 (General territorial application of Act) and the definition of ‘Australia’ in section 9.

⁴⁷ See section 601CD of the Corporations Act.

⁴⁸ See section 601CE of the Corporations Act.

⁴⁹ See section 9 of the Corporations Act.

⁵⁰ Registrable Australian body is defined in section 9 as a body corporate (which is not a company, exempt public authority or corporation sole); or, an Australian unincorporated body that may sue or be sued or may hold property in the name of its secretary or an officer of the body.

- it has its head office or principle place of business in that state or territory; or
- it is registered under Division 1 of Part 5B.2 or its application for registration is yet to be dealt with.

2.30 Applying the DIN requirement to registered Australian bodies ensures that the regime applies in relation to body corporates that are not companies, but which carry on business in one or more states or territories other than their home jurisdiction. As with registered foreign companies, some registered Australian bodies are unincorporated. However, the new requirement does not operate in relation to these bodies as they cannot hold property in their own name and are therefore not prone to issues such as phoenixing activity. The new requirement only applies in relation to registered Australian bodies that are body corporates. [*Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, item 7, subsection 1232(1) of the Corporations Act*]

Aboriginal and Torres Strait Islander corporations

2.31 The CATSI Act is the law that establishes the role of the Registrar of Indigenous Corporations and allows Aboriginal and Torres Strait Islander groups to form corporations. Registration under the CATSI Act is mostly voluntary. However, some corporations—for example, ‘prescribed bodies corporate’ set up under the *Native Title Act 1993*—are required to register under the CATSI Act.

2.32 The CATSI Act sets out the meaning of Aboriginal and Torres Strait Islander corporation and how such corporations are registered. Section 16-5 of the CATSI Act provides that an Aboriginal and Torres Strait Islander corporation is a corporation registered under the CATSI Act. Part 2-2 of the Act deals with applications for registration. In particular, section 42-1 provides that a corporation comes into existence on registration under the CATSI Act.

2.33 Applying the DIN requirement to directors of Aboriginal and Torres Strait Islander corporations ensures that these directors are treated equivalently to those of registered bodies under the Corporations Act. It also ensures that the members and creditors of all registered bodies may benefit from the regime, in particular the promotion of good corporate conduct. [*Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, item 1, subsection 308-15(1) of the CATSI Act*]

What obligations are associated with the new DIN requirement?

2.34 The new law inserts four obligations in relation to the new requirement. These obligations:

- require a director to apply for a DIN within 28 days of being appointed as a director;

- require a director to apply for a DIN within 28 days of being directed by the registrar to apply for a DIN;
- prohibit a person from knowingly applying for multiple DINs; and
- prohibit a person from misrepresenting a DIN to a government body or registered body.

Directors must apply for a DIN within 28 days of being appointed

2.35 The first obligation requires a director to apply for a DIN within 28 days of being appointed as a director. While the new law requires that all directors have a DIN, it is a defence if the director applied to the registrar for a DIN within 28 days of being first appointed as a director of any registered body and the application has not yet been dealt with.⁵¹

[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, items 1 and 7, subsections 308-20(1) and 308-20(2) of the CATSI Act and subsections 1233(1) and 1233(2) of the Corporations Act]

2.36 The 28 day period applicable to the above mentioned defence may be extended by the registrar for a particular director or for a specified class of directors. For a particular director, the period may be extended on application by the director for the period specified in the application or for such other period as the registrar considers reasonable. As such an extension applies the laws to a particular case, it is of an administrative character. An extension relating to a class of persons, however, must be made by legislative instrument as such an extension is legislative in character. As such, any class extensions are subject to parliamentary oversight through the disallowance process under the *Legislation Act 2003*. The ability to grant extensions provides the registrar with discretion to extend the period for compliance where warranted.⁵²

[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, items 1 and 7, section 308-30 of the CATSI Act and section 1235 of the Corporations Act]

2.37 It is also a defence in relation to this obligation if the director was appointed without their knowledge. This defence is aimed at ensuring that a person does not breach the obligation because of the wrong doing of another, for example, due to identity theft or forgery. In such a situation it would be more appropriate for the regulator to explore other options, for example, investigating whether a company has breached section 201D of the Corporations Act, which requires a person to consent to being a

⁵¹ For this reason, this memorandum refers to the relevant obligation as being to apply for a DIN within 28 days rather than as a requirement to have a DIN.

⁵² For example, this power could be applied to the benefit of directors residing in very remote areas should that remoteness affect their ability to apply for a DIN within the standard 28 day period.

director. [*Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, items 1 and 7, subsection 308-20(3) of the CATSI Act and subsection 1233(2) of the Corporations Act*]

2.38 A defendant carries an evidential burden for establishing both defences related to this obligation. The evidential burden in these defences has been reversed because the subject of the defences is peculiarly within the knowledge of the defendant and is significantly more difficult and costly for the prosecution to disprove than for the defence to establish. The burden of proof on the defendant is an evidential burden. To satisfy this eventual burden the defendant must adduce or point to evidence that suggests a reasonable possibility that the defence exists.⁵³ Once this is done, the prosecution bears the burden of proof.

2.39 This obligation is designed to ensure the effectiveness of the new requirement and that it does not have unintended consequences. In particular:

- the obligation's compulsory nature ensures that all directors (except those granted an exemption) apply for a DIN, which is essential for the new requirement to achieve its objective;
- the 28 day application period ensures that the regime does not delay the appointment of directors or the creation of new registered bodies, and that a director does not breach the obligation where there is a delay in processing an application for reasons beyond their control⁵⁴; and
- the requirement for every director to apply for a DIN regardless of the length of their appointment ensures that the DIN requirement cannot be avoided by a person stepping into the role of a director for short periods at critical times.

2.40 The new law does not include an offence prohibiting the provision of false or misleading information to the registrar. For this purpose, the new law relies upon existing prohibitions that cover such matters including section 137.1 of the *Criminal Code*, section 1308 of the Corporations Act and section 561-1 of the CATSI Act. Each of these sections prohibits the provision of false or misleading information. Such prohibitions are important as a deterrent against the provision of false or misleading information to the registrar (for example, as a deterrent against a person attempting to acquire a DIN against a false identity).

⁵³ See subsection 13.3(3) of the *Criminal Code*.

⁵⁴ The 28 day application period reflects the period that a company has to notify ASIC of the appointment of a new director under section 205B of the Corporations Act.

2.41 The new law includes transitional arrangements for persons who are directors at the time the new requirement starts. Such persons have 15 months to apply for a DIN rather than 28 days. Paragraph 2.77 of this memorandum provides further information about these arrangements.

Directors must apply for a DIN within 28 days of being directed to by the registrar

2.42 The second obligation requires a director to apply for a DIN within a prescribed period of being directed to do so by the registrar. The prescribed period is 28 days or such longer period as the registrar allows.⁵⁵ [*Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, items 1 and 7, subsection 308-25(1) of the CATSI Act and subsection 1234(1) of the Corporations Act*]

2.43 This obligation ensures the registrar can require a director to apply or reapply for a DIN where it is desirable to do so. This ability is important in enabling the registrar to effectively administer and maintain the new DIN requirement. For example, the registrar may wish a director to apply or reapply for a DIN because:

- the director has never applied for a DIN;
- the director's existing DIN profile has been lost or corrupted;
or
- the registrar wishes to verify the director's identity.

2.44 This obligation does not include the defences which apply in relation to the first obligation discussed above. Those defences are not relevant to this obligation. Unlike the first obligation, this obligation is not breached until the end of the relevant 28 day period. Similarly, the defence of being appointed without knowledge is not relevant in the present context where the registrar has directed the person to apply because they are a director.

A person must not knowingly apply for multiple DINs

2.45 The third and fourth obligations associated with the new DIN requirement are necessary to ensure the integrity of the new requirement.

2.46 The third obligation prohibits a person from applying for a DIN if the person knows that they already have a DIN. However, the prohibition does not apply in the following circumstances:

⁵⁵ The power of the registrar to extend the period is identical to that applicable to the first obligation discussed in paragraph 2.36 of this memorandum.

- where the registrar has directed the person to reapply for a DIN⁵⁶ – this defence ensures that this obligation does not conflict with the ability of the registrar to require a director to reapply for a DIN; or
- where the person applied for the additional DIN under another Act – this defence ensures that a person cannot be convicted of breaching this obligation under both the Corporations Act and the CATSI Act if the violation only relates to one of those Acts.

[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, items 1 and 7, subsections 308-40(1), 308-40(2) and 308-40(3) of the CATSI Act and subsections 1237(1), 1237(2) and 1237(3) of the Corporations Act]

2.47 This obligation is designed to prevent a person from seeking to circumvent the new requirement by obtaining multiple DINs. The integrity of the regime requires each director to hold no more than one DIN. A person holding multiple DINs would be difficult to identify and track in relation to their directorships and corporate activities.

A person must not misrepresent a DIN to a government or registered body

2.48 The fourth (and final) obligation associated with the new DIN requirement is directed at preventing a person misrepresenting a DIN to a body that is likely to rely upon it for regulatory compliance or identification purposes. In particular, the new law prohibits a person from intentionally representing to a Commonwealth body or a registered body that a DIN is associated with a person when it is not. For this purpose, the new law uses the definition of Commonwealth body set out in the new *Commonwealth Registers Bill 2018* discussed in Chapter 1 of this memorandum. *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, items 1 and 7, subsection 308-45 of the CATSI Act and section 1238 of the Corporations Act]*

2.49 It is important that directors honestly report DINs to Government and regulated bodies. These bodies may rely upon the DIN to establish the identity of directors and those seeking to become directors (for example, to confirm that the person has not been disqualified). A registered body may also be required under the new law to collect and report the DIN of a newly appointed director for the purpose of facilitating the administration of the new requirement. Such a requirement would not

⁵⁶ A defendant bears an evidential burden in relation to this matter. The significance of this burden and the rationale for imposing it on the defendant are as described in 2.38 paragraph of this memorandum.

be possible in a regime where people were not required to honestly report DINs.

How is the new DIN requirement administered?

2.50 The administration of the new requirement relies on the new registry regime outlined in Chapter 1 of this memorandum. Under the new requirement, the registrar is responsible for the administration of all functions and powers that are of a registry nature. These functions and powers are explained in this section of this memorandum. The remaining functions and powers are administered by the regulators that have the general administration of the Corporations Act and the CATSI Act, namely ASIC and ORIC respectively. These remaining functions and powers relate to the enforcement of the new requirement through the civil penalty and criminal offence provisions discussed in the next section of this memorandum.

What powers and functions does the new law confer on the registrar?

2.51 The new law provides the registrar with the functions and powers it requires to administer the registry aspects of the DIN requirement. In particular, the new law provides the registrar with the ability to:

- give a person a DIN if the person has applied for a DIN and the registrar is satisfied that the person's identity has been established; *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, items 1 and 7, subsections 308-5(1) of the CATSI Act and subsection 1230(1) of the Corporations Act]*
- direct a director to apply for a DIN (whether or not the director already has a DIN); *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, items 1 and 7, subsections 308-10(2) of the CATSI Act and subsection 1232(2) of the Corporations Act]*
- keep a record of each DIN that has been given to a person; *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, items 1 and 7, subsections 308-5(2) of the CATSI Act and subsection 1230(2) of the Corporations Act]*
- cancel a DIN that has been given to a person if the registrar is no longer satisfied that the person's identity has been established or if the registrar has given the person another DIN; *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, items 1 and 7, subsections 308-5(3) of the CATSI Act and subsection 1230(3) of the Corporations Act]*
- notify a person that they have been given a DIN or that a DIN, which has previously been given to them, has been cancelled. *[Schedule 2 of the Treasury Laws Amendment (Registries*

Modernisation and Other Measures Bill, items 1 and 7, subsections 308-5(4) of the CATSI Act and subsection 1230(4) of the Corporations Act]

2.52 The registrar is provided little or no discretion in the exercise of most of these functions and powers. In particular, the registrar must give a person a DIN if that person is eligible to apply for a DIN and has established their identity to the satisfaction of the registrar. Likewise, the registrar cannot give a person a DIN or cancel a person's DIN without notifying the person.

2.53 The new law also allows the registrar to request a person's tax file number to facilitate the administration of the DIN requirement.⁵⁷ This will enable the registrar to use a person's tax file number to assist with establishing the person's identity for the purposes of the requirement where the person is willing to provide it. The use of a person's tax file number (when provided) is likely to reduce the time and cost involved in establishing a person's identity to the benefit of both the applicant and the registrar. [*Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, items 11 and 12, section 202 of the Income Tax Assessment Act 1936 and paragraphs 8WA(IAA)(b) and 8WB(IA)(a) and (b) of the Taxation Administration Act 1953*]

2.54 It should be noted that this ability only allows the registrar to *request* a person's tax file number. The registrar cannot require a person to provide a tax file number. In addition, the current rules limiting the use and disclosure of tax file information contained in the *Taxation Administration Act 1953* continue to apply in relation to any such information held by the registrar. This ensures that any tax file information collected can only be used for the purposes of administering the DIN requirement and cannot be disclosed to third persons except in accordance with that taxation law.⁵⁸

Who may apply for a DIN?

2.55 The registrar may only give a person a DIN if that person has applied for one. The new law provides for two categories of persons who may apply for a DIN. No other person can apply.

2.56 The first category of persons who may apply for a DIN are directors. As noted above, a director commits an offence if they do not have a DIN and have not applied for one within the prescribed timeframe

⁵⁷ Without these amendments made by the new law it would be an offence under section 8WA of the *Taxation Administration Act 1953* for the registrar to request a person's tax file number.

⁵⁸ In particular, the registrar is generally permitted to disclose tax file information to the Commissioner for the purposes of verifying with the Commissioner that the number belongs to the person who provided it.

of first being appointed as a director. In addition, the objective of the regime is to promote good corporate conduct of directors by, among other things, establishing their identity and tracking their directorships overtime. It is therefore essential that directors be able to apply for a DIN.

2.57 The second category of persons who may apply for a DIN are person who are not directors but intend to become directors within 12 months. It is not compulsory or required that any such person obtain a DIN or apply for a DIN. However, the new law enables such persons to obtain a DIN should they so desire. The intent is to facilitate the operation of the new DIN requirement by enabling prospective directors to apply for a DIN prior to their appointment where convenient or necessary (for example, because they may be need to travel shortly after their appointment). *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, items 1 and 7, subsections 308-10(3) of the CATSI Act and subsection 1231(3) of the Corporations Act]*

2.58 A DIN allocated to a prospective director is automatically cancelled by operation of law if the person does not become a director within 12 months of being given the DIN. This ensures the new requirement remains focused on those that are directors or are likely to become directors. A number cancelled pursuant to this provision may be reallocated to the same person should they later reapply for a DIN.⁵⁹ *[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, items 1 and 7, subsections 308-5(4) of the CATSI Act and subsection 1230(4) of the Corporations Act]*

How does the registrar perform its functions and exercise its powers?

2.59 The registrar performs its functions and exercises its powers in relation to the DIN requirement primarily in accordance with the data standards.⁶⁰ As explained in paragraphs 1.30 to 1.37 of this memorandum, the data standards are legislative instruments that the new law allows the registrar to make on matters relating to the performance of the registrar's functions and the exercise of the registrar's powers.

2.60 In the present context, the data standards can provide for matters related to the performance of the registrar's functions and the exercise of the registrar's powers in relation to the DIN requirement. These functions and powers are specified in paragraphs 2.51 to 2.54 of this memorandum.

⁵⁹ It is a decision for the registrar as to how to treat cancelled numbers. The registrar could, for example, decide to reuse the number or to quarantine the number.

⁶⁰ As explained in paragraphs 1.38 to 1.40 of this memorandum, the registrar must also perform its functions and powers in accordance with any other applicable laws of the Commonwealth. An example of such a law is section 8WA of the *Taxation Administration Act 1953*, which limits the use and disclosure of tax file number information.

Examples of particular matters related to the DIN requirement that the registrar may deal with in the data standards include:⁶¹

- how a person's identity is to be established for the purposes of the new requirement (for instance, the registrar could require an applicant to provide 100 points of identification);
- the numbering plan for the new requirement (for instance, the registrar could specify rules relating to the allocation and use of numbers in connection with the new requirement, including rules affecting numbers that have previously been given or cancelled⁶²);
- how DIN records are to be stored, maintained and integrated or linked to other data;
- how a person is to apply for a DIN and the manner and form of any application;
- how the registrar may check or validate the accuracy of any records held in relation to the new requirement; and
- how the registrar may notify people of relevant matters under the new requirement.

2.61 Other amendments in the Bill enable the registrar to make data standards relating to how the registrar is informed of relevant matters relating to directors that already hold a DIN. For example, existing section 205B of the Corporations Act requires companies to lodge a notice of the personal details of a new director with the registrar within 28 days of their appointment. As under the new law this notice must meet any requirements of the data standards, the registrar may require companies to provide details of any existing DIN held by a new director. An equivalent ability exists in relation to the other types of registered bodies. These abilities facilitate the proper functioning of the new requirement by enabling details of any existing DIN held by a director to be collected for the purposes of tracking their directorships over time.

⁶¹ Note that while all these matters may be dealt with by the data standards this does not mean that they must be dealt with by the standards.

⁶² In particular, the registrar may decide to re-use a DIN that has previously been allocated to a person but then cancelled, whether or not the cancellation occurred by operation of law or because of a decision made by the registrar.

What are the consequences of contravening the new law

2.62 Civil and criminal penalties apply to contraventions of the DIN requirement. The registrar may also issue infringement notices in relation to some contraventions.

Civil and criminal penalties

2.63 A contravention of every obligation in the new law is both a civil penalty provision and an offence. This allows the regulator or prosecutor (as the case may be) to take a proportional approach to the enforcement of the new regime.

2.64 The maximum penalties applicable to each obligation in the Bill are detailed in the following table.

Table 2.1 Penalties concerning obligations

<i>Obligation</i>	<i>Maximum penalty</i>
Requirement to apply for a director identification number within 28 days of appointment	<p><i>Corporations Act</i> Criminal – 60 penalty units (strict liability) Civil penalty – \$200,000 for an individual; or 1 million for a body corporate</p> <p><i>CATSI Act</i> Criminal – 25 penalty units (strict liability) Civil penalty – \$200,000 for an individual</p>
Requirement to apply for a director identification number if directed by the registrar	<p><i>Corporations Act</i> Criminal – 60 penalty units (strict liability) Civil penalty – \$200,000 for an individual; or 1 million for a body corporate</p> <p><i>CATSI Act</i> Criminal – 25 penalty units (strict liability) Civil penalty – \$200,000 for an individual</p>
Applying for additional DINs	<p><i>Corporations Act</i> Criminal – 100 penalty units or imprisonment for 12 months, or both Civil penalty – \$200,000 for an individual; or 1 million for a body corporate</p>

<i>Obligation</i>	<i>Maximum penalty</i>
	<i>CATSI Act</i> Criminal – 100 penalty units or imprisonment for 12 months, or both Civil penalty – \$200,000 for an individual
Misrepresenting a DIN	<i>Corporations Act</i> Criminal – 100 penalty units or imprisonment for 12 months, or both Civil penalty – \$200,000 for an individual; or 1 million for a body corporate <i>CATSI Act</i> Criminal – 100 penalty units or imprisonment for 12 months, or both Civil penalty – \$200,000 for an individual
Accessorial liability (being involved in a contravention of one of the above obligations)	<i>Corporations Act</i> Civil penalty – \$200,000 for an individual; or 1 million for a body corporate <i>CATSI Act</i> Civil penalty – \$200,000 for an individual

[Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, items 1 and 7, subsection 308-20(4) of the CATSI Act and subsection 1263(4) of the Corporations Act]

2.65 The penalties applicable to each obligation are broadly consistent with current penalties applicable to comparable provisions in the Corporations Act and the CATSI Act respectively. However, the maximum penalty between the Acts varies for some offences. This reflects current differences in the penalty regime as between the two Acts. Similarly, the current civil penalty regime within the CATSI Act does not provide for pecuniary penalty orders to be made against corporations.

2.66 Breaching either of the first two obligations is an offence of strict liability. The application of strict liability negates the requirement for the regulator or prosecutor (as the case maybe) to prove fault.

2.67 The imposition of strict liability in relation to these obligations is necessary to ensure the integrity of the new DIN requirement which relates to corporate regulation. As already noted, the effectiveness of the new requirement necessitates that all directors apply for a DIN and therefore that there is strong deterrence for those who may seek to avoid the requirement. For similar reasons, the registrar may issue an

infringement notice under the *Regulatory Powers (Standard Provisions) Act 2014* in relation to a breach of either obligation.

2.68 Civil penalties also apply to any person who is involved in a contravention of any of the obligations in Table 2.1. Sections 79 of the Corporations Act and 694-55 of the CATSI Act define when a person is involved in a contravention. Those sections provide that a person is so involved if, and only if, the person has aided, abetted, counselled, procured, induced or been knowingly concerned or a party to the contravention, or has conspired with others to effect the contravention. The maximum civil penalty that may be applied under the Corporations Act is \$200,000 for an individual or \$1 million for a body corporate.

2.69 The way the law gives effect to penalties varies between the Corporations Act and the CATSI Act. In the case of the Corporations Act, the penalties are given effect to by making the necessary amendments to existing subsection 1317E of the Corporations Act (in relation to civil penalties) and Schedule 3 of the Corporations Act (in relation to criminal penalties). In the case of the CATSI Act, the civil penalty provisions are given effect to by making necessary amendments to existing subsection 386-1 of the Act while criminal penalties are specified in the provisions that create the offence.

2.70 The principles set out in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*⁶³ were considered in framing each offence in the new law and in determining applicable penalties.

Infringement notices

2.71 Breaches of the two obligations relating to failing to apply for a DIN (see the first two items in Table 2.1) are also subject to the infringement notice regime in Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*. Because these obligations 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.

2.72 Part 5 of the Regulatory Powers Act sets out a standard framework under which infringement notices can be issued. This includes important matters such as when an infringement notice may be issued and by whom, what matters must be set out in an infringement notice, the maximum penalty⁶⁴ that can be imposed, how an extension of time for

⁶³ Attorney-General's Department, September 2011 edition

⁶⁴ The Regulatory Powers Act provides that a maximum penalty of 60 penalty units can be imposed by an infringement notice, which is the amount set out in *A Guide to Framing*

payment may be requested, how and under what circumstances an infringement notice may be withdrawn, and the effect and consequences if a person pays the amount stated in the notice.

2.73 In order for the standard framework in the Regulatory Powers Act to operate the new law must set out who can act as an ***infringement officer*** and as a ***chief executive*** for the purposes of the standard framework. In this respect, the new law provides as follows:

- an ***infringement officer*** is each member of the staff of the registrar who holds, or is acting in, an office or position that is equivalent to an SES employee;
- the ***chief executive*** is the person specified as the relevant chief executive in the registrar’s instrument of appointment under the new law; or if there is no person specified—the registrar. [*Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, items 1 and 7, sections 308-35 of the CATSI Act and section 1236 of the Corporations Act*)]

Consequential amendments

2.74 Definitions are inserted into sections 9 of the Corporations Act and 700-1 of the CATSI Act, which are the main definitions section of those Acts. The definitions support the operation and readability of the new law. [*Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, items 4 and 6, section 700-1 of the CATSI Act and subsection 9 of the Corporations Act*)]

Commencement, application and transitional provisions

Commencement

2.75 The new requirement commences on a date set by proclamation. This mechanism is used so that a commencement date can be set when administrative arrangements supporting the new regime are in place. These arrangements include the use of a new information technology platform and the development of systems and process to support the new requirement’s operation. However, if any provisions do not commence within 24 months of the Bills receiving Royal Assent, they automatically commence the day after the end of that period. Automatic commencement after a designated period is a standard feature of provisions that provide

for commencement by proclamation. Automatic commencement ensures that laws do not sit dormant on the statute books indefinitely. [*Section 2 of the of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill*]

Application

2.76 Each function and power in the new law does not apply until the function or power is assigned to the registrar. This means that the DIN requirement will not apply until the day (the application day) the Minister appoints a registrar to administrator the new requirement. [*Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, items 5 and 9, subitem 5(1) of the Bill and subsection 1645(1) of the Corporations Act*]

Transitional arrangements

2.77 The new law provides a person who is a director immediately before the application day with 15 months to apply for a DIN rather than the 28 day period set out in paragraph 2.35 of this memorandum. This transitional period is designed to provide time for existing directors to become familiar with the new requirement and for any information or awareness campaigns in relation to it to take effect. [*Schedule 2 of the Treasury Laws Amendment (Registries Modernisation and Other Measures Bill, items 5 and 9, subitem 5(2) of the Bill and subsection 1645(2) of the Corporations Act*]

Appendix Consequential amendments

Table A1 – Amendments transferring functions and powers to the registrar

<i>Item</i> ⁶⁵	<i>Provision</i>
ABN Act	
18	Act Title
20	Subsection 9(1)
21	Subsection 9(1) (note 1)
22	Subsection 9(1) (note 2)
27	Subsection 9A(3)
86	Section 41 (definition of Registrar)
87	Section 41
A New Tax System (Goods and Services Tax) Act 1999	
88	Subsection 25-10(2)
89	Subsection 25-60(2)
90	Section 146-20 (heading)
91	Subsection 146-20(1) (note)
92	Paragraph 146-20(3)(b)
96	Section 195-1
Australian Prudential Regulation Authority Act 1998	
97	Subsection 56(1)
Business Names Act	
111	Paragraph 6(1)(b)
114	Paragraph 19(2)(a)
116	Subsection 23(1)
119	Subsection 24(1)
120	Subsection 24(1)
121	Subsection 24(2)
122	Subsections 24(3) and (4)
123	Subparagraphs 25(a)(iv), (v), (vi) and (vii)
124	Paragraph 25(e)
125	Subparagraph 25(e)(i)
126	Paragraph 25(e)
127	Subsection 28(2)
128	Subsection 28(3)
129	Paragraph 29(1)(a)
130	Paragraph 29(4)(b)
131	Subsections 29(5), (6) and (7)
132	Subsection 30(1)
135	Paragraph 31(3)(a)

⁶⁵ Item refers to the item number of the relevant amendment in the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2018

Item ⁶⁵	Provision
136	Paragraph 31(3)(b)
137	Subsection 31(4)
142	Section 33 (heading)
143	Subsection 33(1)
144	Subsection 33(2)
145	Subsection 33(3)
146	Paragraph 33(3)(a)
147	Subsection 33(4)
148	Paragraph 33(4)(a)
150	Subsection 33(8)
151	Paragraph 33(8)(c)
152	Subsection 34(1)
153	Subsection 34(1)
154	Paragraph 34(1)(a)
155	Subsection 34(2)
156	Subsection 34(2)
157	Subsection 34(3)
158	Subsection 34(4)
159	Paragraph 34(4)(a)
161	Paragraph 34(4)(b)
162	Paragraph 34(5)(a)
164	Paragraph 34(5)(b)
166	Section 34A
167	Part 4 (heading)
168	Section 35 (heading)
170	Paragraph 35(1)(a)
172	Subsection 35(1)
174	Section 36 (heading)
175	Subsection 36(1)
176	Subsection 36(1)
178	Section 37 (heading)
179	Subsections 37(1) and (2)
180	Subsection 37(3)
182	Subsections 37(6) to (8)
183	Section 38 (heading)
184	Subsection 38(1)
186	Section 39 (heading)
187	Subsection 39(1)
189	Subsection 39(3)
190	Paragraph 39(3)(a)
191	Paragraph 39(3)(a)
193	Subsection 40(1)
195	Subsections 40(3) and (4)

<i>Item</i> ⁶⁵	<i>Provision</i>
196	Subsection 40(5)
197	Subsection 40(5)
198	Subsections 40(6) and (7)
199	Section 41 (heading)
200	Subsection 41(1)
201	Subsection 41(2)
202	Subsection 42(1)
204	Subsection 42(3)
205	Subsection 42(3)
206	Section 43 (heading)
207	Subsection 43(1)
208	Paragraphs 43(1)(a), (b) and (c)
209	Subsection 43(2)
210	Paragraphs 43(2)(a) and (b)
211	Subsection 44(1)
212	Subsection 44(1)
213	Subsection 44(2)
215	Paragraphs 44(2)(a) and (b)
216	Subsection 45(1)
217	Subsection 45(2)
219	Paragraph 45(2)(b)
220	Subsection 46(1)
221	Subsection 46(2)
223	Paragraphs 46(2)(a) and (b)
224	Subsection 47(1)
225	Paragraphs 47(1)(a) and (c)
226	Subsection 47(2)
228	Paragraph 47(2)(a)
229	Paragraph 47(2)(b)
230	Subsection 48(1)
231	Paragraphs 48(1)(a) and (b)
232	Paragraph 48(1)(b)
233	Paragraph 48(1)(c)
234	Subsection 48(2)
235	Subsection 48(2)
236	Paragraphs 48(2)(a) and (b)
237	Subsection 49(1)
239	Subsection 49(2)
240	Subsection 49(3)
241	Subsection 49(4)
242	Section 50
243	Section 50
244	Subsection 51(2)

Item⁶⁵	Provision
245	Paragraphs 51(2)(a) and (b)
246	Subsection 51(3)
247	Section 52
248	Subsections 53(1) to (4)
249	Subsection 54(1)
250	Paragraph 54(2)(b)
251	Subsections 54(3) and (4)
252	Subsection 55(1)
253	Subsection 55(2)
255	Subsections 55(4) and (5)
261	Subsection 57(1)
262	Subsection 57(1)
264	Subsection 57(2)
271	Subsection 57(8)
273	Subsection 58(1)
277	Subsection 65(1)
278	Subsection 65(1)
279	Subsection 65(2)
280	Subsection 65(2)
281	Subsection 65(3)
283	Section 69 (heading)
284	Subsection 69(1) (heading)
285	Subsection 69(1)
287	Subsection 69(1)
289	Subsection 69(2)
294	Subsection 69(3)
296	Subsection 69(3)
299	Subsection 69(4)
302	Subsection 69(5)
303	Subsection 69(6)
304	Subsection 69(6)
305	Section 70 (heading)
306	Section 70
307	Section 71
308	Section 72
309	Paragraph 73(a)
310	Paragraph 73(b)
312	Section 75 (heading)
313	Section 75
315	Paragraph 75(b)
317	Section 78
319	Subsection 80(1)
332	Subsection 87(11)

<i>Item</i> ⁶⁵	<i>Provision</i>
333	Subsection 88(4)
Business Names Registration (Transitional and Consequential Provisions) Act 2011	
336	Item 14 of Schedule 1 (heading)
337	Item 14 of Schedule 1
338	Item 14 of Schedule 1 (note)
339	Items 15 and 16 of Schedule 1
340	The Registrar may rely on information disclosed by States and Territories
341	What the Registrar must do if information available on transition deficient
342	Items 18 to 20 of Schedule 1
343	Distinguishing words and expressions
344	Meaning of distinguishing word or expression
345	The Registrar must record the distinguishing word or expression
346	Item 21 of Schedule 1
347	Subitem 22(2) of Schedule 1
348	Paragraph 22(2)(a) of Schedule 1
354	Item 28 of Schedule 1 (at the end of the heading)
355	After item 28 of Schedule 1
356	Internal review of certain decisions made by the Regist
357	Subitem 29(1) of Schedule 1
358	Subitem 29(2) of Schedule 1
Corporations Act	
360	Subsection 5H(2)
361	Section 9 (definition of ACN)
362	Section 9 (definition of ARBN)
365	Section 9 (note at the end of the definition of director)
366	Section 9 (definition of extract of particulars)
367	Section 9 (paragraph (a) of the definition of extract of particulars)
368	Section 9 (definition of lodge)
369	Section 9 (definition of offer information statement)
370	Section 9 (definition of profile statement)
371	Section 9 (definition of prospectus)
372	Section 9 (definition of return of particulars)
373	Section 9 (paragraph (a) of the definition of return of particulars)
375	Section 100
376	Section 106 (heading)
377	Section 106
378	Section 106
379	Paragraphs 109X(1)(c) and (d)
380	Subsection 109X(2)
381	Paragraph 111AF(1)(a)
382	Paragraph 1.1 of the small business guide in Part 1.5

Item⁶⁵	Provision
383	Paragraph 1.10 of the small business guide in Part 1.5
384	Paragraph 3.2 of the small business guide in Part 1.5
386	Paragraphs 3.3, 3.7, 3.8 and 3.9 of the small business guide in Part 1.5
387	Paragraph 4.1 of the small business guide in Part 1.5
388	Paragraph 4.2 of the small business guide in Part 1.5
389	Paragraph 4.2 of the small business guide in Part 1.5
390	Paragraph 4.2 of the small business guide in Part 1.5
391	Paragraph 4.3 of the small business guide in Part 1.5
392	Paragraph 4.4 of the small business guide in Part 1.5 (heading)
393	Paragraph 4.4 of the small business guide in Part 1.5
394	Paragraph 4.4 of the small business guide in Part 1.5 (table, heading to column heading “the company must notify ASIC of the change...”)
395	Paragraph 4.4 of the small business guide in Part 1.5 (table item 4, column headed “the company must notify ASIC of the change...”)
396	Paragraph 5.1 of the small business guide in Part 1.5
397	Paragraph 5.1 of the small business guide in Part 1.5
398	Paragraph 5.4 of the small business guide in Part 1.5
399	Paragraph 6.1 of the small business guide in Part 1.5
400	Paragraph 10.3 of the small business guide in Part 1.5
401	Paragraph 12.6 of the small business guide in Part 1.5
402	Paragraph 12.6 of the small business guide in Part 1.5
403	Subsection 111L(1) (table item 1, column 2)
404	Subsection 111L(1) (table item 2, column 2)
405	Subsection 111L(1) (table item 4, column 2)
406	Subsection 111L(1) (table item 11, column 2)
407	Subsection 111L(1) (table item 13, column 2)
408	Subsections 111N(1), (2), (3) and (4)
409	Subsection 117(1)
413	Section 118 (heading)
414	Subsection 118(1)
416	Subsection 118(2)
420	Subsection 129(2)
421	Section 130 (heading)
422	Section 130
423	Subsection 136(5)
424	Section 138
426	Subsection 142(1) (note 2)
427	Subsection 142(2)
429	Section 143 (heading)
430	Subsection 143(1)
431	Subsection 143(1) (note)
432	Subsections 143(2) and (3)

<i>Item</i> ⁶⁵	<i>Provision</i>
433	Paragraph 145(2)(b)
434	Subsection 145(3)
436	Subsection 146(1)
438	Subsection 146A(1)
439	Subsection 146A(2)
442	Subsections 147(3) and (4) (note)
443	Subsection 150(2)
445	Subsection 151(2)
448	Subsection 151(3)
449	Paragraph 151(3)(b)
450	Subsection 152(1)
451	Subsection 152(2)
453	Subsection 152(3)
456	Subsections 157(2) and (3) and 157A(1) to (7)
457	Section 158 (heading)
458	Subsection 158(1)
459	Subsections 158(3) and (4)
460	Section 159 (heading)
461	Subsection 159(1)
462	Paragraph 159(1)(c)
463	Subsection 159(2)
464	Section 160 (heading)
465	Section 160
466	Subsection 161A(6A)
468	Subsections 162(3) and 163(1)
472	Section 164 (heading)
473	Subsection 164(1)
474	Paragraphs 164(1)(a) and (b)
475	Subsection 164(2)
476	Subsection 164(3)
477	Subsections 164(4) and (5)
478	Subsection 164(6)
479	Subsection 164(7)
480	Subsection 165(3)
481	Subsection 165(3)
482	Subsection 165(4)
483	Subsection 165(5)
484	Paragraphs 172(1)(d) and (1A)(d)
485	Subsection 172(2) (heading)
486	Subsection 172(2)
487	Subsection 175(3)
488	Subsection 178A(1)
491	Subsection 178C(1)

Item⁶⁵	Provision
492	Section 178D (heading)
493	Section 178D
494	Section 178D (table heading)
495	Section 178D (table, heading to column headed “The comp
496	Section 178D (table items 1, 2, 3 and 4, column headed
497	Paragraphs 188(1)(f), (h) and (i)
498	Subsection 199A(3)
499	Subsection 201K(5) (note)
500	Section 201L (heading)
501	Section 201L
502	Subsection 201M(2) (note)
503	Section 201S
504	Section 204D (note 1)
505	Subsection 204E(2) (note)
506	Section 205A (heading)
507	Subsection 205A(1)
509	Subsection 205A(2) (note)
510	Section 205B (heading)
511	Subsection 205B(1)
513	Subsection 205B(2)
516	Subsection 205B(4)
518	Subsection 205B(5)
520	Paragraphs 205B(6)(b) and 205D(2)(b) and (3)(a) and (b)
522	Subsection 205D(4)
523	Section 205E (heading)
524	Subsection 205E(1)
525	Subsection 205E(1)
526	Subsection 205E(2)
527	Subsections 206A(1) and (2) (note)
528	Subsection 206G(2)
530	Subsection 206G(4)
531	Subsections 206GA(2) and (3)
532	Section 226
533	Subsection 235(1)
534	Subparagraph 246C5(b)(ii)
535	Subsection 246D(6)
536	Section 246F (heading)
537	Subsection 246F(1)
538	Subsection 246F(2)
539	Subsection 246F(3)
540	Paragraphs 247C(2)(a) and 249A(5)(b)
541	Subsection 249B(2)
542	Paragraphs 251A(5)(c) and 253M(3)(c)

<i>Item</i> ⁶⁵	<i>Provision</i>
543	Subsection 254B(1) (note 1)
544	Subsection 254B(1) (note 2)
545	Subsections 254E(2), 254H(4) and 254N(2)
546	Section 254X (heading)
547	Subsection 254X(1)
548	Subsection 254X(2)
549	Subsection 254X(3) (note)
550	Section 254Y (heading)
551	Subsection 254Y(1)
552	Subsection 256C(3)
553	Subsection 256C(5) (heading)
554	Subsection 256C(5)
555	Subsection 257B(1) (table)
556	Subsection 257C(3) (heading)
557	Subsection 257C(3)
558	Subsection 257D(3) (heading)
559	Subsection 257D(3)
560	Section 257E (heading)
561	Section 257E
562	Subsection 257F(2)
563	Subsection 257H(3) (note)
564	Paragraph 260A(1)(b)
565	Subsection 260B(5) (heading)
566	Subsections 260B(5) and (6)
569	Subsection 260B(7)
570	Section 283BC (heading)
571	Subsection 283BC(1)
573	Subsection 283BC(2)
575	Section 283BCA
576	Section 283BF (heading)
577	Paragraph 283BF(1)(b)
579	Section 283BG (heading)
580	Subsection 285(1) (table item 5)
581	Subsection 289(2)
583	Paragraphs 292(2)(b) and 302(c)
584	Section 302 (note 2)
585	Division 5 of Part 2M.3 (heading)
586	Section 319 (heading)
587	Subsection 319(1)
589	Section 320 (heading)
590	Subsection 320(1)
592	Subsection 321(1)
593	Subsection 322(1)

Item⁶⁵	Provision
597	Paragraph 324DAC(a)
598	Subsection 329(2)
599	Paragraph 329(11)(c)
600	Paragraph 329(11)(c)
601	Paragraph 329(11)(d)
603	Subsection 331AC(7)
604	Subsection 332A(3)
606	Chapter 2N (heading)
607	Subparagraph 345A(1)(a)(ii)
608	Paragraph 345A(1A)(b)
609	Subsection 345A(1A)
610	Subsections 345B(1) and (2)
611	Subsection 345B(3)
612	Section 345C
613	Section 346A (heading)
614	Subsection 346A(1)
616	Section 346B (heading)
617	Section 346B
619	Paragraph 346C(3)(a)
622	Subsection 346C(5)
623	Subsection 347A(2)
624	Section 347B (heading)
625	Subsection 347B(1)
627	Subsection 347B(2)
629	Paragraph 347C(1)(c)
630	Section 348A (heading)
631	Subsection 348A(1)
632	Subsection 348A(1)
633	Subsection 348A(1)
635	Section 348B (heading)
636	Section 348B
637	Section 348C (heading)
638	Subsection 348C(1)
639	Paragraph 348D(2)(a)
642	Subsection 348D(4)
643	Section 349A (heading)
644	Subsection 349A(1)
646	Section 349B
648	Section 349C
650	Section 349D
652	Subsection 411(10)
654	Subsection 412(6)
655	Subsection 412(7)

<i>Item</i> ⁶⁵	<i>Provision</i>
656	Subsection 412(8)
657	Subsection 412(8)
658	Paragraph 413(1)(d)
659	Subsection 413(3)
661	Subsection 415(1)
663	Paragraph 422(1)(c)
664	Subsection 422(2)
665	Subsection 422(3)
666	Subsection 422(4)
667	Subsection 422A(3)
668	Subsection 422A(4) (not including the note)
669	Subsection 422B(3) (not including the note)
670	Paragraph 426(a)
671	Subsections 427(1) to (2)
673	Subsection 427(3)
674	Subsections 427(4)
676	Subsection 429(4)
678	Subsection 429(5)
680	Subsection 432(2)
681	Paragraph 434(1)(a)
682	Section 434H (at the end of the heading)
683	Subsection 434H(1)
684	Subsection 436DA(4A)
686	Paragraph 438D(1)(c)
687	Subsection 438D(3)
688	Paragraph 445FA(1)(e)
690	Paragraph 446A(2)(b)
691	Paragraph 446A(5)(a)
692	Paragraph 446AA(4)(a)
694	Subsection 446C(7) (heading)
695	Subsection 446C(7)
696	Subsection 449CA(4A)
697	Subsection 449CA(6A)
698	Paragraph 450A(1)(a)
700	Section 450B
701	Paragraph 450B(b)
703	Section 450C
704	Paragraph 450C(a)
706	Section 450D
707	Paragraph 450D(a)
709	Subsection 461(2)
711	Paragraph 465A(1)(a)
713	Section 470 (at the end of the heading)

Item ⁶⁵	Provision
714	Subsection 470(1)
715	Paragraphs 470(1)(a) to (c)
716	Paragraph 470(2)(a)
718	Subsection 474(3)
720	Paragraph 481(5)(b)
721	Subsection 481(5)
723	Paragraph 482(2A)(b)
724	Subsection 482(5)
726	Paragraph 489EA(1)(b)
727	Paragraph 489EA(3)(a)
728	Paragraph 489EA(6)(a)
729	Subsection 496(7)
730	Paragraph 497(1)(b)
733	Subsection 506(1B)
735	Subsection 506A(3)
736	Subsection 506A(6)
737	Subsection 507(11)
739	Subsection 509(1) (heading)
740	Subsection 509(1)
741	Subsection 509(1)
742	Subsection 509(2) (heading)
743	Subsection 509(2)
744	Subsection 509(3)
746	Subsection 510(1A)
748	Paragraph 533(1)(d)
751	Subsection 545(3)
752	Paragraph 568A(1)(a)
754	Paragraph 568B(1)(a)
755	Paragraph 568B(1)(c)
756	Paragraphs 568C(3)(a) and (b)
757	Subsection 573(1)
758	Subsection 573(2)
759	Paragraph 579A(3)(a)
761	Paragraph 579B(3)(a)
763	Paragraph 579C(5)(a)
765	Paragraph 579C(6)(a)
767	Paragraph 579C(7)(a)
769	Subsections 579E(13), 579F(3), 579G(8) and 579H(5) and
770	Paragraph 589(3)(a)
771	Paragraph 589(3)(a)
Income Tax Assessment Act 1997	
772	Subsection 30-5(4AA) (note)
773	Paragraph 30-5(4AB)(b)

<i>Item</i> ⁶⁵	<i>Provision</i>
774	Section 30-226
775	Section 30-229 (heading)
776	Subsection 30-229(1)
778	Subsection 30-229(3)
779	Subsection 30-229(4)
783	Section 30-315 (table item 17A)
787	Subsection 995-1(1)
788	Subsection 995-1(1) (at the end of the definition of taxation law)
Credit Act	
789	Section 71 (heading)
790	Subsection 71(1) (heading)
791	Subsection 71(1)
798	Subsection 71(4)
800	Subsection 72(1)
801	Subsection 72(2)
803	Section 212
805	Sections 213 and 214
806	Subparagraph 227(4)(b)(ii)
807	Section 233
808	Section 236
809	Paragraph 237(a)
810	Section 240 (heading)
811	Subsection 240(1)
812	Paragraph 240(2)(b)
813	Subsection 281(1)
814	Section 323 (paragraph relating to Division 3)
815	Division 3 of Part 7-1 of Chapter 7 (heading)
816	Section 327 (heading)
817	Subsection 327(1)
818	Section 328
SIS Act	
820	Subsection 10(1)
821	Subsection 10(1) (paragraph (rg) of the definition of reviewable decision)
822	At the end of Division 2 of Part 1
823	Section 128H
824	Paragraph 128H(c)
825	Section 128H
828	Subdivision C of Division 1A of Part 16
835	Section 285
Taxation Administration Act 1953	
836	Subsection 6B(6A)
837	Subsection 8(1A)
838	Subsections 16-147(5) and (6) in Schedule 1

<i>Item</i> ⁶⁵	<i>Provision</i>
839	Subsection 16-147(7) in Schedule 1
840	Subsection 16-148(7) in Schedule 1
841	Subsection 16-148(8) in Schedule 1
842	Section 426-1 in Schedule 1
845	Subsection 426-65(1) in Schedule 1
846	Subsection 426-65(1) in Schedule 1
848	Subsection 426-65(2) in Schedule 1
849	Subsection 426-65(2A) in Schedule 1
850	Subsection 426-65(2B) in Schedule 1
851	Subsection 426-65(3) in Schedule 1
856	Section 426-104 in Schedule 1 (heading)
857	Subsection 426-104(1) in Schedule 1
859	Subsection 426-104(1) in Schedule 1 (note 2)
860	Subsection 426-104(2) in Schedule 1
863	Section 426-115 in Schedule 1 (heading)
864	Subsection 426-115(1) in Schedule 1
866	Subsection 426-115(1) in Schedule 1 (note 2)
867	Subsection 426-115(2) in Schedule 1

Table A2 – Amendments removing prescriptive requirements from registry provisions

<i>Item</i>	<i>Provision</i>
ABN Act	
23	Subsection 9(2)
24	Subsection 9(3)
25	Subsection 9A(1)
26	Subsection 9A(2)
28	Subsection 10(1)
29	Paragraph 10(1)(ca)
30	Paragraph 10(1)(d)
31	Subsection 10A(1)
32	Paragraph 10A(1)(d)
33	Paragraph 11(1)(b)
34	Subsection 11(3)
35	Paragraph 11(3)(d)
36	Subsection 11(3) (note)
37	Section 11A
38	Section 12
39	Subsection 13(1)
40	Subsection 13(2)
41	Subsection 13(3)
42	Subsection 13(3)
43	Subsections 13(4) and (5)

<i>Item</i>	<i>Provision</i>
44	Section 14 (heading)
45	Paragraph 14(1)(b)
46	Subsection 14(1) (note 1)
47	Subsection 14(2)
48	Subsection 15(1) (table item 1, column headed "These ent
49	Subsection 15(1) (table item 1, column headed "can be re
50	Subsection 15(1) (table item 2, column headed "These ent
51	Subsection 15(1) (table item 3, column headed "These ent
52	Subsection 15(1) (table item 3, column headed "can be re
53	Subsections 15(2) and (3)
54	Paragraph 17(1)(a)
55	Paragraph 17(1)(b)
56	Subsection 17(1) (note)
57	Subsection 17(2)
58	Subsection 17(3)
59	Subsection 18(1)
60	Subsection 18(1) (note 1)
61	Subsection 18(1A)
62	Subsection 18(2)
63	Paragraph 18(3)(a)
64	Paragraph 18(3)(c)
65	Paragraph 18(4)(a)
66	Paragraph 18(4)(b)
67	Subsection 18(4)
68	Subsection 18(5)
69	Paragraph 18(6)(a)
70	Paragraph 18(6)(c)
71	Subsection 19(1)
72	Subsection 19(2)
73	Subsection 21(2) (table item 7)
74	Division 10 of Part 3 (heading)
75	Section 24
76	Section 25
80	Section 41
82	Section 41
84	Section 41
A New Tax System (Goods and Services Tax) Act 1999	
88	Subsection 25-10(2)
89	Subsection 25-60(2)
Australian Prudential Regulation Authority Act 1998	
99	Subsection 56(7C)
BNR Act	
106	Section 3

<i>Item</i>	<i>Provision</i>
109	Section 3 (definition of notified successor)
112	Subsection 16(2)
113	Paragraph 18(1)(b)
117	Subsections 23(2) and (3)
121	Subsection 24(2)
133	Subsection 31(1)
134	Subsection 31(2)
138	Subsection 31(5)
139	Subsection 31(6) (note 2)
140	Subsection 32(3)
143	Subsection 33(1)
146	Paragraph 33(3)(a)
148	Paragraph 33(4)(a)
150	Subsection 33(8)
151	Paragraph 33(8)(c)
154	Paragraph 34(1)(a)
156	Subsection 34(2)
157	Subsection 34(3)
158	Subsection 34(4)
160	Paragraph 34(4)(a)
163	Paragraph 34(5)(a)
165	Paragraph 34(5)(b)
172	Subsection 35(1)
173	Subsection 35(2)
176	Subsection 36(1)
177	Subsection 36(2)
179	Subsections 37(1) and (2)
181	Subsection 37(5)
182	Subsections 37(6) to (8)
185	Subsection 38(2)
187	Subsection 39(1)
188	Subsection 39(2)
192	Paragraph 39(3)(b)
193	Subsection 40(1)
194	Subsection 40(2)
195	Subsections 40(3) and (4)
198	Subsections 40(6) and (7)
200	Subsection 41(1)
202	Subsection 42(1)
205	Subsection 42(3)
214	Subsection 44(2)
218	Subsection 45(2)
222	Subsection 46(2)

<i>Item</i>	<i>Provision</i>
227	Subsection 47(2)
240	Subsection 49(3)
247	Section 52
254	Subsection 55(3)
256	Section 56 (table item 11, column 1)
258	Section 56 (table item 12, column 1)
263	Subsection 57(1)
265	Subsection 57(2)
266	Subsection 57(3)
267	Paragraph 57(3)(c)
268	Subsection 57(4)
269	Subsection 57(5)
270	Subsection 57(6)
271	Subsection 57(8)
272	Subsection 57(9)
274	Subsection 58(2)
286	Paragraph 69(1)(c)
288	Subsection 69(1) (note)
292	Subsection 69(3) (heading)
293	Subsection 69(3)
297	Subsection 69(4) (heading)
298	Subsection 69(4)
300	Subsection 69(5) (heading)
301	Subsection 69(5)
309	Paragraph 73(a)
310	Paragraph 73(b)
320	Subsection 82(1)
321	Subsection 82(4)
322	Subsection 82(5)
323	Subsection 84(1)
324	Subsection 84(4)
325	Subsection 84(5)
326	Subsection 86(2)
327	Subsection 86(5)
328	Subsection 86(6)
329	Subsection 87(6)
330	Subsection 87(8)
331	Subsection 87(9)
334	Subsection 88(4)
BNR (Transitional and Consequential Provisions) Act 2011	
339	Items 15 and 16 of Schedule 1
341	What the Registrar must do if information available on transition deficient
342	Items 18 to 20 of Schedule 1

<i>Item</i>	<i>Provision</i>
343	Distinguishing words and expressions
344	Meaning of distinguishing word or expression
345	The Registrar must record the distinguishing word or expression
346	Item 21 of Schedule 1
349	Subitem 22(2) of Schedule 1
Corporations Act	
360	Subsection 5H(2)
367	Section 9 (paragraph (a) of the definition of extract of particulars)
373	Section 9 (paragraph (a) of the definition of return of particulars)
374	Paragraph 100(1)(d)
385	Paragraph 3.2 of the small business guide in Part 1.5
390	Paragraph 4.2 of the small business guide in Part 1.5
410	Subsection 117(2)
412	Subsection 117(5)
415	Paragraph 118(1)(c)
417	Subparagraph 119A(2)(a)(i)
418	Subparagraph 119A(2)(a)(ii)
428	Subsection 142(2)
435	Subsection 145(3)
437	Subsection 146(1)
440	Section 146A
444	Subsection 150(2)
446	Subsection 151(2)
447	Subsection 151(2AA)
450	Subsection 152(1)
452	Subsection 152(2)
454	Subsection 152(3)
455	Paragraph 157(1)(b)
467	Subsection 161A(6A)
470	Subsection 163(2)
471	Subsection 163(4)
476	Subsection 164(3)
490	Subsection 178A(1)
507	Subsection 205A(1)
508	Subsection 205A(1)
512	Subsection 205B(1)
514	Subsection 205B(2)
517	Subsection 205B(4)
519	Subsection 205B(5)
521	Subsection 205D(3)
529	Subsection 206G(2)
537	Subsection 246F(1)
543	Subsection 254B(1) (note 1)

<i>Item</i>	<i>Provision</i>
547	Subsection 254X(1)
551	Subsection 254Y(1)
567	Subsection 260B(5)
568	Subsection 260B(6)
572	Paragraph 283BC(1)(b)
574	Subsection 283BC(3)
575	Section 283BCA
578	Subsection 283BF(1)
581	Subsection 289(2)
582	Subsection 289(2)
588	Subsection 319(1)
591	Subsection 320(1)
594	Subsection 322(1)
596	Paragraph 324BB(6)(b)
602	Section 329
603	Subsection 331AC(7)
605	Subsection 332A(3)
607	Subparagraph 345A(1)(a)(ii)
608	Paragraph 345A(1A)(b)
618	Section 346B
620	Paragraphs 346C(3)(b) and (c)
621	Subsection 346C(4)
625	Subsection 347B(1)
626	Subsection 347B(1)
627	Subsection 347B(2)
628	Subsection 347B(2)
640	Paragraphs 348D(2)(b) and (c)
641	Subsection 348D(3)
644	Subsection 349A(1)
645	Subsection 349A(1)
647	Section 349B
649	Section 349C
651	Section 349D
653	Subsection 411(10A)
660	Subsection 413(3)
662	Subsection 415(1)
668	Subsection 422A(4) (not including the note)
669	Subsection 422B(3) (not including the note)
672	Subsection 427(2)
673	Subsection 427(3)
675	Section 427
677	Subsection 429(4)
679	Subsection 429(5)

<i>Item</i>	<i>Provision</i>
684	Subsection 436DA(4A)
685	Subsection 438B(2A)
689	Subsection 445FA(2)
691	Paragraph 446A(5)(a)
693	Subsection 446AA(4)
695	Subsection 446C(7)
696	Subsection 449CA(4A)
697	Subsection 449CA(6A)
699	Subsection 450A(1)
700	Section 450B
702	Section 450B
703	Section 450C
705	Section 450C
706	Section 450D
708	Section 450D
710	Subsection 461(2)
712	Subsection 465A(1)
717	Subsection 470(3)
719	Subsection 474(3)
722	Subsection 481(5)
725	Subsection 482(5)
728	Paragraph 489EA(6)(a)
729	Subsection 496(7)
731	Subsection 497(1)
732	Subsection 497(6)
734	Subsection 506(1B)
735	Subsection 506A(3)
736	Subsection 506A(6)
738	Subsection 507(11)
745	Subsection 509(3)
747	Subsection 510(1A)
749	Subsections 537(1) and (2)
750	Section 537
753	Subsection 568A(1)
757	Subsection 573(1)
758	Subsection 573(2)
760	Subsection 579A(3)
762	Subsection 579B(3)
764	Subsection 579C(5)
766	Subsection 579C(6)
768	Subsection 579C(7)
769	Subsections 579E(13), 579F(3), 579G(8) and 579H(5) and (6)
770	Paragraph 589(3)(a)

<i>Item</i>	<i>Provision</i>
771	Paragraph 589(3)(a)
Income Tax Assessment Act 1997	
777	Subsection 30-229(1) (note 1)
780	Subsection 30-229(4)
786	Subsection 995-1(1)
Credit Act	
792	Subsection 71(1)
793	Subsection 71(1)
794	Subsection 71(2)
795	Subsection 71(3) (at the end of the heading)
796	Subsection 71(4) (heading)
797	Subparagraph 71(4)(b)(i)
799	Subsection 71(5)
805	Sections 213 and 214
SIS Act	
820	Subsection 10(1)
825	Section 128H
826	Section 128H (note)
827	Section 128H
828	Subdivision C of Division 1A of Part 16

Table A3 – Amendments to repeal redundant provisions and harmonise registry provisions

<i>Item</i>	<i>Provision</i>
ABN Act	
19	Subsection 3(3)
77	Sections 26, 27, 28, 29A and 30
78	Section 41
79	Section 41 (definition of ABN (Australian Business Number))
81	Section 41 (definition of approved form)
83	Section 41 (definition of Australian Business Register)
85	Section 41
A New Tax System (Goods and Services Tax) Act 1999	
92	Paragraph 146-20(3)(b)
93	Subsection 146-20(3) (note)
94	Section 195-1 (definition of Australian Business Register)
95	Section 195-1 (definition of Australian Business Registrar)
Australian Prudential Regulation Authority Act 1998	
98	Subsection 56(7C)
99	Subsection 56(7C)
ASIC Act	
100	Paragraph 12A(1)(k)
BNR Act	

<i>Item</i>	<i>Provision</i>
101	Section 3 (definition of ABN)
102	Section 3
103	Section 3 (definition of application fee)
104	Section 3 (definition of ASIC Act)
105	Section 3 (definition of ASIC member)
107	Section 3 (definition of Australian Business Register)
108	Section 3 (definition of Business Names Register)
110	Section 3 (definition of staff member)
115	Section 22
118	Subsections 23(5) and (6)
141	Subsection 32(4)
143	Subsection 33(1)
149	Subsection 33(7)
169	Subsection 35(1)
171	Paragraph 35(1)(b)
173	Subsection 35(2)
177	Subsection 36(2)
182	Subsections 37(6) to (8)
188	Subsection 39(2)
192	Paragraph 39(3)(b)
195	Subsections 40(3) and (4)
203	Subsection 42(2)
238	Subsection 49(1)
257	Section 56 (table item 11, column 1)
259	Section 56 (table item 12, column 1)
260	Section 56 (table items 16 and 17)
275	Part 8
276	Sections 63 and 64
282	Sections 66 to 68
291	Subsection 69(2)
295	Paragraphs 69(3)(a) and (b)
311	Section 74
314	Section 75
316	Sections 76 and 77
318	Section 79
BNR (Transitional and Consequential Provisions) Act 2011	
335	Item 13 of Schedule 1
339	Items 15 and 16 of Schedule 1
341	What the Registrar must do if information available on transition deficient
342	Items 18 to 20 of Schedule 1
343	Distinguishing words and expressions
344	Meaning of distinguishing word or expression

<i>Item</i>	<i>Provision</i>
345	The Registrar must record the distinguishing word or expression
350	Item 26 of Schedule 1
351	Item 27 of Schedule 1 (table item 3, column 2)
352	Item 27 of Schedule 1 (table item 4, column 2)
353	Item 27 of Schedule 1 (cell at table item 5, column 1)
Corporations Act	
363	Section 9 (definition of ASIC database)
364	Section 9 (definition of Business Names Register)
367	Section 9 (paragraph (a) of the definition of extract of particulars)
411	Subsection 117(4)
419	Subsection 119A(2) (note 1)
425	Section 138
441	Paragraph 147(1)(b)
469	Subparagraph 163(2)(c)(i)
476	Subsection 164(3)
489	Subsection 178A(1)
515	Subsection 205B(3)
567	Subsection 260B(5)
575	Section 283BCA
595	Paragraph 324BB(6)(a)
615	Subsection 346A(2)
633	Subsection 348A(1)
634	Subsection 348A(2)
Income Tax Assessment Act 1997	
774	Section 30-226
777	Subsection 30-229(1) (note 1)
778	Subsection 30-229(3)
780	Subsection 30-229(4)
781	Subsection 30-229(4)
782	Paragraphs 30-229(4)(a) to (c)
784	Subsection 995-1(1) (definition of Australian Business Register)
785	Subsection 995-1(1) (definition of Australian Business Registrar)
788	Subsection 995-1(1) (at the end of the definition of taxation law)
Credit Act	
802	Part 5-1 of Chapter 5 (heading)
803	Section 212
804	Division 2 of Part 5-1 of Chapter 5 (heading)
805	Sections 213 and 214
SIS Act	
824	Paragraph 128H(c)
828	Subdivision C of Division 1A of Part 16
832	Subsection 128L(5)
834	Section 128M

<i>Item</i>	<i>Provision</i>
Taxation Administration Act 1953	
836	Subsection 6B(6A)
837	Subsection 8(1A)
838	Subsections 16-147(5) and (6) in Schedule 1
840	Subsection 16-148(7) in Schedule 1
842	Section 426-1 in Schedule 1
843	Subdivision 426-C of Part 5-35 of Chapter 5 in Schedule
844	Section 426-65 in Schedule 1 (heading)
846	Subsection 426-65(1) in Schedule 1
847	Subsection 426-65(1) in Schedule 1 (note 1)
848	Subsection 426-65(2) in Schedule 1
849	Subsection 426-65(2A) in Schedule 1
850	Subsection 426-65(2B) in Schedule 1
851	Subsection 426-65(3) in Schedule 1
852	Paragraph 426-65(3)(a) in Schedule 1
853	Paragraph 426-65(3)(b) in Schedule 1
854	Paragraph 426-65(3)(c) in Schedule 1
855	Subsection 426-65(4) in Schedule 1
856	Section 426-104 in Schedule 1 (heading)
857	Subsection 426-104(1) in Schedule 1
858	Subsection 426-104(1) in Schedule 1 (note 1)
859	Subsection 426-104(1) in Schedule 1 (note 2)
860	Subsection 426-104(2) in Schedule 1
861	Paragraph 426-104(2)(a) in Schedule 1
862	Paragraph 426-104(2)(b) in Schedule 1
863	Section 426-115 in Schedule 1 (heading)
864	Subsection 426-115(1) in Schedule 1
865	Subsection 426-115(1) in Schedule 1 (note 1)
866	Subsection 426-115(1) in Schedule 1 (note 2)
867	Subsection 426-115(2) in Schedule 1
868	Paragraph 426-115(2)(a) in Schedule 1
869	Paragraph 426-115(2)(b) in Schedule 1

Table A4 – Amendments that make the registrar responsible for collecting fees

<i>Item</i>	<i>Provision</i>
SIS Act	
829	Subsection 128L(1) (table items 6 to 8)
830	Subsections 128L(2) and (4)
831	Subsection 128L(4)
833	Subsection 128L(6)