Commonwealth Registers Bill 2019 [and associated Bills]

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Date introduced: 4 December 2019
House: House of Representatives
Portfolio: Treasury
Commencement: Various dates as set out in the body of this Bills Digest.
Links: The links to the Commonwealth Registers Bill 2019, the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, the Business Names Registration (Fees) Amendment (Registries Modernisation) Bill 2019, the Corporations (Fees) Amendment (Registries Modernisation) Bill 2019 and the National Consumer Credit Protection (Fees) Amendment (Registries Modernisation) Bill 2019, their Explanatory Memoranda and second reading speeches can be found on the Bills' home pages, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at February 2020.
Commonwealth Registers Bill 2019 [and associated Bills]

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The Bills Digest at a glance

Purpose of the Bills

The purpose of the legislative package—the Commonwealth Registers Bill 2019, the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019, Business Names Registration (Fees) Amendment (Registries Modernisation) Bill 2019, the Corporations (Fees) Amendment (Registries Modernisation) Bill 2019 and the National Consumer Credit Protection (Fees) Amendment (Registries Modernisation) Bill 2019—is to:

- create a new act called the Commonwealth Registers Act 2019 and make related amendments to existing laws to create a new Commonwealth business registry scheme and
- introduce a director identification number (DIN) requirement.

The Commonwealth Registers Bill 2019 commences the day after Royal Assent. The remainder of the regime commences on the earlier of two years after Royal Assent or on Proclamation, to allow for administrative arrangements (including a new information technology platform and the development of systems and processes) supporting the new regime to be in place.

Background and outline of the Bills

As part of the National Business Simplification Initiative—a Commonwealth-led agreement between federal, state and territory governments to work together to make it simpler to do business in Australia—the new business registry regime will focus initially on information contained in the 34 registers kept by the Australian Securities and Investments Commission and the Australian Business Register. The new law will allow the Minister to appoint an existing Commonwealth body to be the Registrar. The Registrar will perform its functions and powers in accordance with data standards and a disclosure framework (disallowable instruments made by the Registrar) and other Commonwealth laws.

The DIN is one of a number of initiatives designed to deter and penalise phoenix activity. All persons appointed as a director of a body corporate will be required to apply to the Registrar for a DIN; all directors will be required to confirm their identity; and the DIN will be a unique identifier, allowing traceability of a director’s relationship across companies. There are civil and criminal penalties for directors that fail to apply for a DIN within the applicable timeframe.

Issues and concerns

The Senate Standing Committee for the Scrutiny of Bills raised four main concerns:

- significant matters, such as governance of the performance and exercise of the Registrar’s functions and powers, and the collection and disclosure of personal information, are left to delegated legislation
- there is no requirement that the Registrar’s functions or powers be delegated only to persons with appropriate expertise
- the breadth of a power for the Registrar to arrange for the use of processes to assist decision making could raise administrative law issues
- it is not clear why, in making certain offence-specific defences (relating to making a record of information obtained in the course of official employment or relating to an application for a DIN), the defendant bears the evidential burden of proof.

The Parliamentary Joint Committee on Human Rights has sought the advice of the Treasurer on a number of aspects of the legislative package.
Glossary
The following terms are used throughout this Bills Digest.

<table>
<thead>
<tr>
<th>Term</th>
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<tbody>
<tr>
<td>ASIC</td>
<td>Australian Securities and Investments Commission</td>
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<tr>
<td><strong>Business Names Registration Act</strong></td>
<td><em>Business Names Registration Act 2011</em></td>
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<td>Business Names Registration Amendment Bill</td>
<td><em>Business Names Registration (Fees) Amendment (Registries Modernisation) Bill 2019</em></td>
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<td>CATSI Act</td>
<td><em>Corporations (Aboriginal and Torres Strait Islander) Act 2006</em></td>
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<td>Consumer Credit Act</td>
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<td>Credit Amendment Bill</td>
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<td>DIN</td>
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<td>Treasury Laws Amendment Bill</td>
<td><em>Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019</em></td>
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Commonwealth Registers Bill 2019 [and associated Bills]

Purpose of the Bills
The purpose of the legislative package— the Commonwealth Registers Bill 2019 (the Registers Bill), the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019 (the Treasury Laws Amendment Bill), Business Names Registration (Fees) Amendment (Registries Modernisation) Bill 2019 (the Business Names Registration Amendment Bill), the Corporations (Fees) Amendment (Registries Modernisation) Bill 2019 (the Corporations Amendment Bill) and the National Consumer Credit Protection (Fees) Amendment (Registries Modernisation) Bill 2019 (the Credit Amendment Bill)—is to:

• create a new act called the Commonwealth Registers Act 2019 (the Registers Act) and make related amendments to existing laws to create a new Commonwealth business registry scheme and

• introduce a director identification number (DIN) requirement.

History of the Bills
The legislative package was first introduced into the House of Representatives on 13 February 2019 but lapsed when the federal election was called. The Bills were reintroduced—largely unchanged—on 4 December 2019.

1. Throughout this Bills Digest the legislative package will be referred to as the Commonwealth Registers Bill 2019 [and associated Bills]. Where specific amendments relate to an individual Bill, that Bill will be referenced.

2. The related amendments fall into two categories. First, amendments to the Corporations Act 2001, the National Consumer Credit Protection Act 2009 (Consumer Credit Act) and the Business Names Registration Act 2011, which are in equivalent terms and contain 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. Second, amendments are made to a number of statutes as a result, or in support, of the new regime. These amendments are referred to as ‘consequential amendments’. See Explanatory Memorandum, Commonwealth Registers Bill 2019 [and associated Bills], p. 5.

**Commencement**

<table>
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<tr>
<td>Commonwealth Registers Bill 2019</td>
<td>The day after Royal Assent</td>
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<tr>
<td>Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019</td>
<td>Sections 1–3, on Royal Assent; Schedule 1, items 1 to 1258, 1262 to 1467 and Schedule 2, on a day(s) fixed by Proclamation or 24 months after Royal Assent; Schedule 1, items 1259 and 1260, at the same time as items 1 to 1258 or not at all if Schedule 3 to the Treasury Laws Amendment (Strengthening Financial Regulators No. 1) Act 2019 commences before or on the same day; Schedule 1, item 1261, the later of (a) immediately after commencement of Schedule 1, items 1 to 1258 and (b) immediately after the commencement of Schedule 3 to the Treasury Laws Amendment (Strengthening Financial Regulators No. 1) Act 2019</td>
</tr>
<tr>
<td>Business Names Registration (Fees) Amendment (Registries Modernisation) Bill 2019</td>
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Source: Relevant Bill.

**Commonwealth Registry**

For the Commonwealth Registry, the legislative package sets out:

- what information is subject to the new regime
- who may be appointed to administer the new regime as its Registrar

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4. These provisions relate to offences against the Corporations Act.
5. Note that a Bill for an Act with this title has not been introduced into the Parliament. Treasury has advised the Parliamentary Library that this should be a reference to the Act that will be created should the Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Bill 2019 be enacted. At the time of writing this Digest, that Bill had passed the House of Representatives and was scheduled for debate in the Senate. See: Parliament of Australia, ‘Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Bill 2019 homepage’, Australian Parliament website.
6. This provision relates to offences against the Corporations Act.
• 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.  

The Explanatory Memorandum states:

The objective of the new regime is to facilitate a modern registry regime that is flexible, technology neutral and governance neutral, and that facilitates timely and efficient access to information (including, where appropriate, on a real time basis) by regulators and other users of the information.  

Clause 4 of the Registers Bill provides a simplified outline of its contents:

• the Registers Act (when enacted) provides for the Registrar’s role relating to a government registry regime
• the Minister appoints an existing Commonwealth body to be the Registrar, with the functions and powers of the Registrar largely set out in other Commonwealth laws. The Minister can give directions to the Registrar
• the Registrar performs those functions and exercises those powers in accordance with specified data standards. The data standards are a disallowable instrument made by the Registrar and may deal with how information is given to the Registrar
• information that the Registrar has:
  – may be disclosed to government agencies for the performance of their functions and
  – is dealt with by the disclosure framework which is a disallowable instrument made by the Registrar
• certain decisions made by the Registrar are reviewable by the Administrative Appeals Tribunal.

Director Identification Number

The Treasury Laws Amendment Bill amends the Corporations Act 2001 (Corporations Act) and the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act) to introduce a DIN requirement, setting 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. 

Structure of the Bill

Commonwealth Registry

The Registers Bill is divided into a number of parts:

• Part 2—The Registrar: deals with appointment, functions, powers, directions by Minister, delegation, assisted decision making, liability for damages

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8. Ibid., p. 7.
• Part 3—How the Registrar is to perform and exercise functions and powers: including data standards and giving information to the Registrar

• Part 4—Disclosure of information: outlines the disclosure framework, protection of confidentiality of protected information (including penalties if an offence is committed), authorisation of recording or disclosure, preventing disclosure of particular protected information, authorisation for purposes of the Privacy Act 1988 and disclosure to a court

• Part 5—Miscellaneous: includes review of decisions, extracts of information to be admissible in evidence, annual report and rules.


Consequential amendments are proposed to be made to three Acts to allow the Registrar to collect fees for registry services:

• Schedule 1 of the Business Names Registration Amendment Bill makes amendments to the Business Names Registration (Fees) Act 2011

• Schedule 1 of the Corporations Amendment Bill makes amendments to the Corporations (Fees) Act 2001

• Schedule 1 of the Credit Amendment Bill makes amendments to the National Consumer Credit Protection (Fees) Act 2009.

Director Identification Number

Schedule 2 of the Treasury Laws Amendment Bill amends the Corporations Act and the CATSI Act to introduce a DIN requirement:

• proposed Part 6-7A—Director identification numbers: amends the CATSI Act to require directors of Aboriginal and Torres Strait Islander corporations, and possibly other officers, to have DINs. The Commonwealth Registrar gives DINs on application from those directors or other officers. The amendments relate to:
  – giving and cancelling DINs; applying for a DIN; eligible officers; requirement to apply for and have a DIN (with penalties for non-compliance); extension of application periods; infringement notices; penalties for applying for additional DINs; penalties for misrepresenting DINs; application of amendments
• proposed Part 9.1A—Director identification numbers: amends the Corporations Act, in a similar way, to require directors of corporations to have DINs.

Minor amendments are also made to:

• the Income Tax Assessment Act 1936 – amends the objects section of Part VA, which deals with tax file numbers, to provide that one of those objects is to facilitate the administration of proposed Part 6-7A of the CATSI Act and proposed Part 9.1A of the Corporations Act (as outlined above) and
• the Taxation Administration Act 1953 – to allow the Registrar to request a person’s tax file number to facilitate the administration of the DIN requirement.
Background

Commonwealth Registry

The legislative package is part of the National Business Simplification Initiative, announced in 2016, which is a Commonwealth-led agreement between federal, state and territory governments designed to ‘reduce the complexity of regulation for businesses and make dealings with government easier’. There are two main approaches: removing unnecessary regulation (particularly where there is duplication across government levels); and improving access to government information and services for business by providing them in one place.

The creation of the Commonwealth Registry partially implements the measure ‘Delivering Australia’s Digital Future – modernising business registers’ which was announced in the 2018–19 Budget. That measure provided $19.3 million in 2018–19 to the Australian Taxation Office, the Department of Industry, Innovation and Science and ASIC to develop a detailed business case for modernising the Government’s business registers. The Black Economy Taskforce: Final Report—October 2017 recommended the creation of a single business register, integrating the Companies Register, Australian Business Register and Business Names Register into a single register maintained by a single agency. The Black Economy Taskforce noted:

... the fragmentation of business registers has created opportunity for unscrupulous businesses to either register multiple entities to avoid obligations or for those who have been involved in multiple phoenixing entities, for example, to start afresh with a new business untainted by the tarnished reputation of their earlier entities.

Also, the existence of separate registers

... supports neither identification nor verification, nor service delivery to businesses. It also compromises the valuable data that should be available to government and businesses to verify counterparties.

According to Treasury, feedback from a 2017 discussion paper helped it to define the problem and informed the development of a potential solution. Treasury released another discussion paper on modernising business registers in July 2018, in which it argued:

Modernising business registers will address registry fragmentation, improve business user experience, reduce risks of ongoing operating, foster data driven innovation and enable better use of registry data.

The main problems identified with the current system are:

• high compliance costs and regulatory burden as businesses are required to interact with numerous registry services, often providing the same information

11. G Hunt (Minister for Industry, Innovation and Science) and C Laundy (Assistant Minister for Industry, Innovation and Science), New national simplification initiative to make it easier to get on with doing business and creating jobs, media release, 18 November 2016.
12. Ibid.
15. Ibid., p. 103.
16. Ibid.
• data integrity issues arising from the distribution of registry accountabilities across different regulators with no harmonisation or rationalisation of data collection and authentication requirements
• difficulty in meeting user demand with current ageing IT infrastructure
• current legislation has not kept pace with developing digital technology and restricts ASIC’s ability to interact with clients in their preferred manner.\textsuperscript{19}

When introducing the legislative package in February 2019, the Assistant Treasurer noted:

Currently the data is hosted in different systems across various departments and agencies, imposing inefficient cost burden on registrants in meeting their registration obligations and making it difficult and time consuming to find information.\textsuperscript{20}

The regime initially applies to 35 business registers currently administered by ASIC and the Australian Business Register, held by the Commissioner of Taxation.\textsuperscript{21} These registers include entity name/identifier/information registers, registers of banned or disqualified persons and professional registers (including some historical registers). The Explanatory Memorandum advises that ‘[a]ditional government registers may be brought into the regime by future legislative reforms.’\textsuperscript{22}

**Director Identification Number**

According to the Explanatory Memorandum, phoning—when the controllers of a company deliberately avoid paying liabilities by shutting down an indebted company and transferring its assets to another company—is estimated to cost the Australian economy between $2.9 billion and $5.1 billion annually.\textsuperscript{23}

The introduction of a DIN was recommended by the Productivity Commission in its September 2015 final report on *Business Set-up, Transfer and Closure*:

The Commission recommends the introduction of a director identification number, underpinned by an identification process along the lines required to establish a bank account, to enable the monitoring of director registration (including the detection of disqualified or fraudulent directors), the collection of data regarding director appointments over time (to establish patterns of director involvement in repeat business failures) and detection of possible fraudulent and phoenix activity by the Inter-agency Phoenix Forum and investors.\textsuperscript{24}

As part of a package of reforms to deter and penalise illegal phoenix activity, the Government announced in September 2017 that it would introduce a DIN:\textsuperscript{25}

The DIN will identify directors with a unique number, but it will be much more than just a number. The DIN will interface with other government agencies and databases to allow regulators to map the relationships between individuals and entities and individuals and other people.\textsuperscript{26}

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\textsuperscript{19} Ibid., p. 3.
\textsuperscript{20} S Robert (Assistant Treasurer), *Modernising business registers and introducing DINs*, media release, 14 February 2019.
\textsuperscript{21} A list of the registers is provided in Appendix 1.
\textsuperscript{22} Explanatory Memorandum, Commonwealth Registers Bill 2019 [and associated Bills], p. 6.
\textsuperscript{23} Ibid., p. 39.
\textsuperscript{24} Productivity Commission (PC), *Business set-up, transfer and closure*, Inquiry report, 75, PC, Canberra, 30 September 2015, p. 28.
\textsuperscript{25} K O’Dwyer (Minister for Revenue and Financial Services), *A comprehensive package of reforms to address illegal phoening*, media release, 12 September 2017.
Under the Bill, the DIN will:

• require all directors to confirm their identity
• be a unique identifier for each person who consents to being a director, which they will keep, even if they cease to be a director
• provide traceability of a director’s relationship across companies (enabling better tracking of directors of failed companies)
• reduce time and cost for administrators and liquidators, improving the efficiency of the insolvency process
• improve data integrity and security.  

Committee consideration

Selection of Bills Committee

Following the February 2019 introduction of the legislative package, the Selection of Bills Committee recommended that the Bills be ‘referred immediately to the Economics Legislation Committee for inquiry and report by 26 March 2019’ as they constituted ‘significant reform which should be reviewed to ensure effectiveness, ease of access and protection of privacy’.  

Following reintroduction in December 2019, the Selection of Bills Committee recommended that the legislative package not be referred to a committee for inquiry.

Senate Economics Legislation Committee

On 14 February 2019, the Senate referred the legislative package to the Senate Economics Legislation Committee (Economics Committee) for inquiry and report by 26 March 2019. Details of the inquiry are available at the Inquiry webpage.

The Economics Committee received 14 submissions for the inquiry, with all submitters supporting the aim of the Bills. Some general issues were identified:

• a potential reduction in the availability of public information under the new regime
• concern about the imposition of ‘disproportionate’ civil and criminal penalties and strict liability offences for directors who do not have a DIN or fail to apply for a DIN, particularly for small businesses
• lack of detail in the legislation, with a large role left to data standards and administrative instruments
• concerns about the reversal of the evidential burden in relation to criminal matters

26. Ibid.
32. Ibid.
33. Ibid., p. 33.
• concerns regarding the security of information required to be provided by new and potential directors, including the potential for identity theft

• recognition that the DIN model alone will not stop illegal phoenix activity. It will be important to integrate the DIN with other registry data

• the potential for the DIN model to be delayed by the ‘complex and challenging’ business register project

• recognition that ASIC’s IT aging systems will make it ‘difficult to support in a timely and cost-effective manner the development of new types of register ... readily deliver enhancements ... and meet the needs of registry customers’.

The Committee recommended that:

• the Government review ASIC’s registry technology in order to assess its continued suitability and the possible need for its replacement

• the operation of the DIN be reviewed two years after its introduction to ascertain its effectiveness and

• the Bills be passed.

As at 31 December 2019, an interim Government response had been received by the Committee, but was not publicly available.

**Senate Standing Committee for the Scrutiny of Bills**

The Standing Committee for the Scrutiny of Bills (Scrutiny of Bills Committee) has raised a number of concerns with the Registers Bill and the Treasury Laws Amendment Bill.

The first concern raised by the Scrutiny of Bills Committee is the extent to which the functions and powers of the Registrar are governed by two disallowable legislative instruments – the data standards and the disclosure framework – rather than in primary legislation. The Committee argued that the need for ‘administrative flexibility’ is not adequate justification for this approach. Instead, where Parliament delegates its legislative power, specific consultation obligations (beyond those in the Legislation Act 2003) should be included, and compliance with those obligations should be a condition of validity of the relevant legislative instrument. The Committee sought the Assistant Treasurer’s advice ‘as to why it is considered necessary and appropriate to leave the data standards and disclosure framework to delegated legislation’.

The second concern raised by the Scrutiny of Bills Committee is that there is no requirement that the Registrar’s functions or powers be delegated only to persons with appropriate expertise. The

34. Ibid., p. 34.
35. Ibid.
36. Ibid., p. 35.
37. Ibid., p. 36.
38. Ibid., p. 38.
39. President of the Senate, President’s report to the Senate on the status of Government responses to Parliamentary Committee Reports as at 31 December 2019, p. 4.
42. Ibid. Section 17 of the Legislation Act 2003 requires rule-makers to consult before making legislative instruments, but section 19 notes that ‘the fact that consultation does not occur does not affect the validity or enforceability of a legislative instrument’.
43. Ibid.
Committee argued that a limit should be set on the scope of powers that might be delegated or on the categories of people to whom those powers might be delegated (preferring delegates to be confined to the holders of nominated offices or to members of the Senior Executive Service). It noted that the explanatory materials do not adequately address these concerns. Accordingly, the Committee requested the Assistant Treasurer’s advice on the appropriateness of the wide delegation power and whether the Bills could be amended to provide further guidance as to the acceptable categories of delegates and powers able to be delegated.\(^{44}\)

The third concern raised by the Scrutiny of Bills Committee relates to the provision in the Bills for the Registrar to arrange for the use of processes to assist decision making (such as computer applications and systems) ‘for any purposes for which the Registrar may make decisions in the performance or exercise of the Registrar’s functions or powers, other than decisions reviewing other decisions’.\(^{45}\) The Committee was concerned that the breadth of this power could raise administrative law issues, particularly if it resulted in predetermined criteria being applied inflexibly to decisions that should consider the merits of individual cases.\(^{46}\) The Committee considered that the explanatory materials did not provide a sufficient justification for the proposed approach. Accordingly, the Committee requested the Assistant Treasurer’s advice on:

- why it is considered necessary and appropriate to permit the Registrar to arrange for computer assisted decision-making for any purpose for which the Registrar may make decisions in the performance or exercise of the Registrar’s functions or powers, other than decisions reviewing other decisions
- whether consideration has been given to how computer assisted decision-making processes will comply with administrative law requirements (for example, the requirement to consider relevant matters and the rule against fettering of discretionary power) and
- whether consideration has been given to including guidance on the face of the Bill as to the types of administrative actions (for example, complex or discretionary decisions) that must be taken by a person rather than by a computer.\(^{47}\)

The final concern raised by the Scrutiny of Bills Committee relates to the reversal of evidential burden of proof. The Registry regime makes it an offence for a person to make a record of information obtained by the person in the course of the person’s official employment, or to disclose information to another person. Exceptions — offence-specific defences — are provided if:

- the recording or disclosure of the information is for the purposes of the Registry regime, or occurs in the performance of the person’s official employment
- the disclosure of the information 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 or exercise of the functions or powers of a government entity or
- the disclosure of the information is in accordance with the disclosure framework or each person to whom the information relates consents to the disclosure.

The Treasury Laws Amendment Bill makes it an offence for an eligible officer not to have a DIN or to apply for a DIN knowing that the officer already possesses a DIN. There are also offence-specific defences to these offences if:

\(^{44}\) Ibid., p. 10.
\(^{45}\) Clause 11 of the Registers Bill; items 5, 10 and 18 of Schedule 1 to the Treasury Laws Amendment Bill.
\(^{46}\) Senate Standing Committee for the Scrutiny of Bills, Scrutiny digest, 1, 2020, op. cit., p. 10.
\(^{47}\) Ibid., p. 11.
• the officer applied before a certain period and the application had not been finally determined
• the Commonwealth Registrar directed the person to make the application or
• the person applied for the additional DIN under another Act.

In raising these offence-specific defences, the defendant will bear the evidential burden of proof – requiring the defendant to raise evidence about the matter (not positively prove the matter). It is ordinarily the duty of the prosecution to prove all elements of an offence. The Committee noted that the Guide to Framing Commonwealth Offences provides that a matter should only be included as an offence-specific defence where:

• it is peculiarly within the knowledge of the defendant and
• it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish. 48

The Explanatory Memorandum states that:

The evidential burden in those defences has been reversed because the subject matter of the defence is:

• peculiarly within the knowledge of the defendant; and,
• significantly more difficult and costly for the prosecution to disprove than for the defendant to establish. 49

The Committee argued that it was ‘not apparent that all the circumstances identified as an exception to the offence are peculiarly within the knowledge of the defendant’ nor did the Explanatory Memorandum explain why it would be significantly more difficult and costly for the prosecution to disprove the matters than for the defendant to establish. 50 Accordingly, the Committee asked the Assistant Treasurer to provide a more detailed justification of the appropriateness of the offence-specific defences and suggested that it might be appropriate to amend the Bills to provide that certain offence-specific defences 51 were instead framed as elements of the relevant offences. 52

At the time of writing, the Assistant Treasurer’s response had not been provided to the Scrutiny of Bills Committee.

The Committee had no comment on the other Bills in the package. 53

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51. These are the offence-specific defences at: Registers Bill: subclause 17(3); Treasury Laws Amendment Bill, Schedule 1: item 5, proposed 62M of the Business Names Registration Act, item 10, proposed section 1270L of the Corporations Act, item 18, proposed section 212M of the Consumer Credit Act; Treasury Laws Amendment Bill, Schedule 2: item 5, proposed subsections 308-20(2) and 308-40(2) and (3) of the CATSI Act, item 11, proposed subsections 1272C(2) and 1272G(2) and (3) of the Corporations Act.
53. Ibid., p. 41.
Policy position of non-government parties/independents

As at March 2019, Australian Labor Party (Labor) Senators on the Economics Committee recommended that the Bills only be passed if the business case is made public and sufficient time is given to consider the details:

Labor Senators believe that this legislation should not be debated in the Parliament while key details of the modernisation project have not been made public. While the intent to modernise business registers is supported, there are three areas of concern that Labor Senators wish to raise.

... The first issue is that stakeholders have expressed concern about tying the introduction of the Director Identification Number (DIN) to the registry modernisation project, which may delay the implementation of DINs for years.

... The second issue is that the details of the modernisation project remain unclear. Basic project management details such as an estimated completion date, the estimated total cost for implementation and the anticipated tactics for execution, such as whether to migrate all registers in one attempt or to iteratively merge registers, have not been provided to the Parliament.

... Labor Senators also note the recommendation from the Business Council of Co-Operatives and Mutuals (BCCM) that the legislation be amended to allow States and Territories the option to refer functions to the Commonwealth. Labor Senators urge the Government to work with BCCM and the States and Territories to find ways to reduce red tape for co-operatives.54

At the time of writing of this Bills Digest, no comments on the legislative package from other parties or independents have been identified.

Position of major interest groups

The Government has undertaken numerous consultations on the proposed legislation. In its submission to the consultation on draft legislation conducted in October 2018, the Australian Bureau of Statistics noted that the restriction of data standards to the Registrar’s own functions... would limit future opportunities to collection information to meet “whole of government” information requirements ... [which] could potentially reduce the evidence base available for policy development. It might also result in less efficient “whole of government” data collection and increased burden on businesses.55

The Australian Chamber of Commerce and Industry ’strongly encourage[d]’ the government to implement the modernising business registers program and DINs as soon as possible and argued for registry fees to go towards improving the register rather than to consolidated revenue.56

The Australian Council of Trade Unions called for free or low cost public access to registry information, and free access to the DIN register ‘to provide maximum transparency to aid unions, the public and enforcement authorities in promoting corporate accountability and to guard

56. Australian Chamber of Commerce and Industry, Submission to Treasury consultation, Modernising Business Registers and Director Identification Numbers legislation, October 2018.
against phoenixing behaviour’.\(^{57}\) The Australian Institute of Credit Management also called for free or low cost access to registry data.\(^{58}\)

In its submission to the Economics Committee inquiry, the Australian Small Business and Family Enterprise Ombudsman called for a fee structure appropriate to the size of the business—scaled to reflect the complexity of a specific activity—reflecting capacity to pay and the cost of running the register.\(^{59}\)

The Australian Institute of Company Directors (AICD) called for further consultation on:

- the privacy, security and public benefit issues relating to the collection and disclosure of director information through disallowable instruments
- the proposal for defendants to carry the evidentiary burden for proving defences to offences for breaches of the requirement to apply for a DIN prior to appointment and the obligation not to apply for additional DINs
- the proposal for a DIN to be applied for prior to appointment and
- the proposed automatic cancellation of a prospective director’s DIN after a 12-month period of not being appointed as a director.\(^{60}\)

The AICD was also ‘very concerned’ about the confidentiality and security of information held on Registrar systems.\(^{61}\)

The Australian Charities and Not-for-profits Commission and the Housing Industry Association supported the introduction of the modern registry regime, but the Australian Charities and Not-for-profits Commission had some concerns over the imposition of civil penalties and strict liability offences for directors of charities who fail to apply for a DIN.\(^{62}\)

ASIC was strongly supportive of the legislative package.\(^{63}\)

**Financial implications**

The Explanatory Memorandum states that there will be no financial impact for the Government. It does, however, estimate an increase in compliance costs of approximately $21.5 million per year on average over ten years, arising from the requirement for a DIN. Most of the regulatory burden is anticipated to occur within the first 18 months as existing directors fulfil their obligation to obtain a DIN.\(^{64}\)

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57. Australian Council of Trade Unions, Submission to Treasury consultation, Modernising Business Registers and Director Identification Numbers legislation, October 2018.
58. Australian Institute of Credit Management, Submission to the Senate Economics Legislation Committee, Inquiry into the Commonwealth Registers Bill 2019 and 4 related Bills [provisions], [Submission no. 9], The Senate, Canberra, p. 4.
60. Australian Institute of Company Directors, Submission to the Senate Economics Legislation Committee, Inquiry into the Commonwealth Registers Bill 2019 and 4 related Bills [provisions], [Submission no. 7], The Senate, Canberra, p. 2.
61. Ibid.
62. Australian Charities and Not-for-profits Commission, Submission to the Senate Economics Legislation Committee, Inquiry into the Commonwealth Registers Bill 2019 and 4 related Bills [provisions], [Submission no. 2], The Senate, Canberra, p. 1; Housing Industry Association, Submission to the Senate Economics Legislation Committee, Inquiry into the Commonwealth Registers Bill 2019 and 4 related Bills [provisions], [Submission no. 4], The Senate, Canberra, p. 1.
63. ASIC, Submission to the Senate Economics Legislation Committee, Inquiry into the Commonwealth Registers Bill 2019 and 4 related Bills [provisions], [Submission no. 6], The Senate, Canberra, p. 1.
64. Explanatory Memorandum, Commonwealth Registers Bill 2019 [and associated Bills], p. 3.
Labor Senators on the Economics Committee considered that ‘it is clear that the project will require significant capital expenditure’ and that a number of stakeholders had indicated that the project might take three to five years.  

**Statement of Compatibility with Human Rights**

As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bills’ compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bills are compatible.  

The legislative package engages, or may engage the right to the presumption of innocence and the right to privacy and reputation. However, to the extent that the legislative package places limitations on these rights, these limitations can be considered legitimate, rational and necessary in light of the objectives they aim to achieve, and reasonable and proportionate in their extent.  

**Parliamentary Joint Committee on Human Rights**

The Parliamentary Joint Committee on Human Rights (Human Rights Committee) has sought the advice of the Treasurer on the following aspects of the legislative package:  

- what is meant by the term ‘public benefit’ in relation to the disclosure of information by the registrar in accordance with disclosure framework, and whether it would constitute a legitimate objective for the purposes of international human rights law  
- the nature and scope of the personal information which is likely to be collected and disclosed under the new regime  
- whether the disclosure framework set out in clause 16 of the Commonwealth Registers Bill 2019 is sufficiently circumscribed and accompanied by adequate safeguards (having regard to, but not limited to, the matters set out at subclause 16(2))  
- whether there exists a detailed outline of the proposed disclosure framework insofar as it relates to the right to privacy and  
- any other matters relevant to the adequacy of safeguards in relation to the collection, use, disclosure and detention of personal information pursuant to this legislative package.  

At the time of writing, the Treasurer’s response had not been provided to the Human Rights Committee.  

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66. The Statement of Compatibility with Human Rights can be found at pages 63–72 of the Explanatory Memorandum to the Commonwealth Registers Bill 2019 [and associated Bills].  
68. Subclause 16(2) of the Registers Bill sets out examples of matters the disclosure framework may deal with, such as circumstances in which protected information must not be disclosed without the consent of the person to whom it relates.  
70. A response to the concerns raised in the Human Rights Committee’s report on the original package of Bills was not provided as the 2019 federal election was called before the response was due. Parliamentary Joint Committee on Human Rights, *Correspondence archive: 45th Parliament*.  

Commonwealth Registers Bill 2019 [and associated Bills]
Key issues and provisions

Establishing the Commonwealth Registry
This section summarises the main provisions as they relate to:

- information subject to the new regime
- appointment of the Registrar
- functions and powers of the Registrar
- data standards and other relevant Commonwealth laws
- protection and disclosure of information held by the Registrar and
- other matters.

Information subject to the new regime
The regime initially applies to 35 business registers currently administered by ASIC and the Australian Business Register. A list of the registers, and the current legislative provision(s) that establish them, is provided in Appendix 1.

Appointment of the Registrar
Subclause 6(1) of the Registers Bill enables the Minister, by notifiable instrument, to appoint a Commonwealth Body to be the Registrar.71

Different Commonwealth bodies can be appointed Registrar for different functions or powers of the Registrar (subclause 6(2)).

Functions and powers of the Registrar
Clause 7 of the Registers Bill sets out the Registrar’s functions as:

- 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.

Consequential amendments
Schedule 1 to the Treasury Laws Amendment Bill inserts near equivalent provisions as follows:

- Business Names Registration Act, proposed section 62B, inserted by item 5
- Corporations Act, proposed section 1270A, inserted by item 10
- Consumer Credit Act, proposed section 212B, inserted by item 18.

The proposed amendments tie the powers of the Registrar to its functions. Under clause 8 of the Registers Bill, 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

71 Commonwealth body is defined at clause 5 of the Registers Bill as: an agency (within the meaning of the Public Service Act 1999); a body established for a public purpose by or under Commonwealth law; or 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. See also items 1, 8 and 14 of Schedule 1 to the Treasury Laws Amendment Bill.
• the power to do all things necessary or convenient to be done for, or in connection with, the performance of those functions.

### Consequential amendments

Schedule 1 to the Treasury Laws Amendment Bill inserts near equivalent provisions as follows:

- *Business Names Registration Act, proposed section 62C*, inserted by item 5
- *Corporations Act, proposed section 1270B*, inserted by item 10
- *Consumer Credit Act, proposed section 212C*, inserted by item 18.

The powers and functions of the Registrar are largely set out in existing Commonwealth laws, mostly relating to the registers being brought into the new regime. There are hundreds of consequential amendments to existing legislation listing all the functions and powers to be transferred to the Registrar. These consequential amendments transfer existing functions and powers to the Registrar rather than creating new functions and powers. They relate to:

- the subject matters for which the Registrar can collect information
- how persons make applications to the Registrar
- the ability of the Registrar to assess those applications and
- the ability of the Registrar to hold information.

Table A1 in the [Explanatory Memorandum](#) lists those amendments transferring functions and powers to the Registrar.

### Ability to make data standards

The core provisions of the new regime include the Registrar’s **ability to make data standards** relating to the performance of its functions and powers ([clause 13](#) of the Registers Bill); and the Registrar’s **ability to make a disclosure framework** relating to the disclosure of protected information ([clause 16](#) of the Registers Bill).

#### Consequential amendments

Schedule 1 to the Treasury Laws Amendment Bill inserts near equivalent provisions as follows:

- *Business Names Registration Act, proposed section 62H and proposed section 62L* respectively, inserted by item 5
- *Corporations Act, proposed section 1270G and proposed section 1270K* respectively inserted by item 10
- *Consumer Credit Act, proposed section 212H, and proposed section 212L* respectively, inserted by item 18.

The Minister may, by legislative instrument:

- give written directions to the Registrar about the performance of its functions and the exercise of its powers ([subclause 9(1)](#) of the Registers Bill)

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• 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 (subclause 25(1) of the Registers Bill).

Consequential amendments
Schedule 1 to the Treasury Laws Amendment Bill inserts near equivalent provisions as follows:

- Business Names Registration Act, proposed subsection 62D(1) and proposed subsection 62U(1) respectively, inserted by item 5
- Corporations Act, proposed subsection 1270C(1) and proposed subsection 1270T(1) respectively, inserted by item 10
- Consumer Credit Act, proposed subsection 212D(1) and proposed subsection 212U(1) respectively, inserted by item 18.

Each function and power of the new law does not apply until the function or power is assigned to the Registrar (items 359, 1315, 1414, 1465 and 1466, Schedule 1 of the Treasury Laws Amendment Bill).

Data standards

About the data standards
The new law allows the Registrar to make data standards, by legislative instrument, on matters relating to the performance of the Registrar’s functions and the exercise of the Registrar’s powers (subclause 13(1) of the Registers Bill). Subclause 13(2) of the Registers Bill provides examples of what the data standards may cover:

- 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
- 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 information held by the Registrar
- integrating or linking information held by the Registrar.

Data standards may include different provisions relating to different functions or powers of the Registrar (subclause 13(3) of the Registers Bill and items 5, 10 and 18 of Schedule 1 to the Treasury Laws Amendment Bill).

Consequential amendments
Schedule 1 to the Treasury Laws Amendment Bill inserts near equivalent provisions as follows:

- Business Names Registration Act, proposed subsections 62H(1)–(3), inserted by item 5
- Corporations Act, proposed subsections 1270G(1)–(3), inserted by item 10
- Consumer Credit Act, proposed subsections 212H(1)–(3), inserted by item 18.
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 (subclause 13(4) of the Registers Bill).

**Consequential amendments**

Schedule 1 to the Treasury Laws Amendment Bill inserts near equivalent provisions as follows:

- *Business Names Registration Act*, proposed subsection 62H(4), inserted by item 5
- *Corporations Act*, proposed subsection 1270G(4), inserted by item 10
- *Consumer Credit Act*, proposed subsection 212H(4), inserted by item 18.

In addition items 359, 1315 and 1414 of Schedule 1 to the Treasury Laws Amendment Bill insert applications provisions in respect of the Register.

**Form of the data standards**

Clause 14 of the Registers Bill provides for the information to be given to the Registrar in electronic or ‘any other specified form’.

**Consequential amendments**

Schedule 1 to the Treasury Laws Amendment Bill inserts near equivalent provisions as follows:

- *Business Names Registration Act*, proposed section 62J, inserted by item 5
- *Corporations Act*, proposed section 1270H, inserted by item 10
- *Consumer Credit Act*, proposed section 212J, inserted by item 18.

Clause 15 of the Registers Bill requires the Registrar to perform its functions and exercise its powers in compliance with the data standards.

**Consequential amendments**

Schedule 1 to the Treasury Laws Amendment Bill inserts near equivalent provisions as follows:

- *Business Names Registration Act*, proposed section 62K, inserted by item 5
- *Corporations Act*, proposed section 1270J, inserted by item 10
- *Consumer Credit Act*, proposed section 212K, inserted by item 18.

**Protection and disclosure of information held by the Registrar**

About the disclosure framework

The Registrar may, by legislative instrument, make a disclosure framework relating to disclosing protected information (subclause 16(1) of the Registers Bill). Under subclause 16(2) of the Registers Bill, the disclosure framework may provide for:

- circumstances in which protected information must not be disclosed without the consent of the person to whom it relates

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74. 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 registry 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). See clause 5 of the Registers Bill.
• circumstances in which de-identified protected information may be disclosed
• circumstances in which protected information may be disclosed to the general public
• circumstances in which confidentiality agreements are required for the disclosure of protected information and
• imposing conditions on disclosure of protected information.

The disclosure framework ‘must not provide for disclosure of protected information unless the Registrar is satisfied that the benefits of the disclosure would outweigh the risks’ (subclause 16(5) of the Registers Bill).

The new law includes provisions designed to promote the smooth transition of Registry functions and powers from one Registrar to another (subclause 16(7) of the Registers Bill).

Consequential amendments
Schedule 1 to the Treasury Laws Amendment Bill inserts near equivalent provisions as follows:
• Business Names Registration Act, proposed section 62L, inserted by item 5
• Corporations Act, proposed section 1270K, inserted by item 10
• Consumer Credit Act, proposed section 212L, inserted by item 18.

Offences and penalties

About the Criminal Code

Chapter 2 of the Code provides that offences have physical elements, for example, doing or not doing an action, and fault elements, such as intention, knowledge, recklessness or negligence. Under the Code if the legislation creating an offence does not specify a fault element for a physical element consisting of conduct, the automatic fault element is intention.75

The standard of proof for a criminal offence is ‘beyond reasonable doubt’.76

A person commits an offence if he, or she, is party to a confidentiality agreement and fails to comply with that agreement. In that case, the maximum penalty is 100 penalty units or imprisonment for two years, or both (subclause 16(4) of the Registers Bill).77

Consequential amendments
Schedule 1 to the Treasury Laws Amendment Bill inserts near equivalent provisions as follows:
• Business Names Registration Act, proposed subsection 62L(4), inserted by item 5
• Corporations Act, proposed subsection 1270K(4), inserted by item 10
• Consumer Credit Act, proposed subsection 212L(4), inserted by item 18.

In addition, it is an offence for an official to record or disclose information held by the Registrar unless the recording or disclosure is authorised (clause 17 of the Registers Bill). The maximum

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75. Criminal Code, subsection 5.6(1).
76. Criminal Code, section 13.2.
77. Under section 4AA of the Crimes Act 1914, a penalty unit is equivalent to $210.
penalty for disclosing Registry information is imprisonment for two years (subclause 17(1) of the Registers Bill). 78

A defendant carries an evidential burden for establishing that a recording or disclosure of Registry information was authorised, requiring them to adduce or point to evidence that suggests a reasonable possibility that the recording or disclosure was authorised (subclause 17(3) of the Registers Bill).

**Consequential amendments**

Schedule 1 to the Treasury Laws Amendment Bill inserts near equivalent provisions as follows:

- **Business Names Registration Act**, proposed section 62M, inserted by item 5
- **Corporations Act**, proposed section 1270L, inserted by item 10
- **Consumer Credit Act**, proposed section 212M, inserted by item 18.

**Disclosure of information**

Other Commonwealth secrecy provisions do not apply in addition to the new law’s protection and disclosure regime unless expressly designated. Subclause 18(3) of the Registers Bill lists the designated secrecy provisions.

**Consequential amendments**

Schedule 1 to the Treasury Laws Amendment Bill inserts near equivalent provisions as follows:

- **Business Names Registration Act**, proposed subsection 62N(3), inserted by item 5
- **Corporations Act**, proposed subsection 1270M(3), inserted by item 10
- **Consumer Credit Act**, proposed subsection 212N(3), inserted by item 18.

The new law allows a person to apply to the Registrar to prevent the disclosure of ‘particular protected information’ that relates to them (clause 19 of the Registers Bill).

**Consequential amendments**

Schedule 1 to the Treasury Laws Amendment Bill inserts near equivalent provisions as follows:

- **Business Names Registration Act**, proposed section 62P, inserted by item 5
- **Corporations Act**, proposed section 1270N, inserted by item 10
- **Consumer Credit Act**, proposed section 212P, inserted by item 18.

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 (clause 21 of the Registers Bill). 79

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78. Under subsection 48(2) of the Crimes Act where a person is convicted of an offence against a law of the Commonwealth punishable by imprisonment only, the court may, if the court thinks it appropriate in all the circumstances, impose, instead of, or in addition to, a penalty of imprisonment, a pecuniary penalty worked out in accordance with the formula in that section.

79. **Clause 5** of the Registers Bill provides that taxation law has the same meaning as in the Income Tax Assessment Act 1997, where it is defined at section 995-1 as: 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. **Clause 5** of the Registers Bill defines Australian business law to mean a law of the Commonwealth, or of a State or Territory, that is a law that 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.
Consequential amendments
Schedule 1 to the Treasury Laws Amendment Bill inserts near equivalent provisions as follows:

- **Business Names Registration Act**, proposed section 62R, inserted by item 5
- **Corporations Act**, proposed section 1270Q, inserted by item 10
- **Consumer Credit Act**, proposed section 212R, inserted by item 18.

Other matters
Other matters designed to support the effectiveness and efficiency of the Registry regime include:

- when the Minister can direct the Registrar (clause 9 of the Registers Bill)
- the circumstances in which, and to whom, the Registrar may delegate its functions and powers (clause 10 of the Registers Bill)
- the use of assisted decision making processes (such as computer applications and systems) by the Registrar (clause 11 of the Registers Bill)
- the extent to which the Registrar and associated persons may be liable for damages in connection with the new regime (clause 12 of the Registers Bill).

Consequential amendments
Schedule 1 to the Treasury Laws Amendment Bill inserts near equivalent provisions as follows:

- **Business Names Registration Act**, proposed sections 62D–62G respectively, inserted by item 5
- **Corporations Act**, proposed sections 1270C–1270F respectively, inserted by item 10
- **Consumer Credit Act**, proposed sections 212D–212G, inserted by item 18.

In addition the Bills provide for:

- review rights with respect to decisions made by the Registrar (clause 22 of the Registers Bill)\(^80\)
- the admissibility of Registry information in court proceedings (clause 23 of the Registers Bill)\(^81\)
- the information that must be included in the Registrar’s annual report about the operation of the new regime (clause 24 of the Registers Bill)\(^82\) and
- what rules may be made by the Minister—by legislative instrument—for the purposes of the new regime (clause 25 of the Registers Bill).\(^83\)

Other consequential amendments
The hundreds of consequential amendments, contained in Part 2 of Schedule 1 of the Treasury Laws Amendment Bill:

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80. **Business Names Registration Act**, proposed subsection 56(2), inserted by item 4 of Schedule 1 to the Treasury Laws Amendment Bill; **Corporations Act**, proposed subsection 1317B(1A), inserted by item 12 of Schedule 1 to the Treasury Laws Amendment Bill; **Consumer Credit Act**, proposed subsection 327(1A), inserted by item 19 of Schedule 1 to the Treasury Laws Amendment Bill.

81. **Business Names Registration Act**, proposed section 62S, inserted by item 5 of Schedule 1 to the Treasury Laws Amendment Bill; **Corporations Act**, proposed section 1270R, inserted by item 10 of Schedule 1 to the Treasury Laws Amendment Bill; **Consumer Credit Act**, proposed section 212S, inserted by item 18 of Schedule 1 to the Treasury Laws Amendment Bill.

82. **Business Names Registration Act**, proposed section 62T, inserted by item 5 of Schedule 1 to the Treasury Laws Amendment Bill; **Corporations Act**, proposed section 1270S, inserted by item 10 of Schedule 1 to the Treasury Laws Amendment Bill; **Consumer Credit Act**, proposed section 212T, inserted by item 18 of Schedule 1 to the Treasury Laws Amendment Bill.

83. **Business Names Registration Act**, proposed section 62U, inserted by item 5 of Schedule 1 to the Treasury Laws Amendment Bill; **Corporations Act**, proposed section 1270T, inserted by item 10 of Schedule 1 to the Treasury Laws Amendment Bill; **Consumer Credit Act**, proposed section 212U, inserted by item 18 of Schedule 1 to the Treasury Laws Amendment Bill.
• make the Registrar responsible for administering the functions and powers that make up the registers (by replacing relevant references to ASIC in the current law with references to the Registrar)
• replace prescription of various matters (what information has to be provided by registrants to ASIC and the Commissioner of Taxation and the manner and form in which such information has to be provided) with the requirements of the data standards and the disclosure framework
• remove other aspects of the registers that are displaced (made redundant by or inconsistent with or duplicated) by the new regime.

Another category of consequential amendments allow the Registrar to collect fees relating to the registers (but do not affect how the fee regime operates or the amount payable for particular fees). These are set out in Schedule 1 of the Business Names Registration Amendment Bill, Schedule 1 of the Corporations Amendment Bill and Schedule 1 of the Credit Amendment Bill.

Director Identification Numbers
Schedule 2 of the Treasury Laws Amendment Bill amends the Corporations Act by inserting proposed Part 9.1A and the CATSI Act by inserting proposed Part 6.7A to introduce a DIN requirement. It sets out:

• the persons to whom 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.

The persons to whom the DIN requirement applies

Proposed section 308-15 of the CATSI Act (inserted by item 5 of Schedule 2 of the Treasury Laws Amendment Bill) defines an eligible officer as a person who is:
• appointed to the position of director of an Aboriginal and Torres Strait Islander corporation or is appointed to the position of alternate director and is acting in that capacity or
• any other officer of an Aboriginal and Torres Strait Islander corporation body who is an officer of a kind prescribed by the regulations. 84

Proposed section 1272B of the Corporations Act (inserted by item 11 of Schedule 2 of the Treasury Laws Amendment Bill) defines an eligible officer in near equivalent terms, except that rather than referring to an Aboriginal and Torres Strait Islander corporation, the provision refers to a director or specified officer of ‘a company, or of a body corporate that is a registered Australian body or registered foreign company’. 85

Obligations associated with the DIN requirement

The obligations:
• require a director to apply for a DIN prior to being appointed as a director. Failure to comply with the requirement is an offence of strict liability punishable by a maximum penalty of 25

84. Section 16-5 of the CATSI Act defines an Aboriginal and Torres Strait Islander corporation as a corporation registered under that Act.
85. The terms ‘company’, ‘body corporate’, ‘registered Australian body’ and ‘registered foreign company’ are defined at section 6 of the Corporations Act.
penalty units (equivalent to $5,250) under the CATSI Act and 60 penalty units (equivalent to $12,600) under the Corporations Act.  

- require a director to apply for a DIN within a prescribed period of being directed to do so by the Registrar.  

- if the Registrar does not specify the number of days, the prescribed period is 28 days from the date the direction is given to the director.  

- A failure do so gives rise to an offence of strict liability and the maximum penalty is 25 penalty units (equivalent to $5,250) under the CATSI Act and 60 penalty units (equivalent to $12,600) under the Corporations Act.

- prohibit a person from knowingly applying for multiple DINs—unless the Registrar has directed the person to apply for a DIN or where the person applied for an additional DIN under another Act.  

- A failure do so gives rise to an offence, the maximum penalty for which is 100 penalty units (equivalent to $21,000) and/or imprisonment for 12 months under the CATSI Act and imprisonment for 12 months under the Corporations Act.

- prohibit a person from misrepresenting a DIN to a government body or registered body.  

- A person commits an offence if the person represents a number as a DIN if it is not that person’s DIN.  

- The maximum penalty for which is 100 penalty units (equivalent to $21,000) and/or imprisonment for 12 months under the CATSI Act and imprisonment for 12 months under the Corporations Act.

As set out above, an eligible officer must have a DIN. A failure do so gives rise to an offence of strict liability and the maximum penalty is 25 penalty units (equivalent to $5,250) under the CATSI Act and 60 penalty units (equivalent to $12,600) under the Corporations Act.

However, if an eligible officer does not have a DIN because:

- the officer applied to the Registrar for a DIN prior to being first appointed as an eligible officer and the application has not yet been dealt with or

- the person was appointed as an eligible officer without their knowledge

then an offence has not been committed, but the defendant bears the evidential burden. The Explanatory Memorandum provides the rationale for the reversal of the onus of proof as follows:

86. CATSI Act, proposed section 308-20, inserted by item 5 of Schedule 2 of the Treasury Laws Amendment Bill; Corporations Act, proposed section 1272C, inserted by item 11 of Schedule 2 of the Treasury Laws Amendment Bill and item 14 of that Schedule.

87. CATSI Act, proposed subsection 308-25(1), inserted by item 5 of Schedule 2 of the Treasury Laws Amendment Bill; Corporations Act, proposed subsection 1272D(1), inserted by item 11 of Schedule 2 of the Treasury Laws Amendment Bill.

88. CATSI Act, proposed subsection 308-25(2), inserted by item 5 of Schedule 2 of the Treasury Laws Amendment Bill; Corporations Act, proposed subsection 1272D(2), inserted by item 11 of Schedule 2 of the Treasury Laws Amendment Bill.

89. CATSI Act, proposed subsection 308-25(1), inserted by item 5 of Schedule 2 of the Treasury Laws Amendment Bill; item 14 of Schedule 2 of the Treasury Laws Amendment Bill.

90. CATSI Act, proposed section 308-40, inserted by item 5 of Schedule 2 of the Treasury Laws Amendment Bill; Corporations Act, proposed section 1272G, inserted by item 11 of Schedule 2 of the Treasury Laws Amendment Bill.

91. CATSI Act, proposed section 308-40, inserted by item 5 of Schedule 2 of the Treasury Laws Amendment Bill; Corporations Act, item 14 of Schedule 2 of the Treasury Laws Amendment Bill. Sections 1311B and 1311C of the Corporations Act allow set out formulae for working out the fine that may be imposed in lieu of a term of imprisonment, on individuals and body corporates, respectively.

92. CATSI Act, proposed section 308-45, inserted by item 5 of Schedule 2 of the Treasury Laws Amendment Bill; Corporations Act, proposed section 1272H, inserted by item 11 of Schedule 2 of the Treasury Laws Amendment Bill; and item 14 of that Schedule.

93. CATSI Act, proposed subsections 308-20(1), (4) and (5), inserted by item 5 of Schedule 2 of the Treasury Laws Amendment Bill; Corporations Act, proposed sections 1272C(1), (4) and (5), inserted by item 11 of Schedule 2 of the Treasury Laws Amendment Bill.

94. CATSI Act, proposed subsections 308-20(2) and (3), inserted by item 5 of Schedule 2 of the Treasury Laws Amendment Bill; Corporations Act, proposed sections 1272C(2) and (3), inserted by item 11 of Schedule 2 of the Treasury Laws Amendment Bill.
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 prove than for the defence to establish. The burden of proof on the defendant is an evidential burden. To satisfy this evidential burden the defendant must adduce or point to evidence that suggests a reasonable possibility that the defence exists. Once this is done, the prosecution bears the burden of proof. 95

This reversal of the evidential burden of proof was one of the concerns raised by the Scrutiny of Bills Committee in the Scrutiny digest, 1, 2020. 96

Administration of the new DIN requirement

The administration of the DIN requirement relies on the new registry regime. Proposed Part 6-7A in the CATSI Act and proposed Part 9.1A in the Corporations Act provide the Registrar with the ability to:

• give a person a DIN if they have applied for a DIN and the Registrar is satisfied that the person’s identity has been established 97
• direct a director to apply for a DIN 98
• keep a record of each DIN that has been given to a person 99
• 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
• notify a person that they have been given a DIN or that a DIN that has previously been given to them has been cancelled. 100

The Registrar may only give a person a DIN if that person has applied for one: either they are an eligible officer or they are not an eligible officer, but intend to become one within 12 months (if they do not become an eligible officer within 12 months the DIN is automatically cancelled). 101

An application for a DIN must meet any requirements of the data standards. 102

**Offences and penalties**

### Civil penalty provisions

Schedule 2 of the Treasury Laws Amendment Bill introduces a number of strict liability offences and alternative civil penalty provisions.

A person commits an offence of strict liability if the person does something prohibited by an Act or fails to do something required by an Act. Importantly though, the offence will not criminalise honest errors and a person cannot be held liable if he, or she, had an honest and reasonable

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96. Senate Standing Committee for the Scrutiny of Bills, Scrutiny digest, 1, 2020, op. cit.
97. CATSI Act, proposed subsection 308-5(1), inserted by item 5 of Schedule 2 of the Treasury Laws Amendment Bill; Corporations Act, proposed subsection 1272(1), inserted by item 11 of Schedule 2 of the Treasury Laws Amendment Bill.
98. CATSI Act, proposed subsection 308-10(2), inserted by item 5 of Schedule 2 of the Treasury Laws Amendment Bill; Corporations Act, proposed subsection 1272A(2), inserted by item 11 of Schedule 2 of the Treasury Laws Amendment Bill.
99. CATSI Act, proposed subsection 308-5(2), inserted by item 5 of Schedule 2 of the Treasury Laws Amendment Bill; Corporations Act, proposed subsection 1272(2), inserted by item 11 of Schedule 2 of the Treasury Laws Amendment Bill.
100. CATSI Act, proposed subsection 308-5(3), inserted by item 5 of Schedule 2 of the Treasury Laws Amendment Bill; Corporations Act, proposed subsection 1272(3), inserted by item 11 of Schedule 2 of the Treasury Laws Amendment Bill.
101. CATSI Act, proposed subsection 308-5(4), inserted by item 5 of Schedule 2 of the Treasury Laws Amendment Bill; Corporations Act, proposed subsection 1272A(4), inserted by item 11 of Schedule 2 of the Treasury Laws Amendment Bill.
102. CATSI Act, proposed subsection 308-10(4), inserted by item 5 of Schedule 2 of the Treasury Laws Amendment Bill; Corporations Act, proposed subsection 1272A(4), inserted by item 11 of Schedule 2 of the Treasury Laws Amendment Bill.
belief that they were complying with relevant obligations. Civil penalties provide an additional or alternative enforcement option, especially where there may be difficulty in proving the necessary fault element to establish a criminal offence. The standard of proof is lower than for criminal offences—so in a breach of a civil penalty provision a matter must be proven ‘on the balance of probability’.

Consequences of contravening the new law

As stated above, civil and criminal penalties apply to contraventions of the DIN requirement in the Corporations Act and the CATSI Act. The maximum penalties applicable to each obligation are summarised in Table 2.1 of the Explanatory Memorandum, which states:

... 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.

Breaches of the obligations to apply for a DIN are also subject to an infringement notice under Part 5 of the Regulatory Powers (Standard Provisions) Act 2014. For the purposes of the framework under that Act:

- an infringement officer (who can issue an infringement notice) 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 (who can withdraw an infringement notice or extend the time to pay) 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 (items 5 and 11 of Schedule 2 of the Treasury Laws Amendment Bill).

Consequential amendments

Relevant definitions are inserted into section 9 of the Corporations Act and section 700-1 of the CATSI Act.

Transitional provisions

A person who is a director immediately before the day the Minister appoints a Registrar must apply for a DIN within a period specified by a legislative instrument made by the Minister (items 9 and 13 of Schedule 2 of the Treasury Laws Amendment Bill). Until this period is specified there is no requirement on such directors to apply for a DIN. A person who is appointed a director within the first 12 months of the new regime’s operation is provided with an additional 28 days to apply for a DIN.

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105. CATSI Act, proposed subsection 308-35(2), inserted by item 5 of Schedule 2 of the Treasury Laws Amendment Bill; Corporations Act, proposed subsection 1272F(2), inserted by item 11 of Schedule 2 of the Treasury Laws Amendment Bill.
106. CATSI Act, proposed subsection 308-35(3), inserted by item 5 of Schedule 2 of the Treasury Laws Amendment Bill; Corporations Act, proposed subsection 1272F(3), inserted by item 11 of Schedule 2 of the Treasury Laws Amendment Bill.
107. Inserted by item 10 of Schedule 2 of the Treasury Laws Amendment Bill.
108. Inserted by item 8 of Schedule 2 of the Treasury Laws Amendment Bill.
109. Inserted into the CATSI Act by item 9 of Schedule 2 of the Treasury Laws Amendment Bill; Inserted into the Corporations Act, item 13 of Schedule 2 of the Treasury Laws Amendment Bill.
### Appendix 1: registers being brought into the new regime

<table>
<thead>
<tr>
<th>No.</th>
<th>Current provision(s)</th>
<th>Register</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Section 24 of the <em>ABN Act</em></td>
<td>Australian Business Register</td>
</tr>
<tr>
<td>2.</td>
<td>Sections 118, 601DB and 1378 of the <em>Corporations Act</em></td>
<td>ACN register</td>
</tr>
<tr>
<td>3.</td>
<td>Section 22 of the <em>Business Names Act</em></td>
<td>Business Names Register</td>
</tr>
<tr>
<td>4.</td>
<td>Section 601CB of the <em>Corporations Act</em></td>
<td>Australian registrable bodies register – Australian bodies</td>
</tr>
<tr>
<td>5.</td>
<td>Section 601CE of the <em>Corporations Act</em></td>
<td>Australian registrable bodies register – Foreign companies</td>
</tr>
<tr>
<td>6.</td>
<td>Section 152 of the <em>Corporations Act</em></td>
<td>Reserved names register</td>
</tr>
<tr>
<td>7.</td>
<td>Section 601EB of the <em>Corporations Act</em></td>
<td>Managed investment scheme register</td>
</tr>
<tr>
<td>8.</td>
<td>Part 10.13 of the <em>Corporations Act</em> (preserving the operation of the repealed Chapter 2K of that Act)5</td>
<td>Company charges register*</td>
</tr>
<tr>
<td>9.</td>
<td>Section 213 of the <em>Consumer Credit Act</em> and subregulation 29(1) of the Credit Regulations</td>
<td>Credit registers – Licensees</td>
</tr>
<tr>
<td>10.</td>
<td>Section 213 of the <em>Consumer Credit Act</em> and subregulation 29(3) of the Credit Regulations</td>
<td>Credit registers – Credit representatives</td>
</tr>
<tr>
<td>11.</td>
<td>Section 213 of the <em>Consumer Credit Act</em> and subregulation 29(4) of the Credit Regulations</td>
<td>Credit registers – Registered persons</td>
</tr>
<tr>
<td>12.</td>
<td>Section 213 of the <em>Consumer Credit Act</em> and Regulation 30A of the Credit Regulations</td>
<td>Credit register of unlicensed carried over instrument lenders</td>
</tr>
<tr>
<td>13.</td>
<td>Section 1274AA of the <em>Corporations Act</em></td>
<td>Register of disqualified company directors and other officers</td>
</tr>
<tr>
<td>14.</td>
<td>Section 92AA of the <em>Corporations Act</em> and subregulation 7.6.06(1) of the Corporations Regulations</td>
<td>Register of banning orders under Division 8 of Part 7.6 of the Corporations Act</td>
</tr>
<tr>
<td>15.</td>
<td>Section 92AA of the <em>Corporations Act</em> and subregulation 7.6.06(2) of the Corporations Regulations</td>
<td>Register of disqualification orders under Division 8 of Part 7.6 of the Corporations Act</td>
</tr>
<tr>
<td>16.</td>
<td>Regulation 10.2.96 of the Corporations Regulations6</td>
<td>Banned securities representatives register*</td>
</tr>
<tr>
<td>17.</td>
<td>Regulation 10.2.96 of the Corporations Regulations7</td>
<td>Banned futures representatives register*</td>
</tr>
<tr>
<td>18.</td>
<td>Section 213 of the <em>Consumer Credit Act</em> and subregulation 30(1) of the Credit Regulations</td>
<td>Credit register of persons against whom a banning order is made</td>
</tr>
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<td>19.</td>
<td>Section 213 of the <em>Consumer Credit Act</em> and subregulation 30(2) of the Credit Regulations</td>
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</tr>
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**Registers of banned or disqualified persons**

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<tr>
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</tr>
<tr>
<td>20.</td>
<td>Section 213 of the <em>Consumer Credit Act</em> and subregulation 30(3) of the Credit Regulations</td>
<td>Credit register of persons who are banned under a law of a State or Territory</td>
</tr>
<tr>
<td>21.</td>
<td>Section 128K of the SIS Act</td>
<td>Register of Disqualified self-managed superannuation fund (SMSF) auditors</td>
</tr>
</tbody>
</table>

**Professional registers**

<table>
<thead>
<tr>
<th>No.</th>
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<th>Register</th>
</tr>
</thead>
<tbody>
<tr>
<td>22.</td>
<td>Section 922A of the <em>Corporations Act</em> and subregulation 7.6.05(1) of the Corporations Regulations</td>
<td>Register of financial services licensees</td>
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<tr>
<td>23.</td>
<td>Section 922A of the <em>Corporations Act</em> and subregulation 7.6.05(2) of the Corporations Regulations</td>
<td>Register of authorised representatives of financial services licensees</td>
</tr>
<tr>
<td>24.</td>
<td>Section 922Q of the <em>Corporations Act</em></td>
<td>Register of financial advisers</td>
</tr>
<tr>
<td>25.</td>
<td>Section 1285 of the <em>Corporations Act</em></td>
<td>Register of auditors</td>
</tr>
<tr>
<td>26.</td>
<td>Section 15-1 of Schedule 2 to the <em>Corporations Act</em></td>
<td>Register of liquidators</td>
</tr>
<tr>
<td>27.</td>
<td>Section 283BCA of the <em>Corporations Act</em></td>
<td>Register relating to trustees for debenture holders</td>
</tr>
<tr>
<td>28.</td>
<td>Section 128J of the SIS Act</td>
<td>Register of approved SMSF auditors</td>
</tr>
<tr>
<td>29.</td>
<td>Section 1274 of the <em>Corporations Act</em> and regulation 7.6.02AGA of the Corporations Regulations</td>
<td>Carbon registrants register</td>
</tr>
<tr>
<td>30.</td>
<td>Regulation 10.2.96 of the Corporations Regulations10</td>
<td>Register of futures licensees*</td>
</tr>
<tr>
<td>31.</td>
<td>Regulation 10.2.96 of the Corporations Regulations11</td>
<td>Register of licence holders*</td>
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<tr>
<td>32.</td>
<td>Regulation 10.2.96 of the Corporations Regulations12</td>
<td>Register of securities representatives*</td>
</tr>
<tr>
<td>33.</td>
<td>Regulation 10.2.96 of the Corporations Regulations13</td>
<td>Register of foreign insurance agents*</td>
</tr>
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<td>34.</td>
<td>Regulation 10.2.96 of the Corporations Regulations14</td>
<td>Register of general insurance brokers*</td>
</tr>
<tr>
<td>35.</td>
<td>Regulation 10.2.96 of the Corporations Regulations15</td>
<td>Register of life insurance brokers*</td>
</tr>
</tbody>
</table>

Commonwealth Registers Bill 2019 [and associated Bills]

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