



Explanatory Statement

Transitional Registry Data Standards and Disclosure Frameworks (Repeal) Instrument 2023

General outline of instrument

1. This instrument repeals five data standards and five disclosure frameworks made under the *Business Names Registration Act 2011*, *Commonwealth Registers Act 2020*, *Corporations Act 2001* and the *National Consumer Credit Protection Act 2009*.
2. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
3. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Date of effect

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

What is the effect of this instrument

5. This instrument repeals the ten legislative instruments listed in paragraph 11 below.

Compliance cost assessment

6. Minor – there will be no additional regulatory impacts as the instrument is minor and machinery in nature OBPR22-03092.

Background

7. The *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020* (Registries Modernisation Act) provides for the transfer of registry functions and powers from the Australian Securities and Investments Commission (ASIC) and the Registrar of the Australian Business Register (ABR Registrar) to the Commonwealth Registrar, as well as other changes to modernise the registry law. The amendments in the Registries Modernisation Act commenced on 22 June 2022.
8. The inclusion of an auto-commencement date in the Registries Modernisation Act was a technical requirement designed to ensure that laws passed by Parliament are actually commenced if the amendments were never commenced by proclamation.
9. However, it was intended that the Commonwealth Registrar would assume legal responsibility for registry functions and powers with the progressive transfer of the registers onto the new Australian Business Registry Services (ABRS) platform in line with the Modernising Business Registers (MBR) program delivery.

10. The Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022 (Bill) was introduced in the previous parliament to defer the auto-commencement date until 1 July 2024 (or an earlier date specified by proclamation) and to enable the progressive transfer of registers. However, the Bill lapsed when the Parliament was prorogued prior to the federal election in 2022.
11. To ensure business continuity, the following instruments were made by the Commonwealth Registrar:
 - (a) *Australian Business Register—Transitional Registry Disclosure Framework 2022*
 - (b) *Australian Business Register—Transitional Registry Operations Data Standard 2022*
 - (c) *Business Names Registration—Transitional Registry Disclosure Framework 2022*
 - (d) *Business Names Registration—Transitional Registry Operations Data Standard 2022*
 - (e) *Corporations Act—Transitional Registry Disclosure Framework 2022*
 - (f) *Corporations Act—Transitional Registry Operations Data Standard 2022*
 - (g) *National Consumer Credit Protection—Transitional Registry Disclosure Framework 2022*
 - (h) *National Consumer Credit Protection—Transitional Registry Operations Data Standard 2022*
 - (i) *SMSF Approved Auditor—Transitional Registry Disclosure Framework 2022*
 - (j) *SMSF Approved Auditor—Transitional Registry Operations Data Standard 2022.*(referred to below as the ‘transitional instruments’)
12. The transitional instruments provided for:
 - (a) disclosure frameworks relating to the continued disclosure of registry information under current practices i.e. through the Australian Business Register (ABR) and ASIC forms and systems, and
 - (b) data standards relating to the functions and powers of the Commonwealth Registrar in respect of registry operations and the continued operation of registry services under current practices i.e. through ABR and ASIC forms and systems.
13. The transitional instruments were temporary in nature, to allow:
 - (a) actions to be taken through ASIC and ABR notices, forms, or systems or any other means by which the action would have been done by ASIC and the ABR prior to the commencement of the transitional instruments, and
 - (b) for consideration to be given to legislative options to align the commencement of relevant law with the delivery of the MBR program.
14. The transitional instruments operated until legislative changes to support the delivery of the MBR program were in place, at which time it was anticipated that these instruments would be repealed.
15. Relevant legislative changes were given effect by the *Treasury Laws Amendment (2022 Measures No. 1) Act 2022* (Treasury Laws Amendment), which commenced on 9 August 2022. The Treasury Laws Amendment retrospectively delayed the automatic commencement of various provisions relating to the MBR program until 1 July 2026 (or an earlier date if specified by Proclamation). The effect of this change is that the Registries Modernisation Act did not automatically commence on 22 June 2022. This enables the law to be commenced when IT systems supporting the MBR program are ready.

Consultation

16. Subsection 17(1) of the *Legislation Act 2003* requires that the rule-maker undertake an appropriate level of consultation that is reasonably practicable to undertake before making a legislative instrument.
17. Targeted consultation on the draft of this instrument and the explanatory statements was undertaken for a period of 2 weeks with the MBR Business Advisory Group.¹
18. The explanatory statements for the transitional instruments highlighted the transitional nature of these instruments and indicated that they would be repealed once legislative changes to support the delivery of the MBR program were in place.
19. Relevant legislative changes have now occurred via the Treasury Laws Amendment and as anticipated, this instrument now seeks to repeal the transitional instruments.
20. As such, further targeted consultation was not required for this instrument; it is of a minor or machinery nature and does not affect pre 22 June 2022 arrangements now restored by the Treasury Laws Amendment.

Legislative references

Acts Interpretation Act 1901

Business Names Registration Act 2011

Commonwealth Registers Act 2020

Corporations Act 2001

Human Rights (Parliamentary Scrutiny) Act 2011

Legislation Act 2003

National Consumer Credit Protection Act 2009

Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020

Treasury Laws Amendment (2022 Measures No. 1) Act 2022

¹ See [Modernising Business Registers Business Advisory Group | Australian Taxation Office](https://ato.gov.au/modernising-business-registers-business-advisory-group/) (ato.gov.au) for complete list.

Statement of compatibility with Human Rights

This statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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

Overview of the Legislative Instrument

This instrument repeals the following instruments:

- (a) *Australian Business Register—Transitional Registry Disclosure Framework 2022*
- (b) *Australian Business Register—Transitional Registry Operations Data Standard 2022*
- (c) *Business Names Registration—Transitional Registry Disclosure Framework 2022*
- (d) *Business Names Registration—Transitional Registry Operations Data Standard 2022*
- (e) *Corporations Act—Transitional Registry Disclosure Framework 2022*
- (f) *Corporations Act—Transitional Registry Operations Data Standard 2022*
- (g) *National Consumer Credit Protection—Transitional Registry Disclosure Framework 2022*
- (h) *National Consumer Credit Protection—Transitional Registry Operations Data Standard 2022*
- (i) *SMSF Approved Auditor—Transitional Registry Disclosure Framework 2022*
- (j) *SMSF Approved Auditor—Transitional Registry Operations Data Standard 2022*.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms because the new instrument is of a minor or machinery nature. It merely repeals transitional legislative instruments that were made redundant by the enactment of *Treasury Laws Amendment (2022 Measures No. 1) Act 2022*.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.