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## Explanatory Statement

### Australian Business Register – Transitional Registry Disclosure Framework 2022

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#### General Outline of Instrument

1. This instrument is made under subsection 16(1) of the *Commonwealth Registers Act 2020*.
2. This instrument provides a disclosure framework relating to the continued disclosure of registry information under current practices (i.e. through Australian Business Register forms and systems) after the commencement of this instrument.
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

#### Date of effect

5. This instrument commences 22 June 2022.

#### What is the effect of this instrument

6. The effect of this instrument is to authorise the disclosure of registry information in any circumstances in which the disclosure would have been permitted immediately prior to the commencement of the instrument, effectively continuing the current access and disclosure arrangements, as previously required or permitted by the Australian Business Registrar.
7. To ensure the continued operation of registry services in accordance with current practices this instrument authorises disclosures in relation to registry information using notices, forms or systems or any other means by which the disclosure would have been made by the Australian Business Registrar immediately before the commencement of this instrument.

#### Compliance cost assessment

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

#### Background

9. The *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020* (Registries Modernisation Act) provides for the transfer of registry functions and powers from the Australian Business Registrar to the Registrar, as well as other changes to modernise the

registry law. The amendments in the Registries Modernisation Act commence from a date fixed by proclamation or, if not commenced prior to 22 June 2022, from 22 June 2022 (auto-commencement).

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

## **Definitions**

15. The instrument defines a number of terms for the purpose of ensuring registry disclosures that operated before the commencement of this instrument will continue to operate in the same way under this instrument.
16. This includes the definition of old ABN Act and old ABN instrument, being *A New Tax System (Australian Business Number) Act 1999* or any instrument made under the *A New Tax System (Australian Business Number) Act 1999*, as in force immediately before the commencement of this instrument.
17. 'Registry information' is also defined as any information that is protected information within the meaning of the *Commonwealth Registers Act 2020* and for the avoidance of doubt, includes information:
  - (a) provided to, obtained or held by the Registrar in connection with particular functions or powers of the Registrar; or
  - (b) previously provided to, obtained or held by the Australian Business Registrar in connection with particular functions or powers of that Registrar.

## **Disclosure of Registry Information**

18. During the transitional period this instrument authorises the disclosure of registry information where:
  - (a) Australian Business Registrar would have been permitted to make the disclosure immediately prior to the commencement day under:

- i. the old ABN Act, or
  - ii. an old ABN Instrument, or
  - iii. Division 355 of Schedule 1 to the *Taxation Administration Act 1953*, or
- (b) the disclosure is of information that has been lawfully made available to the public before the commencement of this instrument.

19. The instrument makes it clear that the disclosures of registry information may be done using notices, forms or systems or any other means by which the disclosure would have been made by the Australian Business Registrar immediately before the commencement of this instrument. Further, that all arrangements in place immediately before the commencement date apply on and from the commencement of this instrument.

### **Applications to prevent the disclosure of registry information**

20. The instrument provides that any person making an application to prevent the disclosure of protected information under the instrument must be made on the same basis (both the application and the Registrar's decision) as an application under subsection 26(4) of the old ABN Act permitted to be made to, and decided by, the Australian Business Registrar.

### **Risks and Benefits**

- 21. Subsection 16(5) of the *Commonwealth Registers Act 2020* provides that a disclosure framework must only provide for the disclosure of protected information if the Registrar is satisfied that the benefits of the disclosure outweigh the risk of the disclosure (taking into account any mitigation of those risks in accordance with the disclosure framework).
- 22. This instrument authorises the disclosure of registry information on the same basis as previously required or permitted prior to the commencement of this instrument. This includes the disclosure of information that has been lawfully made available to the public prior to the commencement of this instrument.
- 23. While there will be disclosure of some personal information, which may pose a risk to some individuals, the Registrar is of the view that the benefits of the disclosure outweigh the risks, as the alternative, in the current circumstances where the registers cannot yet transfer to the new ABRS platform, is that no registry information is disclosed at all.
- 24. If the alternative position was adopted (disclosure of no registry information) there would be significant and serious impacts for government, businesses, and the community, as the registers and registry information is a critical piece of infrastructure for the Australian economy.
- 25. The Registrar is satisfied that the benefits of disclosing information on the same basis, to ensure the continued operation of registry services in accordance with current practices, are significant and outweigh the potential risks of disclosure of registry information.
- 26. Further, persons who are concerned about their personal safety as a result of personal information being available can make an application on the same basis as an application under subsection 26(4) of the old ABN Act..

### **Consultation**

27. 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.

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

### **Legislative references**

*Acts Interpretation Act 1901*

*A New Tax System (Australian Business Number) Act 1999*

*Commonwealth Registers Act 2020*

*Human Rights (Parliamentary Scrutiny) Act 2011*

*Legislation Act 2003*

*Privacy Act 1988*

*Taxation Administration Act 1953*

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

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

## **Statement of compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### **Australian Business Register- Transitional Registry Disclosure Framework 2022**

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

#### **Overview of the Legislative Instrument**

The effect of this instrument is to authorise the disclosure of registry information in any circumstances in which the disclosure would have been permitted immediately prior to the commencement of the instrument, effectively continuing the current access and disclosure arrangements, as previously required or permitted by the Australian Business Registrar.

To ensure the continued operation of registry services in accordance with current practices this instrument authorises disclosures in relation to registry information using notices, forms or systems or any other means by which the disclosure would have been made by the Australian Business Registrar immediately before the commencement of this instrument.

#### **Human rights implications**

This disclosure framework potentially engages the right to privacy.

#### **Engagement of the right to privacy**

Article 17 of the International Covenant on Civil and Political Rights provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation. The right to privacy is not an absolute right. In some circumstances, it must be weighed against the equally justified right of others and against matters that benefit society as whole.

The disclosure of registry information in line with how registry information is disclosed prior to the commencement of the instrument will continue current access and disclosure arrangements (as previously required or permitted by the Australian Business Registrar). The impact of not disclosing any registry information would have significant and serious impacts for government, businesses and the community.

The disclosure of registry information authorised by this instrument will engage the right to privacy because it provides for the disclosure of personal information within the meaning of the *Privacy Act 1988*.

To any extent which the disclosure of this information constitutes a limitation on the individual's right to be protected from interference with their privacy, the limitation is justified because the disclosure of registry information is in the pursuit of the legitimate objective identified and rationally connected and proportionate to the objective being sought, being the administration of the registry system.

The instrument itself will be a disallowable instrument and therefore subject to proper Parliamentary oversight and the consultation requirements contained in the *Legislation Act 2003*.

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

## **Conclusion**

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

Accordingly, while the right to privacy is engaged, the limitations are:

- (a) aimed at achieving a legitimate objective;
- (b) rationally connected with the objective; and
- (c) reasonable, necessary and proportionate.

The objective of this instrument is to authorise disclosure of registry information in any circumstances in which the disclosure would have been permitted immediately prior to the commencement of the instrument, effectively continuing the current access and disclosure arrangements (as previously required or permitted by the Australian Business Registrar or as lawfully made publicly available) to ensure business continuity. This instrument authorises disclosure of information that is currently disclosed by the Australian Business Registrar and information that is lawfully made publicly available and all arrangements in relation to payments for access to registry information will continue to apply.