



# DIRECTOR IDENTIFICATION NUMBER - WHAT YOUR CLIENTS NEED TO KNOW

**As a result of recent legislative changes, any person who is or wants to become a company director will be required to have a unique identification number which will be administered by a new national registry service.**

This unique identification number will assist government and industry regulatory bodies to accurately identify directors, especially should they commit offences or engage in misconduct in relation to their duties as a director.

**Failure to apply for an identification number may result in fines of up to \$1.11 million.**

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## SUMMARY OF LEGISLATION

**On 22 June 2020, the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019 received royal assent, which lead to the creation of the Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020 (“the Act”).**

The purpose of the Act is to create a new national business registry, bringing together existing registries, and to be administered by a new national registry service named the Australian Business Registry Services (“ABRS”). The registry will also monitor the unique identification number registered to each natural person appointed/to be appointed as a director (“Director ID”).

On 30 September 2021, the Corporations (Director Identification Numbers—Transitional Application Period) Instrument 2021 came into effect. This instrument, made under the Corporations Act 2001 (“the Corps Act”) and the Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020, provides the transitional period for both the Corps Act and Corporations (Aboriginal and Torres Strait Islander) Act 2006 (“the ATS Corps Act”).

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## PURPOSE OF LEGISLATION

**Until recently, any natural person who wished to register themselves as director of an Australian company could do so under a name of their choosing.**

The database maintained by the Australian Securities and Investments Commission (“ASIC”) that accepts the registration of company directors did not require any verification of the name of the individual completing the registration or other information such as date of birth or address.

As such, the ability to enforce the accountability of a director’s conduct has been affected by the inability, in some cases, to accurately identify the natural person registered as a director of a company. Moreover, the issue of illegal ‘phoenix’ activity has been able to propagate throughout corporate Australia as a

result of a director being able to alter or choose alternate names when registering new companies as part of their phoenix manoeuvres.

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## WHO NEEDS TO APPLY

**As a result of the Act, each natural person who is currently or who wants to be registered as a director of any of the following legal entities bound by either the Corps Act or the ATS Corps Act, will need to apply for a Directors ID through the ABRS.**

- (i) Company;
- (ii) Aboriginal and Torres Strait Islander corporation;
- (iii) Corporate trustee, for example, of a self-managed super fund;
- (iv) Charity or not-for-profit organisation that is a company or Aboriginal and Torres Strait Islander corporation;
- (v) Registered Australian body, for example, an incorporated association that is registered with ASIC and trades outside the state or territory in which it is incorporated; and
- (vi) Foreign company registered with ASIC and carrying on business in Australia (regardless of where you live).

Further, if the organisation has an Australian Business Number (“ABN”), the director will need to confirm whether the organisation is registered with ASIC as a:

- (a) Company, which will have an Australian Company Number;
- (b) Registered Australian body, which will have an Australian Registered Body Number (“ARBN”); or
- (c) Registered foreign company, which will have an ARBN.

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## HOW TO APPLY

**The ABRS website provides detailed instructions on how to apply for a Director ID. Summarised hereunder are the steps required in the application.**

**STEP 1** - You will need to set up your MyGovID and download the appropriate application for your smart phone.

**STEP 2** - You will need to collect documentation as evidence of your personal identification that the Australian Taxation Office (“ATO”) can verify through its own database. Examples of the information required are:

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## SIGNIFICANT DATES

- (i) Tax file number;
- (ii) Your residential address as held by the ATO;
- (iii) Personal information sourced from two (2) of the following documents:
  - (iv) Bank account details/statement;
  - (v) ATO notice of assessment;
  - (vi) Superannuation account details/statement;
  - (vii) Dividend statement;
  - (viii) Centrelink payment summary; or
  - (ix) PAYG payment summary.

**STEP 3** - Once your MyGovID is set up and your documents are compiled, you will be able to access the ABRIS website and complete the application through and online form.

Please note that if you cannot set up your MyGovID, there are alternate ways to complete your application for a Director ID. You can apply by telephone or with a paper form. You will still be required to complete step 2 above in order to verify your personal identification.

Furthermore, steps 1 and 2 can be attended to at any time before or after November 2021. Step 3 will only be available from November 2021.

**The following dates provide further particulars for those that are required to apply for a Director ID or, in the future, will become a director.**

- (i) 31 October 2021 – If you are already a director on or before this date, you must apply for your Director ID by no later than 30 November 2022.
- (ii) 1 November 2021 to 4 April 2022 – If you become a director within this period, you must apply for your Director ID within 28 days from the date of your appointment as director.
- (iii) 5 April 2022 – If you become a director after this date, you must apply for your Director ID prior to registering a new company or being appointed as a director of an existing company.

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## FAILURE TO APPLY FOR DIRECTOR ID

**Should you fail to apply for your Director ID, it may result in criminal or civil penalties of 5,000 penalty units, which currently stands at \$1.11 million. Directors of ATS Corp Act organisations can face penalties of up to \$200,000.**

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## STATISTICS

**During the period 1 January and 30 June 2021, ASIC finalised 180 small business related enforcement matters. The matters are summarised hereunder:**

- (i) 123 persons convicted for failing to help liquidators under the external administrator program.
- (ii) 3 persons convicted of criminal offences, of which two were custodial sentences.
- (iii) 10 companies were prosecuted for failing to lodge their annual financial reports with ASIC.
- (iv) 16 persons were disqualified from managing corporations of which one related to illegal phoenix activity.

- (v) 27 Australian credit licences were cancelled or suspended.

From the data above, disqualified persons due to illegal phoenix activity represented only 0.5% of total enforcement matters. We appreciate that the sample is small and may not be reflective of the success ASIC enjoys in prosecuting directors for illegal phoenix activity. Nevertheless, it may provide an indication as to the difficulty ASIC faces in identifying and prosecuting directors.

With the implementation of this new regime, ASIC will now be better able to identify directors of companies, hold them accountable for any misconduct in their duties as a director, and prosecute them for engaging in illegal phoenix activity.

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## CONCLUSION

**Some readers may view this legislation as action taken by Canberra to enforce 'big brother' policies against corporate Australia. However, until recently, more proof of identification has been required to obtain entry into pubs and clubs than to register as a company director.**

It seems likely that this new regime will assist insolvency practitioners in identifying directors who commit offences and ASIC in prosecuting those individuals, especially in respect of phoenix or related party transactions. We welcome these changes and look forward to the greater transparency in the directorship regime.

You may need to liaise with your clients to ensure that they have registered for Director ID or if they do not, they risk personal liability should ASIC seek to enforce fines.

Should a company be wound up and the directors of that company not have obtained director identification numbers, then it will be a matter that will need to be reported to ASIC.



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