

# EXPOSURE DRAFT

2016-2017-2018

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT
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## **Commonwealth Registers Bill 2018**

**No.     , 2018**

*(Treasury)*

**A Bill for an Act relating to registers of the  
Commonwealth, and for related purposes**

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1 **A Bill for an Act relating to registers of the**  
2 **Commonwealth, and for related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**  
5

6 **1 Short title**

7 This Act is the *Commonwealth Registers Act 2018*.

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## Part 1 Preliminary

### Section 2

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1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table  
3 commences, or is taken to have commenced, in accordance with  
4 column 2 of the table. Any other statement in column 2 has effect  
5 according to its terms.

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The day after this Act receives the Royal Assent.	

7 Note: This table relates only to the provisions of this Act as originally  
8 enacted. It will not be amended to deal with any later amendments of  
9 this Act.

10 (2) Any information in column 3 of the table is not part of this Act.  
11 Information may be inserted in this column, or information in it  
12 may be edited, in any published version of this Act.

13 **3 Object of this Act**

14 The object of this Act is to facilitate a modern government registry  
15 regime that is flexible, technology neutral and governance neutral.

16 **4 Simplified outline of this Act**

17 This Act provides for the Registrar's role relating to a government  
18 registry regime.

19 The Minister appoints an existing Commonwealth body to be the  
20 Registrar under Part 2, with the functions and powers of the  
21 Registrar largely set out in other Commonwealth laws. (Different  
22 Registrars can be appointed for different functions or powers of the  
23 Registrar). The Minister can give directions to the Registrar.

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1 The Registrar performs those functions and exercises those powers  
2 in accordance with the data standards (and other Commonwealth  
3 laws) under Part 3. The data standards are disallowable instruments  
4 made by the Registrar. They may deal with such matters as how  
5 information is given to the Registrar (including electronically).

6 Disclosure of information that the Registrar has is governed by  
7 Part 4. Broadly speaking:

- 8 (a) information can be disclosed to government agencies for  
9 the performance of their functions; and  
10 (b) other disclosures (such as by public access to  
11 information) are dealt with by the disclosure framework,  
12 which is a disallowable instrument made by the  
13 Registrar.

14 Certain decisions made by the Registrar are reviewable by the  
15 Administrative Appeals Tribunal.

## 16 5 Definitions

17 In this Act:

18 ***Australian business law*** means a law of the Commonwealth, or of  
19 a State or Territory, that is a law that regulates, or relates to the  
20 regulation of, business or persons engaged in business.

21 ***Commonwealth body*** means:

- 22 (a) an Agency (within the meaning of the *Public Service Act*  
23 *1999*); or  
24 (b) a body, whether incorporated or not, established for a public  
25 purpose by or under a law of the Commonwealth; or  
26 (c) a person:  
27 (i) holding or performing the duties of an office established  
28 by or under a law of the Commonwealth; or  
29 (ii) holding an appointment made under a law of the  
30 Commonwealth.

31 ***data standards*** means standards made under section 13.

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## Part 1 Preliminary

### Section 5

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- 1                    **designated secrecy provision** has the meaning given by  
2                    subsection 18(3).
- 3                    **disclosure framework** means the disclosure framework made  
4                    under section 16.
- 5                    **excluded law** means:  
6                    (a) the corporations legislation (within the meaning of the  
7                    *Corporations Act 2001*); or  
8                    (b) the Commonwealth credit legislation (within the meaning of  
9                    the *National Consumer Credit Protection Act 2009*); or  
10                    (c) the *Business Names Registration Act 2011* and the *Business  
11                    Names Registration (Transitional and Consequential  
12                    Provisions) Act 2011*.
- 13                    **government entity** has the meaning given by section 41 of the *A  
14                    New Tax System (Australian Business Number) Act 1999*.
- 15                    **official employment** means:  
16                    (a) appointment or employment by the Commonwealth, or the  
17                    performance of services for the Commonwealth; or  
18                    (b) the exercise of powers or performance of functions under a  
19                    delegation by the Registrar.
- 20                    **protected information** means information:  
21                    (a) obtained by a person in the course of the person's official  
22                    employment; and  
23                    (b) disclosed to the person or another person, or obtained by the  
24                    person or another person:  
25                    (i) under, or in relation to, this Act; or  
26                    (ii) under another law of the Commonwealth in connection  
27                    with particular functions or powers of the Registrar.
- 28                    **Registrar** means a Commonwealth body appointed under section 6,  
29                    and, in relation to a particular function or power of the Registrar,  
30                    means:  
31                    (a) if a Commonwealth body has been appointed for the function  
32                    or power under subsection 6(2)—that Commonwealth body;  
33                    or
-



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1 (b) otherwise—the Commonwealth body appointed under  
2 subsection 6(1).

3 *rules* means the rules made under section 25.

4 *secrecy provision* has the meaning given by subsection 18(2).

5 *taxation law* has the same meaning as in the *Income Tax*  
6 *Assessment Act 1997*.

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## Part 2 The Registrar

### Section 6

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1 **Part 2—The Registrar**  
2

3 **6 Appointment of Registrar**

- 4 (1) The Minister may, by notifiable instrument, appoint a  
5 Commonwealth body to be the Registrar.
- 6 (2) The Minister may, by notifiable instrument, appoint a  
7 Commonwealth body to be the Registrar in relation to one or more  
8 functions or powers of the Registrar.
- 9 (3) If more than one appointment under this section is in force, a  
10 reference in this Act to the Registrar that does not relate to  
11 particular functions or powers of the Registrar is taken to be a  
12 reference to each Registrar in relation to the functions or powers  
13 for which it is the Registrar.

14 **7 Functions**

- 15 The Registrar's functions are:
- 16 (a) such functions as are conferred on the Registrar by or under  
17 this Act or any other law of the Commonwealth (other than  
18 an excluded law); and
- 19 (b) such functions as are prescribed by rules made for the  
20 purposes of this paragraph; and
- 21 (c) such functions as are incidental to the functions mentioned in  
22 paragraph (a) or (b).

23 **8 Powers**

- 24 The Registrar's powers include:
- 25 (a) such powers as are conferred:
- 26 (i) on the Registrar in relation to the functions mentioned  
27 in section 7; and
- 28 (ii) by or under this Act or any other law of the  
29 Commonwealth (other than an excluded law); and

- 1 (b) the power to do all things necessary or convenient to be done  
2 for or in connection with the performance of those functions.

## 3 **9 Directions by Minister**

- 4 (1) The Minister may, by legislative instrument, give written directions  
5 to the Registrar about the performance of its functions and the  
6 exercise of its powers.

7 Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the  
8 *Legislation Act 2003* do not apply to the directions (see regulations  
9 made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that  
10 Act).

- 11 (2) Without limiting subsection (1), a direction under that subsection  
12 may relate to any of the following:

- 13 (a) matters to be dealt with in the data standards or disclosure  
14 framework;  
15 (b) consultation processes to be followed prior to making data  
16 standards or the disclosure framework.

- 17 (3) A direction under subsection (1) must be of a general nature only.

- 18 (4) Subsection (3) does not prevent a direction under subsection (1)  
19 from relating to a particular matter to be dealt with in the data  
20 standards or disclosure framework. However, the direction must  
21 not direct the Registrar how to apply the data standards or  
22 disclosure framework in a particular case.

- 23 (5) The Registrar must comply with a direction under subsection (1).

## 24 **10 Delegation**

- 25 (1) The Registrar may, in writing, delegate all or any of the Registrar's  
26 functions or powers under this Act (other than the power to make  
27 data standards or the disclosure framework) to:

- 28 (a) any person to whom it may delegate any of its other  
29 functions, as a Commonwealth body, under a law of the  
30 Commonwealth; or  
31 (b) any person of a kind specified in the rules.

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## Part 2 The Registrar

### Section 11

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1 Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain  
2 provisions relating to delegations.

3 (2) In performing a delegated function or exercising a delegated  
4 power, the delegate must comply with any written directions of the  
5 Registrar.

#### 6 **11 Assisted decision making**

7 (1) The Registrar may arrange for the use, under the Registrar's  
8 control, of processes to assist decision making (such as computer  
9 applications and systems) for any purposes for which the Registrar  
10 may make decisions in the performance or exercise of the  
11 Registrar's functions or powers, other than decisions reviewing  
12 other decisions.

13 (2) A decision the making of which is assisted by the operation of such  
14 a process under an arrangement made under subsection (1) is taken  
15 to be a decision made by the Registrar.

16 (3) The Registrar may substitute a decision for a decision (the *initial*  
17 *decision*) the making of which is assisted by the operation of such  
18 a process under an arrangement under subsection (1) if the  
19 Registrar is satisfied that the initial decision is incorrect.

#### 20 **12 Liability for damages**

21 None of the following:

- 22 (a) the Minister;
  - 23 (b) the Registrar;
  - 24 (c) if the Registrar is a Commonwealth body that has members—  
25 a member of the Registrar;
  - 26 (d) a member of the staff of the Registrar;
  - 27 (e) a person who is, or is a member of or a member of the staff  
28 of, a delegate of the Registrar;
  - 29 (f) a person who is authorised to perform or exercise a function  
30 or power of, or on behalf of, the Registrar;
  - 31 (g) an APS employee, or an officer or employee of a  
32 Commonwealth body, whose services are made available to
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Section 12

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1                   the Registrar in connection with the performance or exercise  
2                   of any of its functions or powers;  
3                   is liable to an action or other proceeding for damages for or in  
4                   relation to an act done, or omitted to be done, in good faith in  
5                   performance or purported performance of any function, or in  
6                   exercise or purported exercise of any power, conferred or  
7                   expressed to be conferred by or under this Act.

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## Part 3 How the Registrar is to perform and exercise functions and powers

### Section 13

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1     **Part 3—How the Registrar is to perform and**  
2                     **exercise functions and powers**  
3

4     **13 Data standards**

- 5             (1) The Registrar may, by legislative instrument, make data standards  
6                     on matters relating to the performance of the Registrar's functions  
7                     and the exercise of the Registrar's powers.
- 8             (2) Without limiting subsection (1), the data standards may provide for  
9                     any of the following:
- 10                     (a) what information may be collected for the purposes of the  
11                             performance of the Registrar's functions and the exercise of  
12                             the Registrar's powers;
- 13                     (b) how such information may be collected;
- 14                     (c) the manner and form in which such information is given to  
15                             the Registrar;
- 16                     (d) when information is to be given to the Registrar;
- 17                     (e) how information held by the Registrar is to be authenticated,  
18                             verified or validated;
- 19                     (f) how information held by the Registrar is to be stored;
- 20                     (g) correction of information held by the Registrar;
- 21                     (h) the manner and form of communication between the  
22                             Registrar and persons who give information to the Registrar  
23                             or seek to access information held by the Registrar;
- 24                     (i) integrating or linking information held by the Registrar.
- 25             (3) Without limiting subsection (1), the data standards may include  
26                     different provisions relating to different functions or powers of the  
27                     Registrar.
- 28             (4) If:
- 29                     (a) a Commonwealth body (the *new Registrar*) is appointed as  
30                             the Registrar with particular functions or powers; and

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- 1 (b) immediately before that appointment, another  
2 Commonwealth body was the Registrar with those functions  
3 or powers; and  
4 (c) the new Registrar does not have data standards that would  
5 apply to those functions or powers;  
6 any data standards applying to those functions or powers  
7 immediately before that appointment continue to apply until the  
8 new Registrar makes data standards that apply to those functions or  
9 powers, or amends its existing data standards to apply to those  
10 functions or powers.

## 11 **14 Giving information to the Registrar**

- 12 (1) Without limiting section 13, the data standards may provide that  
13 information is to be given to the Registrar in electronic form, or  
14 any other specified form.
- 15 (2) A requirement under a law that information is to be provided to the  
16 Registrar in a particular form or manner (however described),  
17 including a requirement:  
18 (a) that the information is to be “lodged” or “furnished”; and  
19 (b) that the information is to be “written” or “in writing”; and  
20 (c) that a “copy” of a document containing the information is to  
21 be provided;  
22 is not taken to restrict by implication what the data standards may  
23 provide under subsection (1) in relation to that information.

## 24 **15 How the Registrar is to perform and exercise functions and** 25 **powers**

- 26 (1) The Registrar must perform its functions and exercise its powers in  
27 accordance with:  
28 (a) the data standards; or  
29 (b) if there are no data standards that apply to particular  
30 functions or powers—any requirement relating to those  
31 functions or powers as in force immediately before those  
32 functions or powers became functions or powers of the  
33 Registrar.

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**Part 3** How the Registrar is to perform and exercise functions and powers

## Section 15

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- 1                   (2) This section does not affect the application to the Registrar of any  
2                   other law of the Commonwealth.



1 **Part 4—Disclosure of information**  
2

3 **16 Disclosure framework**

- 4 (1) The Registrar may, by legislative instrument, make a disclosure  
5 framework relating to disclosing protected information.
- 6 (2) Without limiting subsection (1), the disclosure framework may  
7 provide for any of the following:
- 8 (a) circumstances in which information must not be disclosed  
9 without the consent of the person to whom it relates;
  - 10 (b) circumstances in which de-identified information may be  
11 disclosed;
  - 12 (c) circumstances in which information may be disclosed to the  
13 general public;
  - 14 (d) circumstances in which confidentiality agreements are  
15 required for the disclosure of information;
  - 16 (e) imposing conditions on disclosure of information.
- 17 (3) Without limiting subsection (1), the disclosure framework may  
18 include different provisions relating to particular functions or  
19 powers of the Registrar.
- 20 (4) The disclosure framework must not provide for disclosure of  
21 protected information unless the Registrar is satisfied that the  
22 benefits of the disclosure would outweigh the risks of the  
23 disclosure (taking into account any mitigation of those risks in  
24 accordance with the disclosure framework).
- 25 (5) If:
- 26 (a) a Commonwealth body (the *new Registrar*) is appointed as  
27 the Registrar with particular functions or powers; and
  - 28 (b) immediately before that appointment, another  
29 Commonwealth body was the Registrar with those functions  
30 or powers; and

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## Part 4 Disclosure of information

### Section 17

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- 1 (c) the new Registrar does not have a disclosure framework that  
2 would apply to those functions or powers;  
3 the disclosure framework applying to those functions or powers  
4 immediately before that appointment continues to apply until the  
5 new Registrar makes a disclosure framework that applies to those  
6 functions or powers, or amends its existing disclosure framework  
7 to apply to those functions or powers.

### 8 **17 Protection of confidentiality of protected information**

- 9 (1) A person (the *first person*) commits an offence if:  
10 (a) the first person is, or has been, in official employment; and  
11 (b) the first person makes a record of information, or discloses  
12 information to another person; and  
13 (c) the information is protected information that was obtained by  
14 the first person in the course of the first person's official  
15 employment.

16 Penalty: Imprisonment for 2 years.

- 17 (2) However, subsection (1) does not apply if:  
18 (a) the recording or disclosure is for the purposes of this Act; or  
19 (b) the recording or disclosure happens in the course of the  
20 performance of the duties of the first person's official  
21 employment; or  
22 (c) in the case of a disclosure—the disclosure is to another  
23 person for use, in the course of the performance of the duties  
24 of the other person's official employment, in relation to the  
25 performance or exercise of the functions or powers of a  
26 government entity; or  
27 (d) in the case of a disclosure—each person to whom the  
28 information relates consents to the disclosure; or  
29 (e) in the case of a disclosure—the disclosure is in accordance  
30 with the disclosure framework.

31 Note: A defendant bears an evidential burden in relation to the matter in  
32 subsection (2): see subsection 13.3(3) of the *Criminal Code*.

1 **18 Authorisation of recording or disclosure**

- 2 (1) A person is not liable to any proceedings for contravening a  
3 secrecy provision in respect of a recording or disclosure permitted  
4 by subsection 17(2), unless the secrecy provision is a designated  
5 secrecy provision.
- 6 (2) A *secrecy provision* is a provision that:  
7 (a) is a provision of a law of the Commonwealth (other than this  
8 Act); and  
9 (b) prohibits or regulates the use or disclosure of information.
- 10 (3) A *designated secrecy provision* is any of the following:  
11 (a) sections 18, 18A, 18B and 92 of the *Australian Security*  
12 *Intelligence Organisation Act 1979*;  
13 (b) section 34 of the *Inspector-General of Intelligence and*  
14 *Security Act 1986*;  
15 (c) sections 39, 39A, 40, 40A to 40M and 41 of the *Intelligence*  
16 *Services Act 2001*;  
17 (d) section 8WB of the *Taxation Administration Act 1953*;  
18 (e) a provision of a law of the Commonwealth prescribed by the  
19 rules for the purposes of this paragraph;  
20 (f) a provision of a law of the Commonwealth of a kind  
21 prescribed by the rules for the purposes of this paragraph.

22 **19 Preventing disclosure of particular protected information**

- 23 (1) If:  
24 (a) a person applies to the Registrar for particular protected  
25 information relating to the person not to be disclosed; and  
26 (b) the Registrar is satisfied that it is not appropriate to disclose  
27 that information;  
28 a disclosure of that information is taken, for the purposes of this  
29 Act, not to be in accordance with the disclosure framework.
- 30 (2) Without limiting section 16, the disclosure framework may provide  
31 for:

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## Part 4 Disclosure of information

### Section 20

---

- 1 (a) how applications referred to in paragraph (1)(a) are to be  
2 made; and  
3 (b) how those applications are to be decided.

#### 4 **20 Authorisation for purposes of Privacy Act**

5 A disclosure of personal information (within the meaning of the  
6 *Privacy Act 1988*) is taken to be authorised by law for the purposes  
7 of paragraph 6.2(b) of Schedule 1 to that Act if:

- 8 (a) the information is protected information; and  
9 (b) subsection 17(2) of this Act applies to the disclosure.

#### 10 **21 Disclosure to a court**

11 A person is not to be required:

- 12 (a) to produce to a court any document that:  
13 (i) contains protected information; and  
14 (ii) was made or given under, or for the purposes of, this  
15 Act; and  
16 (iii) the person obtained in the course of the person's official  
17 employment; or  
18 (b) to disclose to a court any protected information that the  
19 person obtained in the course of the person's official  
20 employment;

21 unless the production or disclosure is necessary for the purpose of  
22 giving effect to a taxation law or an Australian business law.

1 **Part 5—Miscellaneous**  
2

3 **22 Review of decisions**

4 (1) Applications may be made to the Administrative Appeals Tribunal  
5 for review of a decision of the Registrar made under this Act, or  
6 under the data standards or disclosure framework.

7 (2) Subsection (1) does not apply to a decision to make, amend or  
8 repeal a data standard or disclosure framework.

9 **23 Extracts of information to be admissible in evidence**

10 (1) In any proceedings, a document, or a copy of a document, that  
11 purports (irrespective of the form of wording used) to be an extract  
12 of information held by the Registrar:

13 (a) is proof, in the absence of evidence to the contrary, of  
14 information that is stated in it and that purports to be held by  
15 the Registrar; and

16 (b) is admissible without any further proof of, or the production  
17 of, the original;

18 if it does not appear to the Court to have been revised or tampered  
19 with in a way that affects, or is likely to affect, the information.

20 (2) The Registrar may give a person a certified copy of, or extract  
21 from, the information held by the Registrar on payment of the fee  
22 (if any) prescribed by the rules.

23 (3) In any proceedings, the certified copy:

24 (a) is prima facie evidence of information that is stated in it and  
25 that purports to be held by the Registrar; and

26 (b) is admissible without any further proof of, or the production  
27 of, the original.

28 (4) This section does not limit the manner in which evidence may be  
29 adduced, or the admissibility of evidence, under the *Evidence Act*  
30 *1995*.

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## Part 5 Miscellaneous

### Section 24

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1     **24 Annual report**

2                     Each annual report by the Registrar for a period must include  
3                     information about the performance of the Registrar's functions and  
4                     exercise of the Registrar's powers during that period.

5     **25 Rules**

- 6                     (1) The Minister may, by legislative instrument, make rules  
7                     prescribing matters:  
8                     (a) required or permitted by this Act to be prescribed by the  
9                     rules; or  
10                    (b) necessary or convenient to be prescribed for carrying out or  
11                    giving effect to this Act.
- 12                    (2) To avoid doubt, the rules may not do the following:  
13                    (a) create an offence or civil penalty;  
14                    (b) provide powers of:  
15                    (i) arrest or detention; or  
16                    (ii) entry, search or seizure;  
17                    (c) impose a tax;  
18                    (d) set an amount to be appropriated from the Consolidated  
19                    Revenue Fund under an appropriation in this Act;  
20                    (e) directly amend the text of this Act.