

# Director identification numbers

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## What do I have to do about director ID and when?

### Scheme outline and actions

In response to concerns about illegal phoenixing, a new director identification number (**director ID**<sup>1</sup>) regime is being introduced. The regime aims to identify and eliminate director involvement in unlawfulness, such as illegal phoenix activity.

The reforms were made by Schedule 2 to the [Treasury Laws Amendment \(Registries Modernisation and Other Measures\) Act 2020](#), which was enacted on 22 June 2020. This paper deals with the reforms only as related to company directors, although some aspects are the same under the reforms' other applications.<sup>2</sup> The main legislation discussed here is from Part 9.1A of the *Corporations Act 2001* (**the Act**).

Currently, directors are required to provide their details to the Australian Securities and Investments Commission (**ASIC**). ASIC has not been required to verify the identity of directors. It is difficult to trace a director's relationships across companies, track directors of failed companies and prevent the use of false or fraudulent director identities.

Director ID is the first service delivered by the new Australian Business Registry Services (**ABRS**) managed by the Australian Taxation Office (**ATO**). A director ID is a unique identifier that a director will keep forever. It is free to apply for and obtain a director ID. All present and future directors must obtain a director ID. When directors need to apply by depends on their appointment date (see the discussion and **Table 1** below).

From 1 November 2021, new directors (i.e. individuals who were not a director at the close of 31 October 2021) have 28 days to apply for their director ID following their appointment. This will change from 5 April 2022, when new directors will need to apply on a day that is prior to the day of their appointment.

Please note that an earlier version of this paper stated that persons who held office as a director at the close of 31 October 2021 needed to apply for their director ID within 28 days after a new appointment. This was based on the ABRS website stating the application deadline according to the date you become a director. You again become a director when you become a director under a fresh appointment.

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<sup>1</sup> Also previously referred to as a DIN.

<sup>2</sup> The reforms also apply to directors of Aboriginal and Torres Strait Islander corporations. For more information on the CATSI Act, visit the Office of the Registrar of Indigenous Corporations (ORIC) [website](#).



However, this is not what is intended, which can be established by reading the legislative instruments listed later in this paper in conjunction with the Act. However, though now simplified, the ABRS website still formulates the requirement according to the 'date you become a director'.<sup>3</sup> This is to be read more clearly as stated in the next paragraph.

**Persons who were a director at the close of 31 October 2021 have until 30 November 2022 to apply for their director ID, notwithstanding any additional appointment as a director.**

**Table 1** below uses the description 'Date on which you first became a director' to indicate by when you must apply. However, this needs to be read with caution by those who were a director and at some time ceased to be a director and then obtained another director appointment. See the discussion just concluded above.

There is no requirement to notify ASIC of your director ID. For now, there is no change to ASIC online transactions (or forms) to cater for the collection or the use of the director ID. This will take place in the future as the ABRS builds the new registry platform, expected in September 2023.

If you are a director or expect to become a director, you should consider, for reasons noted below, applying for your director ID as soon as possible. Once a director has their ID, they should keep it safe until it is needed for use. It can be shared with, for example, their accountant, company secretary, ASIC registered agent or registered tax agent.

Alternate directors have the same director ID obligations as persons who act directly as directors. References hereafter in this article to a director include an alternate director. For convenience, 'you' (and 'I' in questions) refers to you as a director (if you are or will become one) and to your clients as directors and intending directors.

Importantly, if your application is refused, you will be in breach if, when review processes are exhausted, you continue in office<sup>4</sup>. Given the legislation's purposes outlined above, we can expect the great majority of applications to be approved.

**TABLE 1:** Date by which a director must apply for a director ID

Date on which you first* become a director	Date by which you must apply for a director ID
On or before 31 October 2021	By 30 November 2022
Between 1 November 2021 and 4 April 2022	Within 28 days of appointment
From 5 April 2022	Before appointment*

\* **Caution:** Re use of the word 'first', see explanation above and re 'Before appointment' see the material above re the 5 April 2022 date and also a further discussion of some critical issues re 5 April 2022 further below.

Your actions therefore depend on your director status on certain dates, as discussed in more detail below.

<sup>3</sup> [www.abrs.gov.au/director-identification-number/who-needs-apply-and-when](http://www.abrs.gov.au/director-identification-number/who-needs-apply-and-when), retrieved on 17 November 2021.

<sup>4</sup> Sections 1272B and 1272C of the *Corporations Act 2001*.



## If you are already a company director at close of 31 October 2021

As stated above, as an existing director, you can apply for a director ID from 1 November 2021, and you must apply for a director ID by no later than **30 November 2022**.

Further, if at close of 31 October 2021 you are already a director and you are appointed to a new director post (or as an alternate), you still have until 30 November 2022 to apply for a director ID.

## If you are not already a company director at close of 31 October 2021

If you become a director:

- from 1 November 2021 until 4 April 2022 (and you were not already a director at close of 31 October 2021), you must apply for a director ID **within 28 days** after your appointment;
- on or after 5 April 2022 (and you were not already a director at close of 31 October 2021), you must apply **on a day before your appointment day**.

If you intend to become a director within 12 months, you may apply for a director ID up to 12 months before your appointment.

## Critical issues re 5 April 2022

Table 1 above is drawn from the ABRS table that sets out when you must apply. From 5 April 2022 onward, it has in the 'Date you must apply' column merely, 'Before appointment'. This may suggest that, provided you apply literally before your appointment, you will comply. However, s 1252C(2)(a) of the Act temporarily exempts a person from actually having a director ID at the time of appointment if 'the officer applied ... before the day the officer first became an eligible officer'. This clearly means that, from 5 April 2022, the application cannot be made on the day of appointment. You must apply for director ID on a day before the day on which you are appointed as a director.

If it was simple as 'before appointment' — as you might readily read those words in the table to mean — then it should be sufficient to apply, say, half an hour before. Thus, if you apply at 11:25pm and are appointed 30 minutes later at 11:55pm you comply, just as you would if you applied at 11:35pm and were appointed 30 minutes later at 12:05am. There should be no question whether 'before' is on the same or a different day, so long as the application is made before the appointment. However, the Act is not worded to give effect to this practical approach.

In practice, the great bulk of director appointments are private company director appointments. They are often made off the cuff to deal with an urgent business or family situation. In such situations, there will not always be time to make the director ID application on a day before the director appointment needs to have effect.

Those director ID documents the writer has seen show the date, but not the time, of issue. It would be simple to add the time to the director ID document and doubtless the Registry's internal record can identify the application and issue times.

The requirement for application on a day prior to the appointment day should be reformed to ensure the application must merely be before the appointment, not on an earlier day. Preferably, it should be permitted on the day of appointment, even if after appointment. Section 1272E(2) of the Act gives the Registrar power to do either of these things. In the meantime, you will need to plan ahead and apply for your director ID on a day before the day of appointment.



## How and where do you apply for a director ID?

When applying for a director ID, directors are required to identify themselves. Accordingly, you must do this personally; you are not permitted to have someone else do it for you, such as your accountant or registered tax or BAS agent.

Like a Tax File Number (TFN), you will only ever need one director ID — you don't have to apply for another one if you become a director of other companies or corporations.

It is free to apply, and the fastest way to do this is online, using the myGovID app, to receive your director ID instantly. If you can't get a myGovID with a Standard or Strong identity strength, the best way to apply for a director ID will depend on your situation.

You can read more details on how to apply on the ABRS website.

## How do you identify yourself?

To apply online, you will need a myGovID with either a Standard or Strong identity strength, which can be obtained [here](#).

Other documents or data you will or may need to apply for your director ID depend on whether you are applying online, by telephone or by paper. This includes:

- your TFN
- home address as recorded by the ATO
- answers to two questions based on details the ATO knows about you from the following documents:
  - bank account details
  - notice of assessment
  - superannuation account details — you will need the fund's ABN and if you run an SMSF, your accountant may need to supply those details, such as a member number, because for SMSFs a member number is normally only recorded in the fund's tax return
  - dividend statement — you need to supply the investment reference number; as not all dividend statements show the entire number, you may need to get it from some other document, such as a holding statement or from your broker
  - Centrelink payment summary
  - PAYG payment summary.

You can read more about what is required to verify your identity [here](#). You should read this material before starting your application because some of the data may not be ready to hand.



Experience and reviews suggest that myGovID and its linking may be unsatisfactory on mobile devices, so you will ideally use a computer<sup>5</sup>. A foreign passport can be used only with a paper application. For paper applications, because documents will not be returned, you will need to provide certified copies of documents. Other forms of identification (**ID**) may be used additionally or alternatively, as set out at the ABRIS webpage linked above.

## A warning

A volume of public comment suggests that a myGovID can be set up using third party data. It perhaps may also be possible to re-register from a different device in the same way.<sup>6</sup> A new Beta version of a 'Strong myGovID' is intended to be more secure. You may wish to review this Beta version.

## What if you are not an Australian citizen and/or are outside Australia?

You can be a director of an Australian or foreign company without being either an Australian citizen or resident in Australia.

However, the materials presently available require that, for an online director ID application, you must have an Australian ID. This is because an online application is linked to your ID documents that are already recorded with the government, such as your driver's licence, Medicare card, etc. It therefore seems likely that online lodgment will not be possible for those without an Australian ID.

This does not mean that you will not be able to lodge online if you are not an Australian citizen but live or have lived in Australia. You may have documents such as a driver's licence and a Medicare card. And, for those with sufficient Australian connections to have Australian ID documents, you are also likely to have a TFN. You may also have an Australian visa linked to your home country passport, and therefore have an Australian government record.

If you are outside Australia and do not have an adequate form of Australian ID, it seems you will need to make a postal application, using copies of your equivalent home ID documents certified by a notary public<sup>7</sup> or by staff at Australian Embassies, High Commissions and Consulates.

Documents bearing an apostille under the [Hague Apostille Convention](#) are also acceptable. Documents in a foreign language will need a suitably certified translation. Unless you have unlimited time to lodge, if you are outside Australia with insufficient Australian ID, it is advisable to discuss in advance with registry staff what will be acceptable in your circumstances or have an adviser in Australia do this on your behalf.

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<sup>5</sup> Wikipedia states Apple and Android MyGovID app reviews are overwhelmingly one star, i.e. universally unsatisfactory. <https://en.wikipedia.org/wiki/MyGovID>, 15 October 2021.

<sup>6</sup> Ibid.

<sup>7</sup> This means a person who is a notary public under your local law, though one must bear in mind that not all jurisdictions have exactly such an office.



## When will you be taken to have lodged?

You will be taken to have lodged when your application for a director ID has been accepted as lodged. That means you will need to have your ID documents ready to hand, as an incomplete step will mean the application will not be accepted. Lodgment delays may delay your appointment as a director or result in a fine.

It is advisable to keep evidence of the day and time of your director ID application. Especially where your director appointment is on the same day as your director ID application, it is advisable that the resolution or other minute of your appointment notes the time, not merely the date, of your appointment. This will become important if the provisions are ultimately adjusted, as the writer believes they should be, so that applications for director ID in relation to appointments as director on or after 5 April 2022 may be made on the same day as appointment, provided they are made before the appointment has effect.

## What if I'm appointed without getting a director ID?

From 5 April 2022, if you are appointed without first applying for a director ID, or for appointment on or before 4 April 2022 you do not apply for a director ID within the required 28-day period, you will commit a punishable offence. This offence is of the type called 'strict liability'. In a strict liability offence, all that counts is that it happened (if it did); your intentions, errors or special circumstances are not taken into account.

Given that director appointments have a specific date that is visible in minutes or other documents, and ASIC records that date, being appointed as a director before applying for a director ID will be easily identified and will almost certainly lead to an automatic fine.

The only excuse permitted is that you were not aware of your appointment. That will be hard to prove and is unlikely to be a way out. Although the regulator can relieve liability, it is likely that relief will be rarely, if ever, given.

Alternate directors may be particularly exposed here. These directors, and those who appoint them, should take care that the appointment takes effect only when it will not cause a breach of the director ID legislation.<sup>8</sup>

## Do I need a new director ID when I take up a new director appointment?

Once you have a director ID, you must use that director ID for all your director appointments. Applying for a new director ID when you already have one is an offence. Accordingly, you will have only one director ID, unless the regulator requires you to cease using the one you have.

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<sup>8</sup> Section 1272B of the *Corporations Act 2001* has the effect that there will not be breach if the person is not acting in the role of alternate. One protection perhaps may be to express the appointment as first taking effect at the later of:

- (1) the person making a director ID application that is not ultimately refused; and
- (2) attending a meeting of directors or members, signing a document or carrying out some other act in capacity as alternate director where any action under (2) is of no effect unless done after (1).

Even so, attempted action as an alternate should not precede the director ID application.

## Does the director ID legislation apply to so called ‘de facto’ directors and to those who hold a title that does not make them a director as generally understood?

The simple answer is **No**.

Section 1272B of the Act makes an **eligible officer** a **director appointed to the position of director**. The double use of ‘director’ wrapped around the word ‘appointed’ is significant.

Section 9 of the Act defines a director as including each of:

- (a) a person appointed to the position of director; and
- (b) unless the contrary intention appears, a person who though not validly appointed acts as a director.

Thus, s 1272B applies to persons in class (a) but not to persons in class (b) (acting but not validly appointed). Only eligible officers must get a director ID, i.e. only those validly appointed as a director must get a director ID.<sup>9</sup>

Section 1272B’s limitation to persons validly appointed and not merely acting as directors is necessary to leave out persons with a title of honour — such as some ‘directors’ in professional firms and directors of celebrations, etc., who have not been appointed as a director under the Act.

This is also perhaps, a director ID Achilles’ heel as the procedure can be avoided by not formally taking office and using straw persons, as in the *Plutus* series of cases brought under Operation Elbrus.<sup>10</sup> Those who thumb their nose at law may well thumb their noses at this too. However, over time, it should serve to reign in some excesses as, doubtless, some offenders will register then come within its net and some will choose to keep their thumbs in their pockets.

## What is the legislative framework for these new rules?

The new rules are contained in the *Corporations Act 2001* and instruments issued under it, particularly:

- sections 1272 to 1272H;
- followed (out of numeric sequence) by sections 1270 to 1270T;
- section 1653;
- section 1274 — which gives ASIC discretion about data that it records;
- sections 205B and 205C — which require companies and officers to provide information in the form prescribed;
- the [Corporations \(Director Identification Numbers—Transitional Application Period\) Instrument 2021](#); and
- [Corporations \(Transitional\) Director Identification Number Extended Application Period 2021](#).

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<sup>9</sup> Section 1272C(1) of the *Corporations Act 2001*.

<sup>10</sup> [www.ato.gov.au/Media-centre/Media-releases/Plutus-Payroll-founder-jailed-in-Operation-Elbrus/](http://www.ato.gov.au/Media-centre/Media-releases/Plutus-Payroll-founder-jailed-in-Operation-Elbrus/).



## What should I do, when should I do it and can I get help?

If you are, or will be, affected by this legislation, it is advisable to apply for your director ID on or as soon as possible after 1 November 2021. Lack of a director ID may impede your commercial or investment activities.

You can get help, as noted under the next heading.

## Further guidance and information

Further guidance and information on director IDs is available from the [Australian Business Registry Services website](#).

If you have any specific concerns that have not been outlined above, please email [taxpolicy@taxinstitute.com.au](mailto:taxpolicy@taxinstitute.com.au).

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