

CORPORATIONS LAW  
SIMPLIFICATION PROGRAM

COMPANY REGISTERS  
PROPOSAL FOR SIMPLIFICATION

TASK FORCE

APRIL 1994

Simplification Task Force  
Attorney-General's Department  
BARTON ACT 2600

## COMPANY REGISTERS – PROPOSAL FOR SIMPLIFICATION

### Company registers

The Corporations Law requires companies to keep a number of registers so that the public can have access to key information about the company and its officers.

The regular updating of these registers can be a significant burden, especially for smaller companies. In many cases, the registers seem to be little used. Often, the information in the registers must also be given to the ASC.

### ASC database

Since 1991, information lodged with the ASC has been readily available on a national database. In practice, it is now far easier for the public to access this information through ASC electronic searching facilities than by going to company offices and searching registers kept by the company. The separate maintenance of registers by companies in many cases leads to unnecessary duplication.

### The proposal

This proposal simplifies the requirements for companies to maintain various registers under the Corporations Law by:

- removing a number of the requirements to maintain registers, while still ensuring that adequate information for investors and creditors is publicly available
- avoiding unnecessary duplication of information held by the company and the ASC
- making the remaining obligations easier to comply with by:
  - bringing them together in the one area in the Law
  - making them more uniform.

The proposal also:

- means that directors will no longer have to constantly update information about their personal shareholdings
- allows directors who leave the company to notify the ASC of their retirement or resignation
- restricts the use of register information for commercial purposes unrelated to the affairs of the company
- provides a mechanism allowing directors to have future lodgements of their residential addresses withheld from the public record.

The proposal does not deal with:

- the charges register (section 271)
- the register of unclaimed property of dissenting shareholders (section 702).

These registers involve areas of the Law that are subject to separate law reform proposals.

### Practical benefits and background

A summary of the practical benefits of the proposal is provided on page 6.

Background information about each register is outlined on pages 7 to 9.

## THE PROPOSAL

Proposal	Issues for consideration
<p><u>Register of directors, principal executive officers and secretaries</u></p> <p><i>(contains the consent to appointment, name, residential address, date and place of birth, occupation of each director, principal executive officer and secretary, and other directorships held by directors)</i></p> <p>Sections 222, 236, 242, 242A</p> <ol style="list-style-type: none"> <li>1. Companies will not be required to keep a register of directors and secretaries.</li> <li>2. The statutory position of principal executive officer will be abolished.</li> <li>3. As at present, a company will have to lodge with the ASC the names, residential addresses and the date and place of birth of directors and secretaries. However, a company will no longer have to lodge details of the occupations of these officers, and other directorships held by directors.</li> <li>4. If a director or secretary provides, in addition, an effective address for service of legal process, that address and not the residential address will appear on the ASC's public database.</li> </ol> <ol style="list-style-type: none"> <li>5. The current requirement for a company to list all continuing directors when notifying an appointment or resignation of a director will no longer apply.</li> <li>6. Directors and secretaries will be able to give direct notice to the ASC of their resignation or retirement. (This opportunity is currently available to directors only in limited circumstances.)</li> </ol> <p><u>Register of directors' shareholdings</u></p> <p><i>(lists the securities of the company or a related</i></p>	<p>Should consents to appointment be lodged with the ASC?</p> <p>Is the option of providing an alternative address for service worthwhile, given that the residential address will often be available through other sources, such as lodgements for previous years or the register of members?</p> <p>Would shareholders and creditors find an address for service a sufficient basis for identifying an officer?</p> <p>Should the residential address be available from the ASC to someone who wants to enforce a judgment or court order?</p> <p>Should directors or secretaries be required to have one address for service for all companies of which they are officers?</p>

Proposal	Issues for consideration
<p><i>body corporate in which the director has a relevant interest</i></p> <p>Sections 235, 236</p> <p>7. Companies will not be required to keep this register.</p> <p>Annual directors' reports of public companies (that are not wholly owned subsidiaries) will continue to contain details of directors' shareholdings (section 307).</p> <p><u>Register of substantial shareholders in listed companies</u></p> <p><i>(lists persons entitled to 5% or more of a company's shares and records every 1% movement in those persons' entitlements)</i></p> <p>Sections 707-716</p> <p>8. Companies will not be required to keep this register (though substantial shareholders will still have to lodge notices with the company).</p> <p><u>Register of notices of beneficial ownership in listed companies</u></p> <p><i>(contains information from responses to requests made by the company seeking details of the beneficial ownership of its shares)</i></p> <p>Sections 717-727</p> <p>9. Companies will not be required to keep this register, but will still be able to give beneficial ownership notices under Part 6.8.</p> <p><u>Register of buy-backs</u></p> <p><i>(details company shares bought back by the company)</i></p> <p>Sections 206VA-VF</p> <p>10. Under the Task Force's Share buy-backs Proposal (March 1994), companies will not be required to keep this register.</p> <p><u>Registers of members, options and debenture</u></p>	<p>Should listed companies or all public companies be required to update this information with the ASC as a protection against insider trading and conflicts of interest?</p> <p>Alternatively, in the case of listed companies, should the Law require lodgement and updating with the ASX, or leave the ASX to decide whether to require lodgement and updating under its Listing Rules?</p> <p>Is it sufficient that substantial shareholder notices are lodged with the ASX, as at present under section 713?</p> <p>Alternatively, would lodgement of these notices with the ASC be appropriate?</p> <p>Should notification of any statement in writing be received by a company under Part 6.8 be lodged with the ASC, rather than with the ASX as at present under Listing Rule 3A(16A)?</p> <p>Should lodgement be required of the notice as well as the response?</p>

Proposal	Issues for consideration
<p><u>holders</u></p> <p><i>(list names and addresses and details of the interests held by shareholders and debenture holders, and record details of options granted)</i></p> <p>Sections 208-214, 215, 335, 1047 and 1048</p> <p>11. Companies will still be required to maintain these registers.</p> <p>12. A person will not be able to use information in these registers for a commercial purpose which is unrelated to the person's holding or the affairs of the company, unless that use is approved by those on the register.</p> <p>Civil and criminal sanctions will be available in the case of a breach of this requirement.</p> <p>13. Provisions concerning these registers will be brought together in the Law, and the procedures and associated rules will be made more uniform, including:</p> <ul style="list-style-type: none"> <li>• court power of rectification</li> <li>• registers to be 'prima facie' evidence</li> <li>• inspection of the registers</li> <li>• copies of material in the registers to be available</li> <li>• the company itself to be responsible for maintaining the registers.</li> </ul>	<p>Is there a need to review the provisions relating to branch registers?</p> <p>Should companies still be required to keep on the options register copies of all the instruments by which options are granted?</p> <p>What should the approval procedure be?</p> <p>In particular, should a majority of those on the register be able to approve that use?</p> <p>Should the options register be required to record the current holders of options? (Listing Rule 3G(2) requires this for listed companies.)</p> <p>Should companies which maintain a register in electronic form be required to provide a copy in that form if requested?</p>

## WHAT ARE THE BENEFITS OF THE PROPOSAL?

### Fewer registers

No company will have to keep:

- a register of directors and secretaries
- a register of directors' shareholdings
- a register of buy-backs.

Listed companies will not have to keep:

- a register of substantial shareholders
- a register of notices of beneficial interests.

### Less reporting to the ASC

It will no longer be necessary to report on:

- the position of principal executive officer
- the occupations of directors and company secretaries
- other directorships held by the company's directors
- continuing directors when notifying an appointment or resignation of a director.

### Flexibility

There will be greater flexibility for a company in recording information for its internal purposes.

### Easier to use provisions

Remaining register provisions will be easier to understand and use.

### Restricted use of registers

It will be more difficult for anyone to use information on the registers to produce commercial mailing lists.

### Benefits for directors and secretaries

Directors will no longer have to constantly update information on their personal shareholdings.

There will be a mechanism for directors and secretaries to have future lodgements of their residential address withheld from public access on the ASC database.

Directors and secretaries will be able to notify the ASC if they leave a company.

## BACKGROUND TO THE PROPOSAL

### Register of directors, principal executive officers and secretaries

The details that will continue to be lodged with the ASC are important for the accurate identification of directors and secretaries and ensure that those officers can be located and, where necessary served with legal process.

#### *Residential address*

The availability of private residential addresses has been criticised by some directors because of fears of harassment or threats to safety. However, where the residential address is not available on the public register, it is essential that an alternative address for service is provided.

The proposal seeks to balance these competing considerations.

#### *Principal executive officer*

The office of principal executive officer serves no independent purpose in the Corporations Law. It is usually used to provide an alternative signatory for verifying or executing documents. This can be done by directors and secretaries.

#### *Occupations / other directorships*

The requirement to lodge details of the occupations of officers, and the other directorships held by the directors, seems to be of little benefit. The occupations are in many cases those of company director or secretary and other directorships can be easily obtained from searching the ASC database.

#### *Resignation / retirement*

The limited scope of section 242A means that officers who resign or retire, and cannot prevail upon the company to lodge details of their resignation or retirement, are often unable to notify the ASC themselves.

### Register of directors' shareholdings

This register gives few real benefits to shareholders and creditors. The original rationale for the register was to combat insider trading. It was also thought to address conflict of interest problems. These functions, however, have been overtaken by developments in the Law – the introduction of a comprehensive insider trading regime and the related party provisions.

This information is already lodged annually by public companies that are not wholly owned subsidiaries in statements attached to the directors' reports under section 307. Information about individual shareholdings is accessible through searching the register of members.

### Register of substantial shareholders

The information held in the register of substantial shareholders is also lodged with the ASX by the substantial shareholders.

The proposal to abolish this register eliminates this duplication.

### Register of notice of beneficial ownership

This register is not a complete record of beneficial owners of company shares. It only contains responses to notices that may be sent out by the company. It is up to the company to decide whether or not to seek this information.

Since all responses must be lodged with the ASX under the Listing rules, there seems to be no need to require the company itself to maintain a register.

### Register of buy-backs

The Share buy-backs proposal requires companies to notify the ASC of any share buy-backs. The transfer of shares to the company is also recorded in the register of members. The separate requirement to maintain a register of buy-backs seems unnecessary and the buy-backs proposal envisages its deletion.

### Register of options

This register provides information necessary for the operation of the takeover provisions, and important for potential investors. The information is not held on the ASC database.

### Register of debenture holders

This register serves a number of functions. In particular, it assists the trustees for the debenture holders to perform their duties and facilitates the requisitioning of meetings. The information on the register is not held on the ASC database.

### Register of members

This register has particular legal significance. A person does not become a member of a company until the person's name is entered in the register.

It also has practical significance (for instance, if a shareholder wants to contact others for the purpose of requesting a general meeting the shareholder can obtain the necessary details from the register of members).

The ASC database does not have current information about the full membership of companies.

### *Commercial mailing lists*

Under the current Law, companies and their members cannot prevent someone preparing a mailing list from the register of members. These lists are used or sold for various purposes, especially targeting members with unsolicited mail.

Similarly, there are no restrictions in the Law for the registers of options or debenture holders.

However, in the case of debenture holders, the ASC has left in place a class order by its predecessor to impose restrictions on the use which can be made of the register of debenture holders.

The class order allows a company to apply to the ASC for permission to refuse access to the register unless the person requesting access enters a contract not to provide the register to any third parties, and to use it only for certain specified purposes (for example, to call a meeting of investors). This does not affect the access rights of any person listed on the register.

The Attorney-General's Department has been conducting a review of the provisions relating to the registers of members and debenture holders. The review has been carried out in consultation with interested parties, including the ASC and the Privacy Commissioner.

Some overseas jurisdictions have imposed restrictions on access to company registers in general, by reference to the purpose for which the person wishes to view or use the information.