

BUSINESS BULLETIN

SUMMER 2022

FEATURE – Company Directors Must Apply for a Director Identification Number

From November 2021, company directors will need to verify their identity as part of a new director identification number (Director ID) regime. The Director ID will be a unique identifier that a director will apply for once and will keep forever. The new regime is expected to cover more than 2.5 million directors.

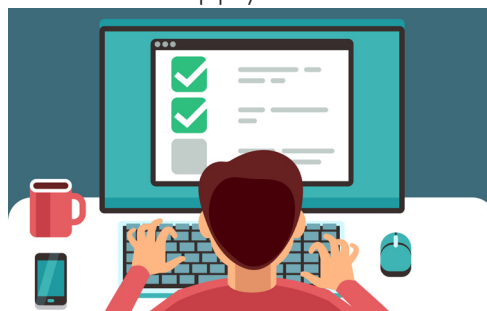
So what exactly is a Director ID?

A Director ID is a 15-digit identifier given to a director (or someone who intends to become a director) who has verified their identity.

A Director ID:

- starts with 036, which is the 3-digit country code for Australia under International Standard ISO 3166
- ends with an 11-digit number and one 'check' digit for error detection.

Directors will only ever have one Director ID. They'll keep it forever even if they change companies, stop being a



KEY DATES

21 DECEMBER

Due date for November monthly

Activity Statements

28 JANUARY

Due date for Superannuation

Guarantee contributions

21 FEBRUARY

Due date for January monthly

Activity Statements

28 FEBRUARY

Due date for quarterly (Oct-Dec)

Activity Statements

director, change their name or move interstate or overseas.

Who needs a Director ID?

You need a Director ID if you're an eligible officer of:

- a company, a registered Australian body or a registered foreign company under the Corporations Act 2001 (Corporations Act)
- an Aboriginal and Torres Strait Islander corporation registered under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act).

An eligible officer is a person who is appointed as a director or as an alternate director who is acting in that capacity. Importantly, it is not only the directors of trading companies that need a Director ID. If you're a director of a passive investment entity or indeed a corporate trustee (such as of a discretionary trust of a self-managed super fund), you too will need to apply for a Director ID

How is a Director ID obtained?

Applications for a Director ID are free and will open on 1 November 2021.

The fastest way to apply is online via the ABRS platform at www.abrs.gov.au/director-identification-number

To log in to ABRS online, the director will also need a myGovID which is different from myGov. We recommend chatting to your Bookkeeper or Accountant to assist in establishing a myGovID.

It's also important to note that Directors must apply for their Director ID themselves because they will need to verify their identity by producing their myGovID alongside two identity documents from a list including: their bank account details, super account details, ATO notice of assessment, dividend statement, Centrelink payment summary, or PAYG payment summary.

Further details on the specifics of identity verification for each of the application methods is detailed on the ABRS website.



How is a Director ID managed?

Once a Director ID is obtained, it should be passed on to any relevant persons, which might include:

- the company secretary.
- another director.
- the accountant.
- the ASIC Registered Agent (if different).

Penalties

Directors who fail to apply for a Director ID within the stipulated time frame can face criminal or civil

penalties of 5,000 penalty units, which currently stands at over \$1.1 million. Directors of a CATSI organisation can face penalties of up to \$200,000.

Penalties will also apply for conduct that undermines the new requirements, including providing false identity information to the registrar or intentionally applying for multiple Director IDs.

STAPLED SUPER FUNDS – What you need to know

Since 1 July 2005, employers have been required to offer their employees the right to choose which

superannuation fund will receive their employer superannuation contributions. If an employee did not choose their own fund, then the employer was obligated to pay into a

default fund.

With the advent of the Stapled Super Funds regime on 1 November 2021, there is now an extra step for employers to take if an employee doesn't choose a super fund.



What is a stapled super fund?

A stapled super fund is an existing super account linked, or "stapled", to an individual employee. The intent behind the concept is to reduce account fees and avoid new super accounts being opened every time an employee starts a new job.

For industries with a particularly fluid workforce, such as hospitality, it is not unheard of for employees to have upwards of half a dozen super funds. This is especially the case when the employee themselves is indifferent or apathetic about superannuation as a concept. From 1 November 2021, employers will need to request stapled super fund details for any new employees starting from that date in either of the following scenarios:

The employee is eligible to choose their own super fund but has not; or

The employee is not eligible to choose their own super fund because they are either:

- a temporary resident; or
- covered by an enterprise agreement or workplace determination made before 1 January 2021.

The Stapled Super Funds regime therefore introduces an intervening step which must be carried out before the employer can merely pay into their default fund. There is however no need to request stapled super fund details from the ATO for:

- existing employees (i.e., those who commenced work before 1 November 2021); or
- new employees (who commence work on or after 1 November 2021) and have already chosen a superannuation fund.

What determines an employee's stapled super fund?

The stapled super fund selection will be based on information held by the ATO about an employee. To be a stapled super fund, the fund must meet a number of requirements. This includes the employee being a current member of the fund and the fund being either a:

- complying superannuation fund;
- retirement savings account; or
- complying superannuation scheme.

If an employee has one existing eligible super account, this will be deemed to be the stapled super fund account for contributions.

If an employee has multiple existing eligible super accounts, the ATO will apply 'tiebreaker' rules. These rules consider:

- whether the ATO has previously identified an account as a stapled super fund;
- how recently contributions have been made to each of the accounts;
- the account balances; and
- how recently each of the accounts were created.

If an employee is concerned how the tiebreaker rules will be applied, they should use a super standard choice form to nominate their preferred fund.

How to request an employee's stapled super fund details

Essentially there are three steps in ascertaining an employee's stapled super fund details.

Step One: Ensure you have the appropriate ATO permissions to make a request

An employer or their authorised representatives can request stapled super

fund details using ATO online services. It may be necessary for the employer to check and update the access levels of their authorized representatives in ATO online services so that they have either full access, or custom access including the "Employee Commencement Form" permission to request stapled super fund details.

Step Two: Establish a valid employment relationship

In order to be able to make a request for an employee's stapled super fund details, you will first need to establish that a valid employment relationship exists. The most common means by which an employment relationship can be evidenced is the submission of a Tax File Number declaration.

Another common means of evidencing the employment relationship would be the submission of a Single Touch Payroll (STP) event, which is a file generated by STP-enabled software.

Step Three: Request the Stapled Super Fund Details

Having established that a valid employment relationship exists, the next step is to request a stapled super fund. This is done as follows:

1. Log into ATO online services.
2. If using Online Services for Business, navigate to the "Employee super account" screen via the "Employees" menu.
3. Select Request.
4. Enter the employee's details, including their:
 - TFN (if provided by the employee);
 - full name;
 - date of birth; and
 - address (residential or postal), if no TFN has been provided by the employee.
5. Read and click the declaration to sign it and then submit.

The ATO will then notify you on screen of the stapled super fund details in response to the request. The result will show almost instantly, except where no TFN is quoted for the employee in which case processing delays

may occur.

Notification of the request and the fund details will also be provided to:

1. the employee; and
2. the employer, if the request was made on their behalf by an authorised representative such as a Tax Agent or BAS Agent.

The ATO will be monitoring the service to ensure employers are using it appropriately and making genuine requests for stapled super fund details. Employers using the service incorrectly may have their access removed. With this in mind, remember not to:

1. Request Stapled Super Fund details for an employee who commenced their employment before 1 November 2021; or
2. Request Stapled Super Fund details for an employee who has already provided their super choice.

Actioning the results of the stapled super funds request

If the ATO advises that the employee does not have a stapled super fund, then the employer must pay the employee's superannuation contributions into the employer's default fund (or another fund that meets the choice of fund rules), as has



been the case since 2005.

If however the ATO provides you with the details of an employee's stapled super fund, then superannuation contributions must be paid into this fund from that point onwards, with the following exceptions:

- the stapled super fund account provided by the ATO can't accept contributions for

the employee. This could be because the employee has closed their account with the fund if the fund has become noncomplying; or

- an employee subsequently notifies you of a different fund by completing a Superannuation standard choice form.

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Implications of not paying into the Stabled Super Fund

Ultimately, if employers choose to disregard their obligations, the teeth will come in the form of a choice shortfall penalty. This is an existing arm to the superannuation guarantee shortfall provisions which applies where the employer has made contributions for an eligible employee to a complying fund but did not:

- offer the employee a choice of superannuation fund;
- make the contributions to the employee's chosen fund if the employee did choose a fund; or
- make the contributions to the default fund if the employee did not choose a fund.

If an employer were to make a contribution to their default fund without making a stapled super fund request, then they have effectively – by implication - fallen foul of the second point above. The choice shortfall is usually 25% of the contributions that are not made in compliance with the choice of superannuation fund obligations, capped at \$500 for a notice period per employee.

The above said, the ATO have foreshadowed that they will help and support employers as the Stapled Super.

