

Public Registers and the Professions

Introduction

Public registers are authoritative lists of names, events and transactions maintained by regulators and other public authorities that provide access to information by members of the public, professionals, business organisations and other interested parties. Well known examples include the electoral roll,¹ land registers², the register of deaths and marriages,³ the companies' and organisations register⁴ and the register of interests of members of parliament.⁵ These registers are established pursuant to either federal or state laws that may occasionally also require registers to be maintained by private firms.⁶

Accessing digital public registers and utilising their content is a regular part of many professional practices, particularly lawyers and accountants. This guide explores the content, role and function of contemporary public registers through four issues:

- The characteristics of public registers;
- The issue of access to public registers;
- The regulatory purpose and function of public registers; and
- The future of public registers in the age of digitalisation.

¹ See Australian Electoral Commission, *About the Commonwealth Electoral Roll* (3 May 2016) <http://www.aec.gov.au/Enrolling_to_vote/About_Electoral_Roll/> (accessed 1 May 2017).

² Australian Capital Territory: ACT Government *Access Canberra (Land title lodgements, registrations and searches)* <https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2108/> (accessed 1 May 2017); New South Wales: NSW Government, *Land and Property Information*; Northern Territory: Northern Territory Government, *Housing, Property and Land: Land Supply and Property Information* <<https://nt.gov.au/property/land>> (accessed 1 May 2017); Queensland: Queensland Government, *Business Queensland (Land Title Practice Manual)* <<https://www.business.qld.gov.au/industries/building-property-development/titles-property-surveying/titles-property/practice-manual>> (accessed 1 May 2017); South Australia: South Australia Government, *Integrated Land Information System*, <<https://www.sailis.sa.gov.au>> (accessed 1 May 2017); Tasmania: Tasmanian Government, *Land Tasmania*, <<http://dpipwe.tas.gov.au/land-tasmania>> (accessed 1 August 2017); Victoria: Landata, *Titles and Property Certificates* <<https://www.landata.vic.gov.au/>> (accessed 1 May 2017); Western Australia: Government of Western Australia, *Landgate* <<https://www.landgate.wa.gov.au/titles-and-surveys>> (accessed 1 May 2017).

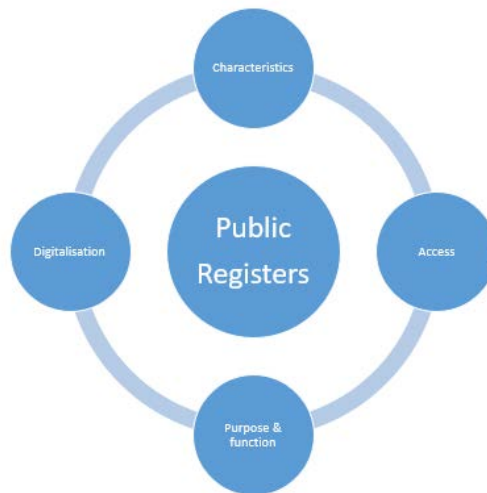
³ Australian Capital Territory: *Access Canberra (Apply for a Birth, Death and Marriage certificate)* <https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/18#tabs> (accessed 1 May 2017); New South Wales: NSW Government, *Justice (Registry of Births, Deaths and Marriages)* <<http://www.bdm.nsw.gov.au/>> (accessed 1 May 2017); Northern Territory: *Births, Deaths and Marriages* <<https://nt.gov.au/law/bdm>> (accessed 1 May 2017); Queensland: *Births, Deaths, Marriages and Divorces* <<https://www.qld.gov.au/law/births-deaths-marriages-and-divorces/>> (accessed 1 May 2017); South Australia: *Births, Deaths and Marriages*, <<http://www.cbs.sa.gov.au/births-deaths-marriages/>> (accessed 1 May 2017); Tasmania: *Births, Deaths and Marriages* <<http://www.justice.tas.gov.au/bdm>> (accessed 1 May 2017); Victoria: *Births, Deaths, Marriages* <<http://www.bdm.vic.gov.au/>> (accessed 1 May 2017); Western Australia: *Births, Deaths and Marriages* <<http://www.bdm.dotag.wa.gov.au/>> (accessed 1 May 2017).

⁴ Australian Securities and Investments Commission, *Companies and Organisations*, <<http://asic.gov.au/online-services/search-asics-registers/companies-and-organisations/>> (accessed 1 May 2017).

⁵ Parliament of Australia, *Register of Members' Interests*, <http://www.aph.gov.au/Senators_and_Members/Members/Register> (accessed 1 May 2017).

⁶ See for e.g. *Corporations Act 2001* (Cth) Part 2.C.1 (Registers); Alistair Jaque and Jason Hadassin, 'Corporate Law: Public Access to Company Registers – the Proper Purpose Test' (2010) 62 *Keeping Good Companies* 288.

Figure 1: The functions of contemporary public registers



Characteristics of Public Registers

Public registers seek to be an authoritative, current source of data kept by regulators or public authorities in relation to a specific regulatory regime that they administer.⁷ Persons using a register, whether as working professionals or members of the public, must have trust in the data it contains. Trust comes from ensuring that the information included in the register is recorded accurately, kept up-to-date and remains a permanent record, not disappearing or changing without explanation.⁸

Responsibility for data integrity belongs to the public authority responsible for the register, such as the Australian Health Practitioner Regulation Agency ('AHPRA') in the case of registered medical professionals. The authority typically appoints a person to take responsibility for the information in the register.⁹ The register must be the single, definitive source of information on an issue. There cannot be multiple data sources so that variations between data sources are not possible. For example, the public registers maintained by the Australian Securities and Investments Commission ('ASIC') are the single, authoritative place to go to find data directly related to a company registered in Australia. This is data such as the date a company was formed, its entity status and the address for its registered office.¹⁰ Individual professionals across a wide range of industries rely upon ASIC regarding the integrity of corporate data to meet their own professional obligations whilst providing services to employers and clients. ASIC must have an exclusive and authorised means of collecting, managing and storing data on these issues. Secondly, they must provide for the public to be able to access or search that data.¹¹ The ability to collect data rests on the notification and registration requirements under the laws it administers, particularly, the *Corporations Act 2001* (Cth).

⁷ Paul Downey, 'Registers: authoritative lists you can trust' on Paul Downey, *Government Digital Service, UK Cabinet Office* (1 September 2015) <<https://gds.blog.gov.uk/2015/09/01/registers-authoritative-lists-you-can-trust/>> (accessed 1 May 2017).

⁸ Downey, above n 7.

⁹ Paul Downey 'Introducing Registers' in Paul Downey, *Government Digital Service, UK Cabinet Office* (23 June 2016) <<https://www.gov.uk/government/publications/registers/registers>> (accessed 1 May 2017).

¹⁰ ASIC, *Online Services*, <<http://asic.gov.au/online-services/search-asics-registers/#companies>> (accessed 1 May 2017).

¹¹ Downey, above n 9.

The information included in a specific public register depends on the purpose for which the register was created subject to two overarching requirements: the register must comply with the requirements of the statute under which it was established; and it must comply with relevant Federal and State privacy laws.¹² Personal information can only be released on a public register if the regulatory agency has satisfactory reasons for doing so and the information is only for the purpose for which the law requires the register to be kept.¹³ A member of the public can request the non-release and/or removal of personal information from a public register.¹⁴ Much of the traditional concern with regard to information contained in public registers raises privacy related issues and is often referred to in codes of conduct established by professional associations.¹⁵

Access to Public Registers

A register is just a collection of data. It is the regulator's role to present that data in ways that make sense to users.¹⁶ Shortcomings in data presentation have been shown to inhibit the effectiveness of public registers.¹⁷ Pre-digitalisation, geographical considerations and the requirement that the public be physically present at the regulator's offices to inspect the register was also a major obstacle to public access.¹⁸ Since the 1990s, public registers have become reliant on database and file sharing technologies, although there is no single standard way of accessing data in digital registers.¹⁹ Registers can now be accessed either by direct physical inspection and/or remotely, using network technologies. These include accessing the regulator's website, via computers using application program interface technology (API), which enables database searching from a remote location. Debate has shifted from regulators ensuring fair access taking account of geographical considerations²⁰ to the extent of access provided. Debate is concerned with whether regulators should permit processing and analysis of information on online public registers. This issue can be especially pertinent for many professionals in areas such as the marketing of services.²¹

¹² Privacy issues are subject to federal and state regulation, depending on whether the issue itself involves federal or state laws. Federal matters, being those arising under Federal Laws, are subject to the *Privacy Act 1988* (Cth) and are subject to regulation by the Office of the Australian Information Commissioner. See Australia Government (Office of the Australian Information Commissioner), *General Data Protection Regulation Guidance for Australian Businesses* <<https://www.oaic.gov.au/>> (accessed 1 May 2017). State related matters are subject to state-based privacy laws, e.g. *Privacy and Data Protection Act 2014* (Vic) as regulated by the Victorian Commissioner for Privacy and Data Protection. See Commissioner for Privacy and Data Protection, *Welcome to CPDP* <<https://www.cpdp.vic.gov.au/>> (accessed 1 May 2017).

¹³ In relation to federal matters, see *Privacy Act 1988* (Cth) Sch 1, Australian Privacy Principles.

¹⁴ *Privacy Act 1988* (Cth) Sch 1.

¹⁵ Maeve McDonagh, 'The Protection of Personal Information in Public Registers: The Case of Urban Planning Information in Ireland' (2009) 18 *Information & Communications Technology Law* 19, 21.

¹⁶ Paul Downey, above n 9 [2-3].

¹⁷ T P Burton, 'Access to Environmental information: The UK Experience of Water Registers' (1989) 1 *Journal of Environmental Law* 292, 200-3; John Moxon, Alistair McCulloch, David Williams and Simon Baxter, 'Environmental Information in Scotland; Access and provision', *Research Report the Scottish Office* (Edinburgh, 1995); Jeremy Rowan-Robinson, Andrea Ross, William Walton and Julie Rothnie, 'Public Access to Environmental Information: A Means to What End?' (1996) 8 *Journal of Environmental Law* 19, 24, 30.

¹⁸ For a discussion of geographical constraints on registers, see T P Burton, above n 17, 197-8.

¹⁹ Downey, above n 9.

²⁰ Burton, above n 17, 197-9.

²¹ Philip Leith, 'Squeezing Information Out of the Information Commissioner: Mapping and Measuring Through Online Public Registers' (2006) 3 *SCRIPT-ed* 389.

Public registers can be classified according to the type of public access that they provide as follows:²²

Table 1: Public access classifications

Type of access	Description	Example
Open registers	Contain public data and are open to everyone	Australian Health Practitioner Regulation Agency Register of medical practitioners < http://www.ahpra.gov.au/registration/registers-of-practitioners.aspx > (accessed 1 August 2017).
Shared registers	Allow access to members of the public but include some form of access control, such as a fee or token requirement before gaining access.	Australian Securities and Investments Commission Connect for searching company, business names, self-managed superannuation funds and auditor registers (https://connectonline.asic.gov.au/HLP/using-this-service/how-to-use-asic-connect/WelcometoASICConnect/index.htm)
Private registers	Contain sensitive information not publicly available but in relation to which it is possible to answer simple questions without revealing private details about individuals on the register.	Taxi Services Commission Victoria, <i>Register of Accredited Drivers and Conditions on Vehicle Licences</i> < http://taxi.vic.gov.au/passengers/taxi-passengers/public-register > (accessed 1 August 2017).
Closed register	Contain data that is private to a single organisation and not generally connected to a digital service.	Consumer Affairs Victoria, <i>Register of Rooming Houses</i> < https://www.consumer.vic.gov.au/businesses/licensed-businesses/rooming-house-operators/public-register > (accessed 1 August 2017).

The Australian Government encourages government agencies to adopt a presumption of openness and a proactive public access stance in relation to public sector information unless there is a legal need to protect information.²³ On this basis, the majority of public registers in Australia should be open registers but this is not the case, due to privacy concerns,²⁴ cost issues,²⁵ and technology and management challenges.²⁶ Digital access to public registers has played a positive role in enhancing access. It has also facilitated professional efficiency, encouraging broader awareness of professional credentialing requirements and extending the range of services that professionals can offer.²⁷

²² Downey, above n 9.

²³ Office of the Australian Information Commissioner, *Principles on open public sector information* (May 2011) <<https://www.oaic.gov.au/information-policy/information-policy-resources/principles-on-open-public-sector-information>> (accessed 1 May 2017). This initiative is also reflected in global policy recommendations on digital strategies, see Organisation for Economic Cooperation and Development, *Recommendation of the Council on Digital Government Strategies* (25 July 2014) <<http://www.oecd.org/gov/digital-government/Recommendation-digital-government-strategies.pdf>> (accessed 1 May 2017).

²⁴ Lucie Guibault and PB Hugenholtz, *The Future of the Public Domain: Identifying the Commons in Information Law* (Kluwer International, 2006) 282.

²⁵ Burton, above n 17, 199. As to the argument that pricing of public information is an appropriate part of managing access to registers, see Organisation for Economic Cooperation and Development, *Public Governance Reviews Finland: Working Together to Sustain Success* (OECD Publishing, 2010) 8.

²⁶ Cary Coglianese, 'Enhancing Public Access to Online Rulemaking Information (2012-2013) 2 *Michigan Journal of Environmental and Administrative Law* 1, 35-42.

²⁷ McDonagh, above n 15, 23.

Purpose and function of public registers

Transparency and public access to public sector information along with improved participation in democratic government and stimulating innovation are important register functions. These and the free flow of information between government, business and the community are the principles that underpin the publication objectives of the Freedom of Information Act 1982 (Cth) ('FOI'). These principles influence, but do not bind, the role and function of public registers in Australia.²⁸ Public registers existed long before FOI legislation was introduced but the principles governing public registers are ostensibly the same.²⁹

Information held by regulators in public registers is a valuable public resource.³⁰ Greater transparency is an essential pre-condition for the accountability of public agencies and access to information underlies public participation in government.³¹ The availability of data through public registers provides professionals amongst others with meaningful information that enables them to make informed commentary, debate and discussion about decisions and actions taken by government agencies. Depending on the public register accessed, public registers also enhance consumer protection. They can guard against corruption and encourage public confidence and trust in the regulator who maintains the register.³²

However, some socio-legal scholars have doubted these benefits, based on empirical studies of UK based public registers that found little use of the registers by the public. This was due to lack of awareness of their existence, poor means of access, lack of understanding of the information provided in registers, insufficient data and poor data usage.³³ The conclusion reached was that public registers did little to promote public reassurance and were unlikely to promote agency or industry accountability or public participation in many contexts unless there was a pre-existing culture of participation such as exists with town planning registers.³⁴ These studies predated the evolution of digital registers, but raise considerations that are arguably still relevant to digital registers, with the exception of geographic limitations.³⁵

Increased access to public information because of digitalisation has arguably enhanced public participation generally³⁶ and improved engagement between regulatory actors including professionals.³⁷ The so-called 'culture of participation' identified by socio-legal scholars as lacking in earlier studies is now a fixed and

²⁸ Office of the Australian Information Commissioner, above n 24.

²⁹ T P Burton, above n 17, 192-193; Rowan-Robinson et al, above n 17.

³⁰ Office of the Australian Information Commissioner, above n 24 (Principle 1).

³¹ Tristan Robinson, 'Federal FOI Reform and Media Access to Government Information: A transparency Revolution or Just a Better Foothold?' (2010) 62 *Australian Institute of Administrative Law Forum* 65.

³² Rowan-Robinson et al, above n 17, 20-21; McDonagh, above n 15, 20-21.

³³ T P Burton, above n 17; 194, and Rowan-Robinson et al, above n 17, 24 and 30.

³⁴ Rowan-Robinson et al, above n 17, 30.

³⁵ Leith, above n 22. As to impact on consumer choice and industry responsibility, see Judith van Erp, 'Effects of Disclosure on Business Compliance: A framework for the Analysis of Disclosure Regimes' (2007) 5 *European Food and Feed Law Review* 255.

³⁶ Richard Macrory, *Regulation, Enforcement and Governance in Environmental Law* (Oxford University Press, 2nd ed, 2014) 231.

³⁷ Andy Gouldson, 'Risk, Regulation and the Right to Know: Exploring the Impacts of Access to Information on the Governance of Environmental Risk' (2004) 12 *Sustainable Development* 136, 147-8.

constant feature because the internet is the tool of participation.³⁸ There is a growing demand for increased participation rights in many regulatory schemes.³⁹

Regardless, influential academics, such as Richard Macrory, warn against overstating the benefits of digital public registers, suggesting that they are, at best, 'passive' regulation. He argues they are, a useful means towards achieving regulatory outcomes but not an end in itself.⁴⁰ This view is shared by Christopher Hood and Helen Margetts in their important work on regulatory tools in the digital age.⁴¹ One unresolved issue is whether public registers have in fact stimulated innovation through the free flow of information between government, business, professionals and the community. This is an area in which the experience and views of professionals, (who have been key mediators of these flows of information), could be sought to not only enrich discussion, but also deepen the foundation of empirical evidence.

Public registers make information held by regulators transparent, accessible and available as a research tool.⁴² However, there is a strong view that the lack of understanding of the underlying data technology by public agencies and regulators who manage these registers has to date inhibited the extent of access permitted and in turn the innovations that might potentially flow from that access.⁴³ One particularly influential study by Cary Coglianese examined the use of electronic media by 90 US federal agencies and found a range of differing digital practices between agencies. Some agencies, such as the Environmental Protection Agency, were more willing to embrace the digital imperatives of the internet than others.⁴⁴ The ongoing responsibilities of managing public registers will in time come to require commitment by all regulatory agencies to substantially improving digital access.⁴⁵

³⁸ John Sinclair, Timothy Peirson-Smith and Morrissa Boerchers, 'Environmental assessments in the Internet Age: The Role of E-Governance and Social Media in Creating Platforms for Meaningful Participation' (2016) 35 *Impact Assessment and Project Appraisal* 148.

³⁹ Macrory, above n 37, 231.

⁴⁰ Macrory, above n 37, 348 reflecting Rowan-Robinson et al, above n 17, 20.

⁴¹ Christopher Hood and Helen Margetts, *The Tools of Government in the Digital Age* (Palgrave Macmillan, 2007).

⁴² Leith, above n 22 410.

⁴³ Coglianese, above n 27, 39-42.

⁴⁴ Coglianese, above n 27, 24-33.

⁴⁵ Leith, above n 22, 411, Coglianese, above 27, 66.

The Future of Public Registers in the Age of Digitalisation

The Organization for Economic Co-operation and Development ("OECD") reports that there is increased use of digital public registers aided by the use of the internet across OECD countries including Australia.⁴⁶ Calls for the introduction of more online public registers are increasingly common in Australia⁴⁷ and worldwide.⁴⁸ Digitalisation of government services in Australia is overseen by the Digital Transformation Agency.⁴⁹ There is alas, currently no guidance note published by that agency on the digitalisation of public registers, unlike the equivalent UK Agency.⁵⁰ The future utility of public registers turns on regulators and regulatory participants having a shared commitment to extended access to public registers of the kind that would permit direct data capture, processing and analysis of the information they contain. There will continue to be challenges concerning privacy,⁵¹ cost⁵² and technology.⁵³ These issues permeate most areas of professional activity. They are in future likely to be both more significant and qualitatively different because digital access removes any practical obscurity that paper-based registers once provided. Finally, personal information may be susceptible to processing in ways not yet envisaged.⁵⁴

⁴⁶ OECD, *Background Document on On-line Registers for Laws, Regulations and Business Formalities* (2005) <<http://www.oecd.org/mena/governance/40501864.pdf>> (accessed 1 May 2017).

⁴⁷ See, e.g., Roman Ianis and Brett Govendir, 'To Really Tackle Corporate Tax Evasion, We Need A Public Register', *The Conversation, Business and Economy* (12 September 2016), <<http://theconversation.com/to-really-tackle-corporate-tax-evasion-we-need-a-public-register-64969>> (accessed 1 May 2017).

⁴⁸ McDonagh, above n 15, 23.

⁴⁹ See <<https://www.dta.gov.au/>> (accessed 1 May 2017).

⁵⁰ Government Digital Service (UK), *Introducing Registers* (23 June 2016) <<https://www.gov.uk/government/publications/registers/registers>> (accessed 1 May 2017).

⁵¹ Guibault and Hugenholtz, above n 25, 282.

⁵² Burton, above n 17, 199. As to the argument that pricing of public information is an appropriate part of managing access to registers, see Organisation for Economic Cooperation and Development, *Public Governance Reviews Finland: Working Together to Sustain Success* (OECD Publishing, 2010) 8.

⁵³ Coglianese, above n 27, 35-42.

⁵⁴ McDonagh, above n 15, 23.

Summary

Public registers are well-known regulatory tools. Their utility depends on being reliable, authoritative and current sources of data kept in relation to a specific regulatory regime that regulators administer. Most of public registers in Australia should be open registers. This is not necessarily the case, particularly because of privacy concerns, cost issues; and technology challenges. These issues are not new to public registers but digitalisation has raised them again, sometimes in ways that are still being envisaged and dispose regulators to caution. Transparency and providing public access to public sector information and facilitating professional activity are important. So is improved participation in democratic government and stimulating innovation through the free flow of information between government, business and the community. These are the broad principles that underpin the role and function of public registers in Australia. As discussed above there is debate about the extent to which these principles do in fact determine the utility of public registers. Research suggests there is an extent to which these principles are frustrated by poor understanding and reluctance by regulators and public agencies to commit to more extensive access to public registers.

Written by: Helen Bird and George Gilligan

This subject overview has been written with the support of the following partners:

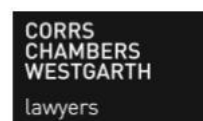


Australian Government
Australian Research Council



UNSW
SYDNEY

CLMR
Centre for Law, Markets and Regulation



Allens > < Linklaters