



Australian Government
The Treasury

TSY/AU

Tackling the Black Economy
**Designing a modern Australian
Business Number system**

Consultation paper
20 July 2018

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Consultation Process

Request for feedback and comments

We welcome submissions in response to this consultation paper. Please clearly indicate on your submission if you wish for it to be kept confidential.

Closing date for submissions: 31 August 2018

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Designing a modern Australian Business Number system

Introduction

The ABN system was originally introduced in 2000 to provide a unique identifier for businesses to use when dealing with government, and to support the introduction and administration of the Goods and Services Tax (GST). However, the value and meaning of an ABN within the community has expanded over time, with the ABN now considered a key business credential. The consequences of a broadly applicable business credential are becoming more apparent over time.

In 2017, the Black Economy Taskforce consulted on the drivers of the black economy and found that the ABN system is being used by participants in the black economy to provide a false sense of legitimacy to their business. This is a concern given the potential for it to be used to deceive other businesses or consumers. It is therefore timely to consider whether the ABN system remains fit to support the expanded range of purposes that an ABN is used for today.

The ABN data held within the Australian Business Register (ABR) is a vital source of information on ABN holders. It is being used by business, government and the community for purposes outside the tax system such as business identity checks, disaster planning, policy design and targeting services to business. It is therefore imperative that the ABR is a trusted source of information and supports easy identification and verification of businesses.

This consultation paper is based on the premise that the ABN remains an important business identifier and will be retained. However, it recognises that the underpinning ABN system is in need of reform to support the growing importance and expanded uses of the ABN and the consequences that come with this.

With this focus, views are sought on possible changes to the ABN system including adjusting ABN entitlement rules, imposing conditions on ABN holders, and introducing a renewal process including a renewal fee. Stakeholders are also welcome to make comments or provide insights on other aspects of the ABN system that are not raised in this paper.

Following this consultation period, the Government will consider stakeholder views and develop a coordinated package of ABN reforms. Further consultation is planned to occur on the details of these reforms and how they should be implemented.

Consideration of reforms to the ABN system is not occurring in isolation. There are currently a number of related reforms occurring across Government. Reforms to modernise business registers, implement a digital identity framework, introduce director identification numbers, and reduce phoenixing activity will all contribute to improving business identity and verification.

This consultation paper does not seek to duplicate consultations or work underway on these related reforms. However, where answering questions in this consultation paper requires referencing these reforms, we welcome views outlining the relevant interactions.

What purpose does the ABN system serve?

There are currently around 7.7 million ABN registrations, with over 860,000 new ABNs issued in 2017-18. A number of other systems exist to identify entities, for instance the Australian Company Number, Australian Registered Body Number, and the Unique Superannuation Identifier. However, the ABN remains the system with the broadest coverage across different entities and with uses across a range of purposes.

An ABN has become a de facto 'licence to do business', enabling businesses to register a business name, open a business bank account, register for GST and claim GST credits, avoid having tax withheld on payments received by the business, obtain an Australian domain name and confirm identity to others when ordering and invoicing. The ABN can also be used as a PayID for the New Payments Platform.

The explanatory memorandum for the ABN Bill envisaged a broad role for the ABN as a single business identifier for government purposes. However, the ABN has become much more than this, influencing the ability of a business to operate successfully, allowing a business to capitalise on opportunities only available to businesses, underpinning laws targeted at business, and signalling a business's credentials. ABNs are also increasingly used by entities outside government as a useful source of data on Australian businesses.

Despite this expanded role of the ABN, the ABN system has not changed substantially since its introduction almost 20 years ago. The ABN system was originally designed so that ABNs could be obtained easily and quickly to facilitate the introduction and administration of the GST, and to provide certainty for small businesses and others engaging in a new tax system but with limited resources available to buy in specialist assistance. Intentionally, these were simple processes, both for ABN applicants and administrators of the new indirect tax.

While the new tax system settled down smoothly, it has become apparent that the interaction of holding an ABN with other parts of the taxation system and with employment laws, confers advantages not available to others. Holding an ABN is seen by some as sanctioning claims for a wider range of tax deductions, and contracting with ABN holders as being a lower cost option than employees. How to counteract gaming of ABNs without introducing a new bureaucracy with its attendant cost and increased complexity in the ABN system is essential.

Moreover, the Black Economy Taskforce has found that free and easy access to ABNs is facilitating black economy behaviour in some circumstances by lending a false perception of legitimacy to fraudulent operations. This ultimately has impacts across the economy.

A false perception of legitimacy places businesses not prepared to do the right thing on the same footing as honest businesses. It increases the risk of people being misled and exploited by these businesses and creates opportunities for tax evasion. Any reforms to the ABN system should ensure that the system works for ABN holders, but also that it works for those who deal with ABN holders since it is important that customers, investors and employees have confidence in the identity and legitimacy of a business.

Questions:

1. Are changes needed to the ABN system to take into account the expanded purposes for which ABNs are used today? If so, what changes?
2. In your experience, is an ABN viewed as a sign of authenticity or legitimacy? If so, what impact does this have?

Who should be entitled to an ABN?

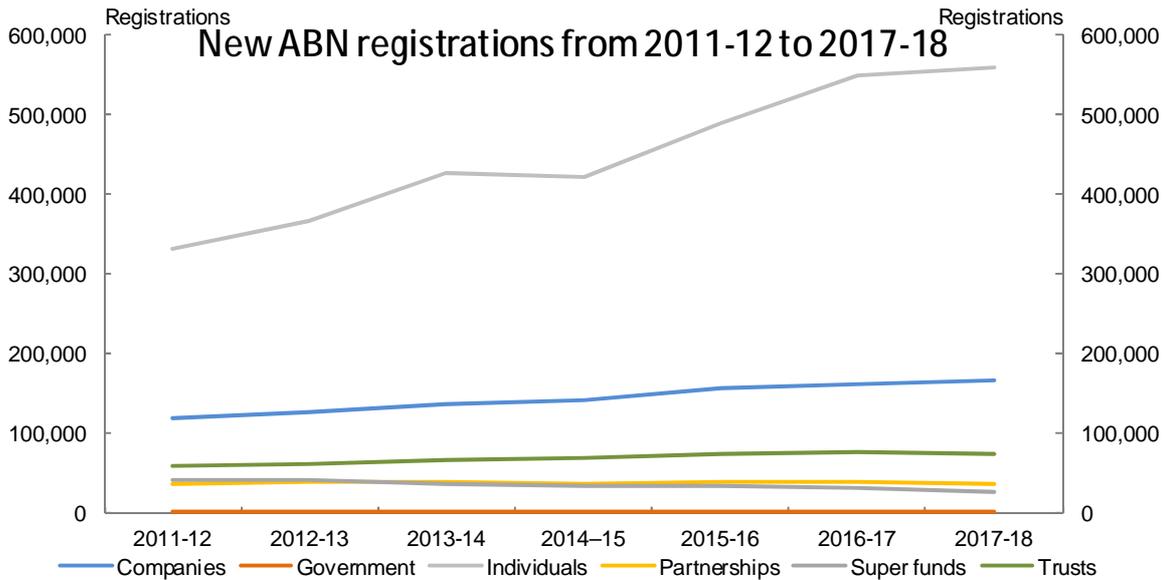
Under the current ABN system, entities carrying on an enterprise or taking steps to start an enterprise are entitled to an ABN. This can include individuals running or starting a business as a sole trader or contractor, but can also include other entities such as trusts, partnerships, charities, government agencies, and superannuation funds. Corporations Act companies are entitled to an ABN without needing to meet the enterprise test, although they still must apply if they wish to be granted an ABN.

The Taskforce expressed concern that not everyone obtaining an ABN is entitled to one. Some of the examples provided to the Taskforce included:

- Applications for multiple ABNs over time for what is essentially the same enterprise, to facilitate avoidance of employee, creditor, consumer and tax obligations (referred to as phoenixing);
- Individuals working as employees (and not entitled to an ABN) but applying for ABNs ostensibly as independent contractors, often due to a demand from their employer (referred to as sham contracting).
 - This allows the employer to avoid responsibility for employee entitlements, thereby reducing their labour costs and potentially offering the employer an advantage over their competitors. Examples of employees driving the use of sham contracting were also provided to the Taskforce, such as visa holders seeking to circumvent their visa work conditions.
- Individuals incorrectly obtaining an ABN when not entitled to avoid the 'no ABN withholding' rules.
- Individuals not carrying on an enterprise and therefore not entitled to an ABN obtaining an ABN in order to register for GST and fraudulently claim GST input tax credits.

A person who makes false or misleading statements to obtain an ABN can face a penalty of \$12,600. There is also a significant risk of the applicant breaching other laws if they are not aware of their responsibilities as an ABN holder (for instance, the responsibility to retain income to meet their taxation obligations).

ABR figures show a large increase in individuals applying for an ABN (see chart below). However, it is possible that flexible work preferences and increased entrepreneurship, including the rise of the sharing or gig economy, play some part.



Source: ABR

Nevertheless, the sharp increase in individuals applying for an ABN raises the question whether the ABN entitlement rules remain appropriate. To address the issue of applicants obtaining ABNs when they are not entitled, the Taskforce recommended that certain groups (such as apprentices and individuals on tourist visas, as well as workers in certain industries) be excluded from obtaining an ABN. It is worth considering, however, that there may be genuine reasons why these groups might require an ABN (for example, an apprentice with an unrelated part-time business).

As part of the ABN online application process, ABN applicants are required to answer a series of questions to determine their entitlement to an ABN. This process is not perfect as sometimes applicants will answer the questions incorrectly – either deliberately or unintentionally – and obtain an ABN, even though they may not be entitled to one.

However, it is not practical for the Registrar of the ABR (who is also the Commissioner of Taxation) to conduct an in-depth review of every ABN application from an individual. The concept of entitlement is also complex – for instance the distinction between an independent contractor and an employee, and consequently whether an individual is entitled to an ABN, is not governed by a single definition but rather by a range of factors that will depend on an individual’s particular work arrangements.

The ABR and ATO websites offer guidance material on ABN entitlement to assist applicants. The ABR is also currently working with other parts of the ATO to develop an application experience based on the applicant’s risk profile. This may involve stronger entitlement checks before an applicant obtains an ABN. The ATO is also working to improve information sharing and cooperation with other regulators such as the Department of Home Affairs and the Fair Work Ombudsman.

These changes, or other reforms to the ABN system, on their own are unlikely to stop fraudulent behaviour. However, there may be opportunities to dissuade ABN applicants from engaging in this behaviour or to better identify those who do. There might also be broader opportunities to make the ABN entitlement rules clearer and simpler. This could help the ABN system to better assist honest business transactions while making it harder for black economy participants to gain access to a range of benefits that will facilitate their fraudulent behaviour.

Questions:

3. Who should be entitled to an ABN? Who should not be entitled to an ABN? What are the risks or benefits from any changes to ABN entitlement rules?
4. What is the best way of ensuring that only those who are entitled apply for and are granted an ABN?
5. Should individual contractors holding ABNs be required to register for GST regardless of the amount of their annual turnover?
6. Could the ABN application process or ABR guidance material be made clearer to help applicants (and employers) distinguish between an employee and a contractor, or to better highlight the consequences if an applicant is caught intentionally ignoring the ABN entitlement rules?

Should there be conditions associated with an ABN?

The Taskforce found that the current ABN system does not incentivise or require a business to be compliant with government obligations in order to retain their ABN. Whilst there are currently some requirements associated with an ABN – for example, ABN holders must keep the Registrar informed of changes to their details – the current arrangements are akin to a perpetual system where businesses retain their ABN regardless of their compliance with government obligations. The Taskforce highlighted that this has led to ABN holders viewing their ABN as a right, rather than a benefit with conditions or obligations attached.

The Taskforce recommended that ABN holders should only be allowed to continue to hold their ABN if they comply with government obligations. This change would address the current disconnect between the perception of ABNs as a proxy for legitimacy and the reality that there are currently no conditions imposed on ABN holders. This would allow businesses and individuals to better identify compliant businesses and act as a deterrent to engage in black economy behaviour. There is, however, a danger that a system of conditions or obligations could reinforce a business' false legitimacy where that business engages in areas of the black economy unrelated to the ABN obligations.

Stakeholders may have views on the conditions that should be imposed on ABN holders. A starting point might be whether the ABN holder is meeting their taxation obligations (similar to the announcement for businesses wishing to tender for Commonwealth government contracts). It may also involve reviewing information through the proposed Director Identification Number, where applicable, to test if a company is associated with phoenixing activity.

However, the consequences associated with not meeting the ABN obligations require careful consideration. ABN cancellation as a consequence could be problematic. Cancelling an ABN does not cancel or deregister a business and they could continue trading. However, in practical terms, cancellation of an entity's ABN may affect their ability to run a viable business as an ABN enables many key business functions, such as remitting GST and avoiding tax being withheld on payments received.

Faced with these impacts, a business owner might decide to operate without an ABN in the black economy. Care would also need to be taken to ensure ABNs are not cancelled for minor issues, issues under dispute, or where the business has agreed to take corrective action in relation to their government obligations.

Alternatives to cancellation, such as penalties or traffic light systems (where ratings such as amber or red are published to alert others to an ABN holder's non-compliant behaviour), have similar downsides.

A key priority of any changes to the ABN system would be to ensure that businesses are not unfairly disadvantaged. For example, a process such as cancelling an ABN for not meeting the prescribed conditions would need to be fair and transparent and only occur where the business had not taken appropriate steps to rectify the issues.

Questions:

7. Should an ABN holder be required to meet certain conditions or undertake certain obligations? If so, what obligations should apply? Should any exemptions apply and under what circumstances?
8. What consequences should apply if an ABN holder does not meet the required obligations (e.g. cancellation of an ABN, publication of a non-compliant status, penalties)? How could these consequences be designed to avoid unfair consequences for businesses?
9. What notification should be given to an ABN holder of the ABR's intention to cancel their ABN?

Should the ABN system be used to support more active verification of legitimate businesses?

A system of conditions for ABN holders provides one way of improving the integrity of the ABN system and the quality of ABN data. However, there may be other ways for end users to ensure the legitimacy of a business or there may be particular situations that call for more active verification of a business' credentials. The Taskforce recommended two situations where more active verification of ABNs was warranted:

- The Taskforce recommended that, to access trade discounts on purchases, ABN holders should have to provide their ABN to the seller. The seller should be required to verify the ABN and record the transaction details (Chapter 7 supplemental recommendation). This was to counter individuals fraudulently accessing special offers only available to ABN holders, such as discounted phone plans, vehicles or hardware.
- The Taskforce also recommended that stall holders at large and organised markets and food trucks should be required to display their ABNs, and that market operators should also be required to maintain a list of stallholders that can be reported to the ATO as required (Recommendation 10.7).

Being required to show their ABN in certain circumstances may result in individuals deciding to apply for an ABN despite not being entitled or not needing an ABN. For instance, some market sellers may be selling their products as a hobby or may not need an ABN as they are below the GST turnover threshold.

There may, however, be a role for more active verification of ABNs in some instances. It will be important to understand as part of these consultations whether there are circumstances such as those identified by the Taskforce where additional verification processes may be beneficial.

Digital reforms such as the New Payments Platform may provide opportunities for more active verification of ABNs. The Taskforce notes that, over the longer term, there may be scope to integrate ABN verification functionality into the New Payments Platform. The introduction of Director Identification Numbers may also improve active verification of the directors or controlling minds behind a company, and therefore their legitimacy.

Questions:

10. Are changes to the ABN system, or related systems and laws, needed to support easier verification of an ABN holder? For instance, this might include increased visibility of ABNs as part of business dealings or better linking ABNs to other systems (such as payment platforms).
11. Should specific action be taken to require ABN verification:
 - for market stalls and food trucks?
 - in order to access trade discounts?

How should the ABN system support accurate information on businesses?

The ABR provides a national database of ABN holders' details. A limited set of ABR data is available to the public on the ABN Lookup website. This data is used by trading partners, consumers, investors, and business service providers to confirm an ABN holder's details and other information such as GST registration and deductible gift recipient status. There were over 1 billion searches on ABN Lookup in 2017-18, suggesting that the ABR provides an important verification role for the public.

Case study: Business use of ABR data

A key business software firm has introduced a tool in its accounting software to automatically check a business contact's ABN against their details on the ABN Lookup website. When an ABN is entered against the contact, the software will display whether the ABN is active and other details such as GST registration. The business contact's ABN details are checked against ABN Lookup every time a user views the contact's details in the software, allowing access to the most current ABN information about that business contact.

A range of entities have access to a wider set of ABR data. This broadly includes government departments and certain bodies at the Commonwealth, State and Territory, and local level. This data is likewise becoming an important source of information for planning and decision making.

Case study: Government use of ABR data

After a severe storm passed through Ipswich in December 2016, Ipswich City Council used the ABR to find email contact details for local businesses. This allowed the Council to quickly get in touch with business owners and offer support. The Council was able to assist businesses that requested immediate help and provide advice on the various local government assistance programs available.

Bass Coast Shire Council used ABR information to identify and contact over 1,000 agricultural businesses in their area, to survey their views about rural land use including agricultural tourism, food production and protection of natural assets. The responses were used to develop a rural land use strategy for the shire that supports long-term economic growth.

These case studies illustrate that the value of ABR data goes well beyond the tax system – providing data for end users is now an important function of the ABN system.

Unfortunately, the enduring nature of ABN registrations creates problems with the currency and accuracy of that data. In 2017, the ABR's annual 'Measuring ABR Integrity' program identified that over 20 per cent of business address details were incorrect, and over 25 per cent of ABNs were no

longer in use or no longer entitled. This is despite ABN holders being required to notify the Registrar within 28 days if they change their details or cease to trade.

In 2016-17, the Registrar cancelled 683,497 ABNs where the ABN holder had not lodged income tax returns or business activity statements for the last two years, or had lodged them, but they showed no business income. In other words, ABNs were cancelled where ABN holders were no longer considered to be carrying on an enterprise and therefore no longer entitled to an ABN. Only a small proportion of ABN holders sought to have their ABNs re-instated. Along with cancelling inactive ABNs, the Registrar uses other reliable sources of data to update ABN-holder details. However, this data is not always available and consequently ABN-holder records can be out of date.

The Government has announced as part of reforms to modernise business registers that it will bring together data from the ABR and the ASIC business registers on a single platform. Modernising business registers will address registry fragmentation, improve business user experience, reduce risks of ongoing operating, foster data driven innovation and enable better use of registry data. These changes will improve data quality and usability but stakeholders are welcome, as part of this consultation process, to suggest other ways to improve the data available to end users.

Better data for end users generates broad-ranging benefits. Government agencies are able to provide more targeted support and improved services for businesses and better data matching. Businesses and the community have access to more accurate business data through ABN Lookup, allowing them to make better informed decisions about a business before choosing to engage their services or buy their product.

Questions:

12. How could the quality of ABN data be improved?
13. As an end user of ABN data, what information on ABN holders is, or would be, most useful to you?
14. As an ABN holder, what information would you want to be publicly available on the ABR, noting that there are options to suppress information from being released publicly in certain circumstances?

Note: these questions interact with issues being considered as part of the 'Modernising Business Registers' process.

Should ABNs be subject to renewal?

The Taskforce proposed that ABNs should not be ongoing, but should be subject to periodic renewal. A renewal process would address some of the issues outlined above.

A renewal process would not directly address those who deliberately use the ABN system to engage in fraudulent behaviour. Other government initiatives, including measures to address phoenixing activity and the introduction of Director Identification Numbers, may be helpful in this regard. Imposing conditions on ABN holders (discussed on page 4) would also help address deliberately fraudulent behaviour and would require a renewal system.

A renewal process would indirectly address fraudulent behaviour by prompting ABN holders to have closer engagement with the ABN system. This would create opportunities to remind ABN holders of the ABN entitlement rules and the penalties for providing false information as part of applying for an ABN. The current issues surrounding entitlement are discussed on page 2.

This in turn would create an opportunity for applicants, including vulnerable workers or 'employees' who had mistakenly provided the wrong information, to consider their situation before applying to retain their ABN. Having to renew ABNs would arguably also encourage honesty as dishonest

behaviour potentially becomes more difficult to sustain if it is necessary to lie or mislead on multiple occasions.

For those applicants or ABN holders who are determined to engage in the black economy, a regular ABN entitlement check as part of a renewal system would provide more evidence for prosecutions. A renewal process would also provide more data points on an ABN holder, making it more difficult to argue that they answered the ABN application correctly at the time but their circumstances had since changed.

Lastly, a renewal process would prompt ABN holders to notify the Registrar if their details changed, improving the quality of data on ABN holders, with benefits for government, business and the community (as discussed on page 6).

The Taskforce also proposed that fees be considered for ABN registrations and renewals. Fees would cover the cost of the registration and renewal process, consistent with fee arrangements for similar registration and renewal processes (for example, renewing a company or a business name). It would also assist the Registrar to better support the data needs of ABR data users.

A fee may further discourage people from holding an ABN when they do not need one or are not entitled to one. This could help restrict the ABN system to genuinely active businesses and other entitled entities. This in turn would have flow-on effects for the quality of the ABN data.

The length of the renewal period and the fee charged could be the same for all ABN holders or could vary. For instance, if a system of conditions were introduced, a renewal system could recognise ABN holders who meet their obligations with longer renewal periods or possibly lower fees.

The Taskforce suggested an option could be to align ABN renewal processes with other similar renewal processes where possible and consider whether a single fee could be charged where an entity has multiple identifiers. This may not be straightforward in all cases where there may be different entities associated with an enterprise. For example, a business name might be held by a number of companies in a partnership.

Questions:

15. Should ABN holders have to renew their ABNs? If so, how often? Should the same renewal period apply for all ABN holder entity types?
16. What consequences should apply - and when - if an ABN holder does not renew their ABN on time? This could include late fees, a change in ABN status published on ABN Lookup, eventual suspension and/or cancellation.
17. Are ABN registration and renewal fees the most appropriate way to fund an ABN renewal process? Are there other options that should be considered?
18. If a fee is thought to be the most appropriate option, should the same registration and renewal fees apply for all ABN holder entity types? What ABN fee arrangements should apply to entities that are also subject to company or business name fees?

Note: these questions interact with issues being considered as part of the 'Modernising Business Registers' process.

Consolidated list of questions:

1. Are changes needed to the ABN system to take into account the expanded purposes for which ABNs are used today? If so, what changes?
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Stakeholders are also welcome to make comments or provide insights on other aspects of the ABN system that are not covered by these questions.