PS LA 2011/9 - The registration of entities in the Australian Business Register

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From 1 July 2015, the term 'Australia' is replaced in nearly all instances within the GST, Luxury Car Tax, and Wine Equalisation Tax legislation with the term 'indirect tax zone' by the *Treasury Legislation Amendment (Repeal Day) Act 2015*. The scope of the new term, however, remains the same as the now repealed definition of 'Australia' used in those Acts. This change was made for consistency of terminology across the tax legislation, with no change in policy or legal effect. For readability and other reasons, where the term 'Australia' is used in this document, it is referring to the 'indirect tax zone' as defined in subsection 195-1 of the GST Act.

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Australian Taxation Office

Practice Statement Law Administration

PS LA 2011/9

This practice statement is issued under the authority of the Commissioner of Taxation and must be read in conjunction with Law Administration Practice Statement PS LA 1998/1. ATO personnel, including non-ongoing staff and relevant contractors, must comply with this law administration practice statement, unless doing so creates unintended consequences or is considered incorrect. Where this occurs, ATO personnel must follow their business line's escalation process.

SUBJECT:	**The registration of entities in the Australian Business Register**
PURPOSE:	**This practice statement sets out the policy and procedures to be followed on a range of issues relating to the registration of entities in the Australian Business Register (ABR), the cancellation of that registration and the maintenance of the ABR. It also deals with the disclosure of information in the ABR. It should be read in conjunction with Law Administration Practice Statement PS LA 2011/8 *The registration of entities*.**

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BACKGROUND

1. *A New Tax System (Australian Business Number) Act 1999* (ABN Act) was enacted to provide for a single unique identifier for an entity to use when dealing with government and for all other Commonwealth purposes. The ABN Act also has the objects of allowing businesses to identify themselves reliably for the purposes of taxation laws and reducing the number of government registration and reporting requirements by making the ABN system available to State, Territory and local government regulatory bodies. The ABN Act is intended to allow businesses to meet their regulatory obligations and access information and assistance more easily.

2. Additional information about registration (where the topics cover more than ABN registration) is available in Law Administration Practice Statement PS LA 2011/8 *The registration of entities*.

TERMS USED

3. The following terms are used in this practice statement:

Associates – has the meaning given by section 318 of the *Income Tax Assessment Act 1936* (ITAA 1936), which defines the associates of a natural person, company, trustee, partnership and public unit trust entity.

Australia – for the purposes of the ABN Act, does not include any external Territory.

Australian business number – means the entity's ABN as shown in the Australian Business Register (ABR).

Australian Business Register (ABR) – the register established and maintained by the Registrar of the ABR. It may be kept in any form that the Registrar considers appropriate.

Australian Company Number (ACN) – is a number issued to a company under the *Corporations Act 2001*.

Australian Registered Body Number (ARBN) – is a number given by the Australian Securities and Investment Commission (ASIC) to a registrable Australian body which is a body corporate which has been formed or incorporated in Australia. Registrable Australian bodies include bodies corporate that are not companies, recognised companies, exempt public authorities, corporations sole, foreign companies or financial institutions. Certain unincorporated bodies can also be registrable Australian bodies. An association which is registered under a state law not recognised in other states will generally be a registrable Australian body.

Carrying on – in relation to an enterprise is defined in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to include doing anything in the course of the commencement or termination of the enterprise.

Corporations Act company – a body registered as a company under the *Corporations Act 2001.*

Enterprise – has the meaning given by section 9-20 of the GST Act. Further explanation of this term is contained in Miscellaneous Taxation Ruling MT 2006/1*The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number*.

Entity – in relation to GST registration and ABN registration has the meaning given by section 184-1 of the GST Act. It means any of the following:

(a) an individual

(b) a body corporate

(c) a corporation sole

(d) a body politic

(e) a partnership

(f) any other unincorporated association or body of persons

(g) a trust

(h) a superannuation fund.

Further explanation of this term is contained in MT 2006/1.

Government entity – is defined in section 41 of the ABN Act and means:

(a) a Department of State of the Commonwealth

(b) a Department of the Parliament established under the *Parliamentary Service Act 1999*

(c) an Executive Agency, or Statutory Agency, within the meaning of the *Public Service Act 1999*

(d) a Department of State of a State or Territory, or

(e) an organisation that:

  (i) is not an entity

  (ii) is either established by the Commonwealth, a State or a Territory (whether under a law or not) to carry on an enterprise, or established for a public purpose by an Australian law, and

  (iii) can be separately identified by reference to the nature of the activities carried on through the organisation or the location of the organisation,

  whether or not the organisation is part of a Department or branch described in paragraph (a), (b), (c) or (d) or of another organisation of the kind described in this paragraph.

Individual – means a natural person.

Non-profit sub-entity – is defined in section 41 of the ABN Act as a branch of an entity where:

(a) the entity has chosen to apply Division 63 of the GST Act and that choice still has effect, and

(b) the branch maintains an independent system of accounting

(c) the branch can be separately identified by reference to:

(i) the nature of the activities carried on through the branch, or

(ii) the location of the branch, and

(d) the branch is referred to in the entity's records to the effect that it is to be treated as a separate entity for the purposes of the GST law.

Partnership – is defined in section 995-1 of the *Income Tax Assessment Act 1997* (ITAA 1997) and means:

(a) an association of persons (other than a company or a limited partnership) carrying on business as partners or in receipt of ordinary income or statutory income jointly, or

(b) a limited partnership.

Registrar – means the Registrar of the ABR. The Commissioner of Taxation is the Registrar.[1]

Religious practitioner – is defined in section 41 of the ABN Act and means:

(a) a minister of religion

(b) a student at an institution who is undertaking a course of instruction in the duties of a minister of religion

(c) a full-time member of a religious order, or

(d) a student at a college conducted solely for training persons to become members of religious orders.

RSE licence – is defined in section 41 of the ABN Act and means a registrable superannuation entity (RSE) licence within the meaning of the *Superannuation Industry (Supervision) Act 1993* (SISA). It is a licence granted under that Act.

RSE licensee – is defined in section 41 of the ABN Act and means a registrable superannuation entity licensee within the meaning of SISA. It means a constitutional corporation, body corporate, or group of individual trustees, that holds a RSE licence granted under the SISA.

Superannuation fund – is defined in section 41 of the ABN Act and has the meaning given by section 10 of the SISA. It means:

(a) a fund that:

(i) is an indefinitely continuing fund, and

(ii) is a provident, benefit, superannuation or retirement fund, or

(b) a public sector superannuation scheme.

Supply – has the meaning given by section 9-10 of the GST Act. A supply is any form of supply whatsoever and includes:

(a) a supply of goods

(b) a supply of services

(c) a provision of advice or information

(d) a grant, assignment or surrender of real property

(e) a creation, grant, transfer, assignment or surrender of any right

(f) a financial supply

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[1] Subsection 28(2) of the ABN Act.

(g) an entry into, or release from, an obligation:

(i) to do anything

(ii) to refrain from an act, or

(iii) to tolerate an act or situation

(h) any combination of any two or more of the matters referred to in paragraphs (a) to (g).

Taxation Law – has the meaning given by section 995-1 of the ITAA 1997, and includes an Act of which the Commissioner has the general administration.

STATEMENT

4. This practice statement sets out the policy and procedures to be followed by tax officers in relation to:

- registration of entities in the ABR
- maintenance of the ABR
- cancellation of an entity's registration in the ABR
- disclosure of information in the ABR, and
- objection and review rights.

EXPLANATION

THE REGISTRATION OF ENTITIES IN THE ABR

Entitlement to an ABN

5. The ABN Act provides that an entity is entitled to have an ABN where it is carrying on an enterprise in Australia, or if in the course or furtherance of carrying on an enterprise, it makes supplies that are connected with Australia.[2] A supply of goods can be connected with Australia without the requirement of Australian residency. This means both residents and non-residents of Australia are entitled to have an ABN. (For more information about supplies that are connected with Australia refer to Goods and Services Tax Rulings GSTR 2000/31 *Goods and services tax: supplies connected with Australia* and GSTR 2006/9 *Goods and services tax: supplies*.)

6. It is an entity, not the enterprise that is entitled to have an ABN. Therefore, an entity carrying on more than one enterprise is entitled to only one ABN, and an entity retains the same ABN when its enterprise or enterprises change. The same ABN is reallocated to an entity if it applies for an ABN after a period during which its ABN was cancelled. (For more information regarding entitlement to an ABN, refer to MT 2006/1.)

7. It is not compulsory to have an ABN and the Registrar cannot compel an entity to register. However, there may be consequences of not having an ABN, including some payments to the entity being subject to no-ABN withholding under the pay as you go (PAYG) withholding system.

8. Even if an entity is entitled, an ABN is never issued unless the entity applies to be registered in the ABR.

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[2] Subsection 8(1) of the ABN Act. But note that there are exceptions in sections 5 and 5A and subsection 8(2) of the ABN Act, which are discussed at paragraphs 12 to 21 of this practice statement.

Commencement of an enterprise

9. To be entitled to an ABN, most entities must carry on an enterprise. The definition of 'carrying on' in relation to an enterprise includes undertaking activities performed in the course of commencement or termination of the enterprise.[3] These do not include activities undertaken to establish the entity itself (such as drawing up a trust deed).

Existence of an entity

10. An entity is not entitled to have an ABN for a period prior to coming into existence. For a partnership, this is the date the partnership commences. A trust exists when a person (the trustee) has a duty to administer property for the benefit of others (beneficiaries). It commences when the obligations under the trust first apply to trust property and the trustee is subject to those obligations, which is generally no earlier than the date the trust is settled. A company does not come into existence prior to the date of incorporation. (For more information regarding entitlement to an ABN, refer to MT 2006/1.)

Interaction between an ABN and a GST registration

11. Where an entity applies to be registered for GST and for registration in the ABR, the ABN that is granted to them will be their registration number for GST. An entity can obtain either an ABN or GST registration without applying for both registrations. (For further information on GST only registrations, see PS LA 2011/8.) Once a number has been allocated to an entity as an ABN or GST registration number, that number will only be allocated to that entity.

Corporations Act companies

12. All Corporations Act companies are entitled to an ABN whether or not they are carrying on an enterprise.[4] The ABN allocated to a Corporations Act company will normally include the ACN of the company. If a company's ABN has the ACN contained within it, the company may use the ABN on company documents instead of the ACN.[5]

13. A Corporations Act company does not always have to have its ACN embedded in its ABN. For example, an association incorporated under state law may subsequently be incorporated under the Commonwealth *Corporations Act 2001.* (The Corporations Act provides for the legal continuity of these associations as Corporations Act companies.) At the company's request, the Registrar will issue a new ABN that contains the new ACN.

Bodies that are treated as entities carrying on an enterprise

14. For the purposes of the ABN Act, government entities, non-profit sub entities, superannuation funds and certain RSE licensees are treated as if they are entities carrying on an enterprise in Australia.[6]

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[3] Section 41 of the ABN Act.
[4] Subsection 8(2) of the ABN Act.
[5] Sections 153 and 1344 of the Corporations Act.
[6] Section 5 of the ABN Act.

Government entities

15. Government entities are taken to be entities carrying on an enterprise in Australia. A government entity is entitled to an ABN even if it does not meet the ordinary meaning of entity or is not carrying on an enterprise. Government entities may choose to have separate ABNs for different parts of their Department or agency that are identifiable by their different activities or locations, as long as each part to be registered is established by the Commonwealth or a State or Territory to carry on an enterprise, or is established for a public purpose by an Australian law.

16. An application to register made by a government entity should be signed by the head of the department, or their delegate or authorised officer. If it is not clear that the person signing the form holds an appropriate delegation or authorisation, confirmation is required.

17. Where a new government entity applies for an ABN, the Registrar can rely on the Administrative Arrangements Order as an authoritative document to establish the existence of the entity. (For more information on changes in government registrations, refer to the discussion on government entities in PS LA 2011/8).

Non-profit sub-entities

18. Non-profit sub-entities are taken to be entities carrying on an enterprise in Australia. Therefore, a non-profit sub-entity is entitled to an ABN even if it is not an entity as defined in the GST Act or is not carrying on an enterprise.

Superannuation funds

19. A superannuation fund (complying and non-complying) is taken to be an entity carrying on an enterprise in Australia and is entitled to an ABN.[7]

Registrable superannuation entity licensees

20. An RSE licensee, or an applicant for an RSE licence, being a group of individual trustees, is treated as if the group were an entity carrying on an enterprise in Australia and so, is entitled to have an ABN.

Application to religious practitioners and religious institutions

21. Where a religious practitioner:

- undertakes an activity or a series of activities in pursuit of his or her vocation as a religious practitioner
- as a member of a religious institution, and
- does not undertake the activity or series of activities as an employee or agent of the religious institution or another entity,

the activity is treated as an enterprise of the religious institution and not an enterprise of the religious practitioner.[8] The activities are undertaken in the course of an enterprise of the religious institution and not an enterprise of the religious practitioner.

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[7] For more information regarding registration of superannuation funds, refer to Service Delivery Practice Note SD PN 2007/001 *Australian Business Number (ABN) – Registration of entities that are carrying on superannuation activities*.

[8] Section 5A of the ABN Act.

External territories

22. For the purposes of the ABN Act, external territories[9] are excluded from the definition of Australia. Entities that operate enterprises in external territories alone are treated as not carrying on an enterprise in Australia, and if they do not make supplies that are connected with Australia, they will not be entitled to have an ABN.

Visa holders

23. Some visas contain conditions that prevent the visa holder from seeking employment or conducting a business. However, there is no basis at law for the Registrar to deny registration in the ABR, or cancel the registration of an ABN holder who is conducting a business in contravention of their visa conditions or immigration law. Activities which constitute an enterprise continue to have this character even if they are in some way unlawful.

Applying to be registered in the ABR

24. To obtain an ABN an entity must apply to be registered in the ABR.[10]

25. Applications must be lodged in the approved form[11] and can be made by:

    - lodging a paper application form, or
    - lodging on-line through the ABR at www.abr.gov.au

    (For more information regarding approved forms, refer to Law Administration Practice Statement PS LA 2005/19 *Approved forms.*)

26. The form requires an applicant to provide information that allows the Registrar to make a decision regarding an entity's entitlement to be registered in the ABR.

Provision of tax file numbers

27. The application form requests, but does not compel, the applicant to provide their tax file number (TFN) and the TFN of any associates.[12] This information is used to verify the identity of the applicant and any of its associates by matching the TFN and other details supplied in the application form with the information held in the ATO client register. The provision of this information expedites the application process.

28. If a TFN is not supplied and cannot be located in the ATO client register, the Registrar will require the production of additional documents for proof of identity at registration purposes. (For more information regarding proof of identity requirements, refer to Chief Executive Instruction CEI 2014/04/01 *Identity management*.)

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[9] Section 2B of the *Acts Interpretation Act 1901* - External territory means a territory, other than an internal territory (defined in the same section to mean the ACT, the NT and the Jervis Bay Territory), where an Act makes provision for the government of the territory as a territory (for example Norfolk Island, Christmas Island and the Cocos (Keeling) Islands).

[10] Subsection 9(1) of the ABN Act.

[11] Subsection 9(2) of the ABN Act.

[12] Subsection 9(3) of the ABN Act.

Natural persons authorised to apply on behalf of an entity

29. Either the entity or their agent can apply for the entity's registration in the ABR. The Registrar will accept that a registered tax agent making an application on behalf of the entity is authorised to do so.

30. The application must be signed on behalf of the entity by a person authorised by the entity. In general, authorised persons are:

Type of entity	**Authorised person**
Company	Directors
Trust	Corporate trustee directors Individual trustee
Partnership	Partners Directors of a corporate partner (where authorised by the company's rules or a meeting of the Board of Directors)
Unincorporated association	Office bearers
Schools	Principal
Government Agencies	CEO and Delegates

Declaration

31. The application form includes a declaration to be made by the applicant. The declaration requires a statement that the information supplied is true and correct. For applications lodged by agents, their declaration confirms that the agent is authorised to lodge the approved form on behalf of the entity.

The Registrar must register an entity in the ABR if certain conditions are met

32. The Registrar must register an entity in the ABR if all of the following conditions are satisfied:

- the entity has applied to be registered in the ABR in an approved form
- the Registrar is satisfied that the entity is entitled to have an ABN or is likely to be entitled to have an ABN by the date specified in the application
- the Registrar is satisfied that the entity's identity has been established
- if details of an associate were requested in the application form, the Registrar is satisfied that the identity of the associate has been established, and
- the entity is not already registered in the ABR.[13]

33. To determine whether an entity is entitled to an ABN or to establish the identity of the entity or of an associate of the entity, the Registrar may request the entity to provide specified information or a specified document.[14]

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[13] Subsection 10(1) of the ABN Act.

34. The Registrar has developed policies on whether to accept or refuse an application in certain circumstances.

(i) *Information not provided in the application.*

Where an applicant has not provided all of the information that is required in their application, (including identity information for the entity and associates), the Registrar will contact the applicant and ask for the required information. If the applicant does not then provide the required information or documents, the Registrar will refuse to register the entity on the ABR.

(ii) *Information provided but not accepted by the Registrar.*

If an applicant has provided all of the information and documents requested (including identity information), but the Registrar is not satisfied with that information, the Registrar will not register the entity in the ABR until they are satisfied that information is correct, identity has been established and the entity is entitled to an ABN.

Steps taken by the Registrar to register an entity in the ABR

35. The Registrar registers an entity in the ABR by:

- allocating an ABN to the entity, and
- entering certain details about the entity in the ABR.[15]

36. The ABN Act and its regulations specify that the Registrar must record certain details in the ABR, including the following (where applicable):

- the entity's name
- the entity's ABN
- the date of effect of the registration
- any business name registered to the entity on the Business Names Register established and maintained under section 22 of the *Business Names Registration Act 2011*[16]
- the entity's principal place of business
- the kind of entity that is being registered (see note)
- an address for service of notices and the entity's email address
- the entity's associates that were requested in the approved form for registration
- the representative's name, email address and date of effect of that registration
- the Australian and New Zealand Standard Industrial Classification code (ANZSIC code) for the business conducted by the entity
- the entity's ACN
- the entity's ARBN

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[14] Subsection 10(2) of the ABN Act.
[15] Section 11 of the ABN Act.
[16] Until 30 June 2014, any name used for business purposes by the entity, and which appeared in the entity's ABR entry prior to 28 May 2013, will also be displayed due to the operation of subregulation 8(2) of the *A New Tax System (Australian Business Number) Regulations 1999* (ABN Regulations).

- the name of the entity's public officer
- the name of the entity's trustee or trustees
- the date of effect of any change to the entity's ABN, and
- the date of effect of the cancellation of the entity's registration.[17]

Note: when describing the kind of entity, the Registrar will often use the kind of entities listed in the definition of 'entity'[18] in section 184-1 of the GST Act. However, where these kinds of entity do not adequately describe the entity being registered (or result in a misleading description) the Registrar may use descriptors that best promote the objects of the ABN Act (for example, the appropriate kind of entity may be a 'private company' or a 'public company' rather than a 'body corporate').

37. The Registrar may include other information in the ABR, providing that the information would enhance or support the objects of the Act or would reasonably facilitate administration of the ABN Act.

Date of effect of registration

38. The Registrar sets the date of effect of registration. This date may be the one specified by the applicant or a date determined by the Registrar. Depending on the particular circumstance of the entity, the date of effect may be the date of the application, pre-date the application or be a future date.[19]

Future dated registration

39. An entity may apply to be registered in the ABR prior to commencing carrying on an enterprise, by specifying a future date by which their enterprise will have commenced. In some cases, the entity may already be engaged in activities that are consistent with carrying on an enterprise before opening their doors for business. These entities may not be aware that they are entitled to an ABN during their commencement activities and may have mistakenly specified a future date in their application.

40. Where an application for registration in the ABR is received with a start date of more than 30 days in the future, the Registrar will contact the applicant to determine if:

- the entity is already carrying on an enterprise, or
- the entity is likely to be carrying on an enterprise at a future date.

41. The Registrar must be satisfied that the entity can accurately predict that they will be carrying on an enterprise from its nominated future date. If an applicant nominates a future date which is a significant time in the future (such as six months in the future), the Registrar will expect particularly specific and convincing evidence to support the applicant's claim that their enterprise will have commenced by that time.

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[17] Section 25 of the ABN Act, which refers to regulations 5 and 6 of the ABN Regulations.
[18] The term 'entity' is defined in section 41 of the ABN Act to have the meaning given by section 184-1 of the GST Act.
[19] See also Service Delivery Practice Note SD PN 2012/001 *Australian Business Number - setting and changing the date of effect of a registration in the Australian Business Registrar*.

Altering the date of effect of registration

42. Generally, the Registrar will not change the date of effect of an entity's registration in the ABR on the request of the entity. The date of effect is decided upon registration. To change this at a later date may affect other obligations and the reliability of the ABR.

43. The Registrar however, will change the date of effect if the entity can demonstrate that they will derive some material benefit from doing so. For example, the entity may be entitled to GST input tax credits from a date that precedes its ABN and GST registration. In order to facilitate the backdating of the GST registration, the registration in the ABR may also need to be backdated.

Written notice of registration

44. The Registrar must give the entity a written notice containing the following information:

- the fact that the entity has been registered
- the entity's ABN
- the date of effect of the registration, and
- any other details entered in the ABR in relation to the entity as listed above.[20]

Address for service of notices

45. If an entity is registered in the ABR, a notice under the ABN Act or the ABN Regulations may be given to the entity at the entity's address for service as shown in the ABR. This may be done by leaving it at, or sending it by pre-paid post to that address. A posted notice will be deemed to have been given to the entity at the time at which it would be delivered in the ordinary course of post (unless proven otherwise).

46. The Registrar can also serve a notice under the ABN Act using options set out in the *Acts Interpretation Act 1901.* Section 28 of that Act includes alternatives for delivering notices to an individual and to a body corporate.

Reinstating a registration in the ABR

47. Where the Registrar is satisfied that an entity's registration should not have been cancelled, the Registrar must reinstate the entity's registration in the ABR.[21] An example of this is where the entity's registration was incorrectly cancelled by the Registrar and the entity seeks reinstatement of the registration.

48. The reinstatement has effect on and from the day on which the registration was cancelled, not from the date of reinstatement.[22] This means that once the registration is reinstated, registration will be continuous.

49. The Registrar must provide a written notice of the reinstatement.[23]

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[20] Subsection 11(3) of the ABN Act.
[21] Subsection 19(1) of the ABN Act.
[22] Subsection 19(3) of the ABN Act.
[23] Subsection 19(2) of the ABN Act.

Reapplying to be registered in the ABR

50. Where an entity's registration is cancelled in the ABR the entity ceases to have an ABN. The ABR record, however, remains in the ABR and displays the date of effect of the cancellation of the registration.

51. Where such an entity subsequently wishes to have an ABN, they will need to lodge a new application to be registered in the ABR, as their entitlement to an ABN will need to be established.

52. If entitled to an ABN, the entity will be re-registered in the ABR. The ABN previously allocated would normally be reactivated with a new date of effect.

Registrar may change an ABN

53. The Registrar may, at any time, change the ABN of an entity that is registered in the ABR.[24] This can be done at the entity's request or on the Registrar's initiative.

54. The circumstances in which the Registrar may change or replace an ABN include, but are not limited to:

- an incorrect ACN or ARBN was used to generate the ABN
- a company has received an ABN without their ACN or ARBN embedded in it and has now asked for its ABN to contain its ACN
- in specific instances where the entity's data has become compromised
- the entity has requested a different number based on cultural or religious beliefs, for example, where an entity is issued with an ABN that contains a number sequence which is offensive to their beliefs, or
- an error was made in the initial registration, for example, the entity was registered with an incorrect entity type.

55. The Registrar generally will not change an ABN on the entity's request for commercial or personal reasons alone.

56. The change to the ABN takes effect on the date stated in the ABR.

57. The change of ABN is completed by the Registrar:

- making an appropriate change to the ABR including the date from which the new ABN has effect
- end dating the old ABN to ensure that it is no longer used, and
- giving the entity written notice of the new ABN. This notice must state the date from which the new ABN has effect.

Refusal to register

58. When an application to be registered in the ABR is refused, the applicant will not be registered in the ABR and will not be issued with an ABN.

59. The Registrar will exercise his powers under subsection 13(1) of the ABN Act to refuse an application for registration in the following circumstances:

- the application is not in the approved form

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[24] Subsection 17(1) of the ABN Act.

- the Registrar is not satisfied that the applicant is entitled to an ABN or likely to be entitled to one by the date specified in the application
- the Registrar is not satisfied as to the identity of the applicant
- the Registrar is not satisfied as to the identity of an associate of the applicant. An example of an associate is a partner in a partnership, or
- the applicant is already registered in the ABR.

Registration of partnerships

60. While an entity may have only one ABN, multiple partnerships with the same partners may have different ABNs. According to general legal concepts, a partnership is not a separate entity. Rather, it is a relationship between parties. However, for ABN purposes, a partnership is recognised as an entity.[25]

61. A situation may arise where the partners in an existing partnership arrangement enter into a different legal relationship with respect to a new undertaking where the agreed rights, liabilities and duties of that new relationship are distinct and separate from their existing relationship(s). If the partners can demonstrate that separate legal relationships exist between the parties (as opposed to the one partnership merely undertaking separate enterprises), each of these partnerships would be entitled to a separate registration in the ABR. The following are indicators of a separate legal arrangement:
    - different profit-sharing ratios
    - different terms and conditions related to running the business
    - a separate partnership agreement exists between the partners.

62. Carrying on multiple related businesses at different locations will not be sufficient to establish that another partnership exists.

Notice of refusal

63. If the Registrar refuses an entity's application for registration, the Registrar must give the entity written notice of the refusal and the reasons for the refusal.[26]

64. A notice of refusal must explain an entity's review and objection rights.[27]

Deemed refusal

65. If the Registrar does not register or refuses to register an applicant for registration within 28 days after the application is made, the entity may at any time thereafter give the Registrar written notice that it wishes to treat the application as having been refused.[28] The Registrar is taken to have refused the application on the day on which the applicant gives notice to the Registrar.

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[25] Section 184-1 of the GST Act.
[26] Subsection 13(1) of the ABN Act.
[27] *Taxpayers' Charter – what you need to know* (NAT 2548–06.2010).
[28] Subsection 13(2) of the ABN Act.

66. When calculating the 28 day period, any period(s) starting on a day when the Registrar requests specified information or a specified document and ending at the end of the day on which the entity gives the information or document to the Registrar are disregarded (that is, these days are not included in the 28 days).[29]

MAINTENANCE OF THE ABR

Establish and maintain an ABR

67. One of the duties conferred on the Registrar by the ABN Act is to establish and maintain an ABR.[30] The Registrar has taken a broad interpretation of the words 'establish and maintain an ABR' in order to best achieve the objects of the ABN Act.

68. The ABR may be kept in any form that the Registrar considers appropriate.[31] It is currently kept in electronic form.

69. The Registrar ensures that the details recorded in the ABR are current and accurate by:

- updating details recorded in the ABR when notified by an entity that their details have changed
- requesting information from registered entities in relation to their entitlement, identity or details entered in relation to the entity in the ABR
- adjusting details in the ABR where the Registrar is satisfied that the details entered in the ABR are incorrect and that the Registrar has access to details that the Registrar believes to be correct
- cancelling the registration of an entity where the Registrar is satisfied that the entity is no longer entitled to be registered.

Naming conventions in the ABR – incapacitated entities

70. Descriptors such as 'in liquidation', 'in receivership' or 'administrator appointed' should not be added to the names of entities displayed on the public ABR.

71. However, if the name registered with ASIC contains these descriptors, the full name of the company, including the descriptor, should be shown.

72. Where the entity has a business name registered for the entity under the *Business Names Registration Act 2011,* then the procedures prescribed by that law would need to be followed before a descriptor could be added to the business name of the entity in the ABR.

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[29] Subsection 13(4) of the ABN Act.
[30] Subsection 24(1) of the ABN Act.
[31] Subsection 24(2) of the ABN Act.

Provision of information to the Registrar

73. A registered entity has an obligation to notify the Registrar of any change in circumstances which results in information previously given to the Registrar and recorded in the ABR in relation to that entity no longer being correct. An entity must notify the Registrar, in an approved form,[32] of any such change within 28 days of becoming aware of the change.[33] The approved form may be lodged:

- in paper form
- electronically via the ABR using AUSkey
- through the Business and Tax Agent Portals, or
- by telephone (with the appropriate telephone signature).

74. Failure to notify the Registrar of changes to an entity's details is an offence under section 8C of the *Taxation Administration Act 1953* (TAA).

Formal requests for information

75. The Registrar has the power to formally request information from a registered entity that is relevant to:

- the entity's entitlement to be registered
- confirming the entity's identity
- the details in relation to the entity in the ABR
- confirming the identity or details entered in the ABR in relation to a representative of the entity.[34]

The Registrar may also require an associate of a registered entity to provide information that is relevant to confirming the associate's identity, or require a representative of a registered entity to provide information relevant to confirming the associate's identity or details entered in the ABR.

76. The Registrar's request must be made by notice in writing, specifying the information required and the timeframe for compliance (which must be at least 14 days from when the notice is served on the recipient).[35] Failure to provide the information requested by the Registrar is an offence under section 8C of the TAA.[36]

77. The ABN Act does not empower the Registrar to compel people or entities more generally to provide information. Unlike the income tax laws, for example, the ABN Act does not contain wide information-gathering and access powers that apply to taxpayers and to third parties.

Informal requests for information

78. As part of the general administration of the ABN Act, the Registrar may ask for or receive information which a party may provide voluntarily. Where information is requested in this manner (not using the Registrar's formal powers) the Registrar will make it clear that the party from whom information is sought is not compelled to provide it.

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[32] Subsection 14(2) of the ABN Act.
[33] Subsection 14(1) of the ABN Act.
[34] Subsection 15(1) of the ABN Act.
[35] Subsection 15(2) of the ABN Act.
[36] See note to subsection 15(1) of the ABN Act.

Obligation to give information

Application to partnerships

79. Where the entity is a partnership, the obligation to notify the Registrar of any changes or give information to the Registrar in compliance with a formal request is imposed on each partner but may be discharged by any of the partners.[37]

Application to unincorporated association or body

80. Where the entity is an unincorporated association or body, the obligation to notify the Registrar of any changes or give information to the Registrar is imposed on each member of the committee of management of the association or body but may be discharged by any of the members of the committee.[38]

Application to RSE licensee that is a group of individual trustees

81. Where the entity is an RSE licensee that is a group of individual trustees, the obligation to notify or give information to the Registrar of any changes is imposed on each individual, but may be discharged by any of the individuals.[39]

Application to government entities headed by one person

82. Where the entity is a government entity that is an unincorporated association or body and only a single person is responsible for its management to persons or bodies outside the government entity, the obligation to notify the Registrar of any changes or to give information is imposed on that single person.[40]

Powers of the Registrar to correct information

83. If the Registrar is satisfied that details entered in the ABR in relation to an entity or an entity's representative are incorrect, and the Registrar has access to details that the Registrar believes to be correct, the Registrar may adjust the details accordingly.[41]

84. The Registrar may undertake data correction activities and act upon information gathered from a variety of sources. These sources include, but are not limited to:

- information obtained under other taxation laws and disclosed to the Registrar under the confidentiality of taxpayer information provisions, for the purposes of administering the ABN Act
- publicly available sources or other accessible information (for example, the Yellow Pages), and

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[37] Subsection 16(1) of the ABN Act.
[38] Subsection 16(2) of the ABN Act.
[39] Subsection 16(2A) of the ABN Act.
[40] Subsection 16(4) of the ABN Act.
[41] Section 29A of the ABN Act.

- other government entities. (Note that information may be subject to conditions of use that are set out in an agreement such as a Memorandum of Understanding, or to confidentiality provisions in laws administered by the source agency.)

Updating the ABR with taxation information

85. Information obtained under other taxation laws can be used by the Registrar for the purpose of updating the ABR. [42] For example, if the Registrar is satisfied that details recorded in the ABR in relation to a registered entity are not correct, the Registrar can use information that has been obtained under another taxation law, such as the ITAA 1936 or the GST Act, to update the respective details in the ABR.

86. Once the register is updated, the information originally sourced under another taxation law will be protected information for the purposes of the ABN Act, and subject to disclosure to the public or for government purposes as provided for by that Act.

CANCELLATION OF AN ENTITY'S REGISTRATION IN THE ABR

87. An entity's registration can be cancelled on the Registrar's initiative or following a request by the entity.

Registrar's initiative

88. There are three circumstances in which the Registrar, on his own initiative, may cancel an entity's registration in the ABR.[43] They are when the Registrar is satisfied that:

(i) An entity is registered under an identity that is not its true identity.

Example 1: An entity has provided fraudulent documents to satisfy proof of identity requirements.

Example 2: An entity changes such that the former entity ceases or no longer carries on an enterprise (such as where a partnership changes to a company, the Registrar would cancel the registration of the partnership if it was not undertaking any other enterprises).

(ii) At the time of registration, an entity was not entitled to an ABN.

Example: An entity claims it was carrying on an enterprise but was not able to demonstrate that it had taken any steps to commence the enterprise.

(iii) An entity is no longer entitled to have an ABN (for deregistered companies, see also paragraphs 89 to 92 of this practice statement).

Example 1: An entity is no longer carrying on an enterprise in Australia or making supplies that are connected with Australia in the course or furtherance of carrying on an enterprise.

Example 2: An entity ceases to exist, such as due to the dissolution of a partnership.

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[42] See Item 1 of subsection 355-50(2) of Schedule 1 to the TAA and section 29A of the ABN Act.
[43] Subsection 18(1) of the ABN Act.

Example 3: An entity cannot be contacted and has not reported income or any other evidence of conducting an enterprise for some time (for example, in an activity statement or an income tax return). The Registrar may be satisfied that the entity is no longer carrying on an enterprise, and cancels its ABR registration.

Example 4: Where an individual who is registered as a sole trader dies, their registration will be cancelled. Where an executor or administrator continues the enterprise, they may apply for an ABN in their capacity as executor or administrator.

Note: A reconstituted partnership can continue to use the ABN of the previous partnership and the registration is maintained. For further information, refer to PS LA 2011/8.

Deregistered companies

89. ASIC may deregister a company if the company's annual registration renewal fee has not been paid in full at least 12 months after the due date for payment.

90. The effect of a company being deregistered is that it ceases to exist as a Corporations Act company. Therefore, it is not entitled to an ABN. Except in the circumstance outlined below, the Registrar will cancel the company's ABN from the date of deregistration.

91. ASIC may reinstate the deregistered company which brings the company back into existence. After reinstatement, a company is taken to have continued in existence as if it had not been deregistered.

92. The cancellation and re-registration of a company can cause administrative difficulties. The Registrar will not usually cancel a company's ABN where the company is deregistered by ASIC for failure to comply with procedural requirements and is likely to be reinstated. The Registrar will however, cancel the company's ABN where the company is deregistered by ASIC and is unlikely to be reinstated.

Cancellation requested by a registered entity

93. An entity may apply at any time in the approved form to cancel their registration in the ABR.[44] It should do so if it is no longer entitled to an ABN.

94. An entity is not required to cancel its ABN if they change the enterprise they are carrying on or ceases one or more enterprises, as long as they continue to carry on at least one enterprise.

Consequence of cancelling a registration in the ABR

95. Once an entity's registration is cancelled in the ABR, the entity ceases to have an ABN. The previously held ABN must not be quoted for any business transactions after the date of effect of the cancellation of the registration.

96. If an entity suspends enterprise temporarily, their ABN will be cancelled (in the absence of any other enterprises being carried on) and, upon request, be reactivated when the enterprise recommences. However, if the enterprise is seasonal, the ABN remains active.

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[44] Subsection 18(4) of the ABN Act.

Written notice of cancellation

97. The Registrar must give written notification of any decision to cancel or refuse to cancel stating:

- the date of effect of any cancellation, and
- the reasons for cancellation if cancellation occurs on the Registrar's initiative, or
- the reasons for refusing to cancel registration on application.[45]

Date of effect of cancellation in the ABR

98. The date of effect of cancellation is determined by the Registrar. It may be the date on which the entity is given notice of the cancellation, a specified date in the future or a date before the date on which the notice is given.[46]

99. Where an entity specifies a date of cancellation in their application, the Registrar will normally accept that date, but may choose an earlier date if the Registrar is satisfied that the entity was no longer entitled to an ABN from the earlier date.

100. Where the Registrar initiates the cancellation, the cancellation will take effect from the date on which the Registrar gives notice of the cancellation. However, the Registrar may specify a future date or an earlier date if the Registrar is satisfied that the entity was no longer entitled to an ABN from the earlier date.

DISCLOSURE OF INFORMATION IN THE ABR

101. Both the confidentiality of taxpayer information provisions in Schedule 1 to the TAA and the specific confidentiality provisions in the ABN Act apply to ABR protected information.[47] Any disclosure of information in the ABR will need to be consistent with an exception in either of these sets of provisions. Any disclosure of information about individuals is also subject to the *Privacy Act 1988*, although it is important to note that a disclosure of personal information made under the confidentiality provisions will be authorised by law and so lawful for the purposes of the Privacy Act.

102. Information relating to the affairs of an entity that is obtained or disclosed under or in relation to the ABN Act is protected information.[48]

Public access to certain information in the ABR

103. Once registered, some information about an entity will be publicly available on ABN Lookup at www.abr.business.gov.au.

104. These details include:

- the entity's name
- ABN
- ABN status
- entity type (such as company, sole trader, trust)

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[45] Subsections 18(2) and 18(5) of the ABN Act.
[46] Subsections 18(3) and 18(6) of the ABN Act.
[47] See section 41 of the ABN Act for a definition of 'protected information'.
[48] Section 41 of the ABN Act.

- any business name registered to the entity under section 22 of the *Business Names Registration Act 2011*[49]
- state or territory
- postcode
- date of effect of GST registration or cancellation
- deductible gift recipient status and date/s of effect
- tax concession charity status and date/s of effect
- ACN or ARBN (if any)
- the date of any change of the entity's ABN
- the date of effect of ABN registration, and
- the date of cancellation of registration in the ABR.[50]

105. The Registrar may give a person a copy of the above details relating to an entity upon payment of a fee. The fee payable for a copy of an entry is $20 for the first page of the copy and 10 cents per page for any subsequent page.[51]

106. An entity may request a copy of its own details. The extract will contain all of the information set out above plus additional information including full address for service of notices, email addresses and the name of associates. No fee is payable for a single copy of an entry in the ABR if the copy is given to the entity to which the entry relates.[52]

Non-disclosure of details in the publicly available ABR

107. A person can apply to have a detail relating to an entity registered in the ABR suppressed from being made publicly available.[53] The Registrar will consider applications for the non-disclosure of details in circumstances where a person's personal safety is at risk. For example, where:

- a person believes that if their details appear on the public register, it may cause harm to them or those associated with them, such as where domestic abuse and violence orders are in place, or
- the public availability of ABR details may endanger a person who is employed in certain fields (for example, health professionals treating persons whose behaviour may pose a danger).

108. A written request for the non-disclosure of details must be accompanied by a statutory declaration (where appropriate) giving the reasons for making the request and including the relevant supporting documentation.

109. Examples of supporting documentation are (but the Registrar may require more than one piece of evidence):

- copy of a police report
- court order

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[49] Until 30 June 2014, any name used for business purposes by the entity and which appeared in the entity's ABR entry prior to 28 May 2013, will also be displayed due to the operation of subregulation 8(2) of the ABN Regulations.
[50] Subsection 26(3) of the ABN Act.
[51] Subsection 26(1) of the ABN Act and regulation 7 of the ABN Regulations.
[52] Subregulation 7(2) of the ABN Regulations.
[53] Subsection 26(4) of the ABN Act.

- copy of a phone bill showing the entity has a silent number, or
- copy of an electoral roll letter showing the entity is a silent voter.

110. While withholding details that may assist identifying the ABN holder, the Registrar will still maintain some details on the ABR as a balance between protecting a person's safety and the intended public benefit of the ABR. For example, it is important for members of the public to be able to check the ABR to see if an ABN that has been quoted is correct, or to check whether the holder of an ABN is registered for GST. The details that the Registrar will still display on the ABR are:

- the entity's ABN
- the date of effect of the registration and its status
- the date of effect of any GST registration and its status
- whether the entity is endorsed for deductible gift recipient purposes and its date of effect, and
- any charity tax concessions that apply to the entity and the date of effect.

Disclosure of protected information to third parties

111. The Registrar may disclose information recorded in the ABR to other Commonwealth, state and territory and local government agencies where the disclosure is for the purposes of carrying out functions of the agency.[54] In addition to the publicly available details listed in paragraph 104 of this practice statement, other details, including the following are also currently disclosed:

- the entity's address for service of notices
- the entity's principal place of business
- the ANZSIC code for the business conducted by the entity
- the name of the entity's public officer
- the name of the entity's trustee or trustees
- the entity's e-mail address
- ANZSIC code description
- associates (other than public officer and trustee(s)).

OBJECTION AND REVIEW RIGHTS

Review rights and ABN reviewable decisions

112. Where an entity is dissatisfied with a decision made by the Registrar, they may:

- seek an informal review of the decision by an ATO officer who did not make the original decision
- object against a reviewable ABN decision in accordance with Part IVC of the TAA.

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[54] Subsection 30(3) of the ABN Act. Note that for Commonwealth agencies that are not agencies for the purposes of the *Public Service Act 1999*, for state/territory bodies that are not departments of state, and for local government bodies, the functions for the purposes of which information may be disclosed must be statutory functions of the agency or body (and not administrative functions).

113. An informal review will potentially resolve the matter in a timelier manner and at less cost to the entity than lodging an objection.[55]

114. The following are reviewable ABN decisions:

- a decision setting the date of effect of a registration
- a decision to refuse an application for registration
- a decision to cancel a registration in the ABR
- a decision setting the date of effect of a cancellation
- a decision to refuse to cancel a registration in the ABR
- a decision to refuse an application not to disclose details.[56]

[55] For further information on seeking an informal review, see *Overview of the Taxpayers Charter* on the ATO website and Corporate Management Practice Statement PS CM 2007/01 *Respecting clients' right of review.*

[56] Section 21 of the ABN Act.

Amendment history

Date of amendment	Part	Comment
21 May 2014	Various	General restructure of content. Additional information including: service of notices by email; address for service of notices; acceptance/refusal of application; power to change ABN; descriptors for entity names; entity update to Registrar; de-registered companies; suppression of ABR information; disclosure of ABR information; visa holders; provision of TFNs; approved form declarations; future dated registrations; registration date of effect; establishment and maintenance of ABR; information sourced from third parties; updating ABR with tax information; secrecy provisions.

Subject references	ABN Australian business number
ATOLaw topic	Goods and services tax ~~ General rules and concepts ~~ registration
Legislative references	ANTS(ABN)A 1999 ANTS(ABN)A 1999 5 ANTS(ABN)A 1999 5A ANTS(ABN)A 1999 8(1) ANTS(ABN)A 1999 8(2) ANTS(ABN)A 1999 9(1) ANTS(ABN)A 1999 9(2) ANTS(ABN)A 1999 9(3) ANTS(ABN)A 1999 10(1) ANTS(ABN)A 1999 10(2) ANTS(ABN)A 1999 11 ANTS(ABN)A 1999 11(3) ANTS(ABN)A 1999 13(1) ANTS(ABN)A 1999 13(2) ANTS(ABN)A 1999 13(4) ANTS(ABN)A 1999 14(1) ANTS(ABN)A 1999 14(2) ANTS(ABN)A 1999 15(1) ANTS(ABN)A 1999 15(2) ANTS(ABN)A 1999 16(1) ANTS(ABN)A 1999 16(2) ANTS(ABN)A 1999 16(2A) ANTS(ABN)A 1999 16(4) ANTS(ABN)A 1999 17(1) ANTS(ABN)A 1999 18(1) ANTS(ABN)A 1999 18(2) ANTS(ABN)A 1999 18(3) ANTS(ABN)A 1999 18(4) ANTS(ABN)A 1999 18(5) ANTS(ABN)A 1999 18(6) ANTS(ABN)A 1999 19(1) ANTS(ABN)A 1999 19(2) ANTS(ABN)A 1999 19(3) ANTS(ABN)A 1999 21 ANTS(ABN)A 1999 24(1) ANTS(ABN)A 1999 24(2) ANTS(ABN)A 1999 25 ANTS(ABN)A 1999 26(1) ANTS(ABN)A 1999 26(3) ANTS(ABN)A 1999 26(4) ANTS(ABN)A 1999 28(2) ANTS(ABN)A 1999 29A ANTS(ABN)A 1999 30(3) ANTS(ABN)A 1999 41 ANTS(GST)A 1999 9-10 ANTS(GST)A 1999 9-20 ANTS(GST)A 1999 Div 63 ANTS(GST)A 1999 184-1 ANTS(GST)A 1999 195-1

	ANTS(ABN)R 1999 5 ANTS(ABN)R 1999 6 ANTS(ABN)R 1999 7 ANTS(ABN)R 1999 7(2) ANTS(ABN)R 1999 8(2) Acts Interpretation Act 1901 2B Acts Interpretation Act 1901 28 Business Names Registration Act 2011 22 Corporations Act 2001 Corporations Act 2001 153 Corporations Act 2001 1344 ITAA 1936 318 ITAA 1997 995-1 Parliamentary Service Act 1999 Privacy Act 1988 Public Service Act 1999 Superannuation Industry (Supervision) Act 1993 Superannuation Industry (Supervision) Act 1993 10 TAA 1953 8C TAA 1953 Pt IVC TAA 1953 Sch1 355-50(2) item 1
Related public rulings	MT 2006/1 The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an ABN GSTR 2000/31 Goods and services tax: supplies connected with Australia GSTR 2006/9 Goods and services tax: supplies
Related practice statements	PS LA 2005/19 Approved forms PS LA 2011/8 The registration of entities PS CM 2007/001 Respecting clients' rights of review
Case references	
Other references	SD PN 2007/001 Registration of entities that are carrying on superannuation activities (internal link only) SD PN 2012/001 Australian Business Number – Setting and changing the date of effect of a registration in the Australian Business Registrar (internal link only) Overview of the Taxpayers' Charter Taxpayers' Charter – what you need to know (NAT 2548–06.2010) CEI 2014/04/01 Identity management (internal link only)
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