PS LA 2016/3 - The cancellation of registrations in the Australian Business Register

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This document has changed over time. This version was published on *11 May 2018*

Generated on: 26 November 2026, 02:48:12 AM

Australian Government
Australian Taxation Office

PS LA 2016/3
The cancellation of registrations in the Australian Business Register

This Law Administration Practice Statement outlines the policy to be applied to the cancellation of the registration of entities in the Australian Business Register.

This practice statement is an internal ATO document, and is an instruction to ATO staff.

Taxpayers can rely on this practice statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty. Nor will they have to pay interest on the underpayment provided they reasonably relied on this practice statement in good faith. However, even if they don't have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

1. What is this practice statement about?

This practice statement outlines the Registrar's policy about how and when the registration of entities in the Australian Business Register (ABR) can be cancelled.

2. Who can make a decision to cancel an entity that is registered in the Australian Business Register?

The Registrar can make decisions about cancelling an entity's registration.

An entity's[1] registration can be cancelled:

- on the Registrar's initiative[2]
- following a request by the entity or the entity's authorised contact.[3]

3. Under what circumstances can the Registrar cancel an entity's registration?

The Registrar can cancel an entity's registration if satisfied that the entity is not entitled to have an Australian Business Number (ABN).[4]

An entity is not entitled to an ABN where it is not carrying on an enterprise[5] in Australia or in the course of carrying on an enterprise it is not making supplies connected with the indirect tax zone.[6]

Carrying on an enterprise includes activities done in the course of terminating the enterprise. Whether those activities have a connection with the termination is a question of fact and degree and will depend on the circumstances of each particular case.[7]

The Registrar can also cancel an entity's registration where the identity that the entity or its associate is registered under is not their true identity.[8]

4. Our policy about Registrar-initiated cancellation

The value of the ABR as a whole of government database relies on the integrity of the ABR records. The Registrar cancels registrations as an administrative action taken to ensure the integrity of the information recorded in the ABR.

The Registrar can make a decision about an entity's entitlement to be registered in the ABR by using available information. This information can come from a variety of sources and can either be solicited or unsolicited. These sources include:

- information from the entity itself
- information from the Commissioner of Taxation
- information from other government agencies
- requests from third parties
- information from other available sources.

In making a decision, the Registrar must be reasonably satisfied that a particular fact is more likely than not to

[1] The term 'entity' is defined in section 41 of the *Australian Business Number Act 1999* (ABN Act) to have the meaning given by section 184-1 of the *A New Tax System* (*Goods and Services Tax) Act 1999* (GST Act). For further information about entities refer to Miscellaneous Tax 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*. Note: All legislative references in this practice statement are to the ABN Act, unless otherwise stated.

[2] Subsection 18(1).

[3] Subsection 18(4).

[4] Paragraphs 18(1)(b) and (c).

[5] The term enterprise is defined in section 41 to have the meaning given by section 9-20 of the GST Act.

[6] The indirect tax zone means the geographical part of Australia in which the goods and services tax, the wine equalisation tax and luxury car tax operate. This excludes all the external territories and certain offshore installations.

[7] Paragraphs 140 to 148 of MT 2006/1 further discusses termination of enterprise.

[8] Paragraph 18(1)(a).

be true, based on the evidence and information provided.

The information must be persuasive, reliable and sufficient enough to demonstrate that the entity is no longer entitled to be registered in the ABR.

Information from the entity

To assist in making a decision the Registrar can request information and evidence from an entity that is relevant to its entitlement to an ABN, or confirming its identity or the identity of any associates whose details are recorded in the ABR.[9]

The Registrar may also take into account other information about the entity that is readily available and accessible. For example, the entity's website; advertising in the Yellow Pages or local business directory.

Information from the Commissioner of Taxation

The Registrar may use information from the Commissioner of Taxation along with information held in the ABR or other sources to be satisfied about an entity's entitlement to be registered in the ABR.

For example the Registrar can use information disclosed from the Commissioner that an entity has not reported income or is not showing any other evidence of conducting an enterprise for a period of time. This satisfies the Registrar that the entity is no longer carrying on an enterprise and is not entitled to an ABN. The Registrar cancels the registration of the entity.

Information from other government agencies

Information from various government agencies can be used by the Registrar to assist in making a decision about an entity's entitlement to be registered in the ABR.

For example, Australian Securities and Investment Commission (ASIC) will deregister a company where its annual renewal fee has not been paid in full at least 12 months after the due date for payment. The Registrar can cancel the registration in the ABR based on notification about de-registration from ASIC.[10]

Requests from third parties

The Registrar may consider a request to cancel an entity's registration in the ABR from a third party. For example, where the Commissioner of Taxation has concluded that the entity is not carrying on an enterprise for GST purposes, or where it is not operating under the structure or entity type for which it is registered in the ABR.

5. Our policy about client initiated cancellation

An entity or their authorised contact can apply at any time to have the entity's registration cancelled in the ABR.

An entity should cancel its registration when it is no longer entitled to an ABN.

The entity must make the request in the approved form.[11]

The Registrar will accept the date of cancellation that an entity specifies in their application, unless satisfied that the date of cancellation is different.

Refusal to cancel

The Registrar can refuse to cancel an entity's registration in the ABR, even where the entity has applied in the approved form. For example the entity may have outstanding tax obligations that they need to finalise prior to the ABN being cancelled by the Registrar.

Changes to an enterprise

An entity is not required to cancel their registration if they change the enterprise they are carrying on.

Where the entity is carrying on multiple enterprises and one or more of those are ceased, they are not required to cancel their registration providing they continue to carry on at least one enterprise.

Seasonal enterprises

If the enterprise is seasonal, the ABN remains active in the ABR. This is because a seasonal enterprise continues to carry on an enterprise even where they are not physically trading.

6. What is the date of effect of a cancellation in the ABR?

The Registrar generally gives the entity a date of effect of cancellation as:

- the date of the written notice of cancellation[12]
- a specified date in the future[13]

[9] Section 15.

[10] Section 601AD (1) of the *Corporations Act 2001* states that a company ceases to exist on deregistration.

[11] Paragraph 18(4)(a).

[12] Paragraph 18(3)(a).

- a date before the date of the notice of cancellation.[14] For example, this could be the date of registration where the Registrar is satisfied that
  - the entity was never entitled to an ABN
  - the date the entity ceased carrying on an enterprise
  - the date the entity ceased to exist, for example, the date a company is deregistered by ASIC
  - the date that the Registrar made a decision about the entity's entitlement
  - the date the cancellation is actioned in the ABR.

7. Written notice of cancellation

The Registrar must send a written notice of a decision to cancel or refuse to cancel a registration in the ABR. The notice must state:

- the date of effect of cancellation[15]
- the reasons for the cancellation where the cancellation is on the Registrar's initiative[16]
- the reasons for refusing to cancel the registration on application[17], and
- the entity's review rights.

The Registrar will send the notice as soon as it is practicable after an entity's registration in the ABR is cancelled.

Returned unclaimed mail indicator

Where an entity has a returned unclaimed mail indicator on their account, a cancellation notice will not be sent until the Registrar is satisfied another address relating to the entity (whether or not a physical address) is likely to be effective.

8. What are the consequences of cancelling the registration in the ABR?

When an entity's registration is cancelled in the ABR, regardless of the reason, the entity ceases to have an active ABN.

The previously active ABN must not be quoted by the entity after the date of effect of the cancellation of the registration.

[13] Paragraph 18(3)(b).
[14] Paragraph 18(3)(c).
[15] Paragraph 18(2)(b) and subsection 18(5).
[16] Paragraph 18(2)(a).
[17] Subsection 18(4).

Where an entity or its associate misuses an ABN by holding themselves out and identifying themselves by using a cancelled ABN[18] they commit an offence under the ABN Act, which carries a penalty of two years imprisonment.[19]

9. Can an entity's registration be reinstated where it should not have been cancelled?

Reinstating an entity's registration

The Registrar can reinstate an entity's registration where satisfied that the registration should not have been cancelled.[20] These circumstances include:

- where an internal administrative error has occurred
- the entity has made an error in requesting cancellation of its registration
- where ASIC has reinstated a company's registration.

Date of effect of reinstatement

The reinstatement has the date of effect on and from the day the registration was cancelled, not the date of the reinstatement. The registration will appear on the ABR as if it was never cancelled once it is reinstated.[21]

Written notice of reinstatement

The Registrar must provide the entity with a written notice of the reinstatement as soon as practicable after an entity is reinstated in the ABR.[22]

10. Review rights

An entity can lodge an objection[23] against the following decisions:

- cancelling its registration in the ABR[24]
- refusing to cancel its registration in the ABR[25]

[18] Subsections 23(1) and (2).
[19] Subsection 23(3).
[20] Subsection 19(1).
[21] Subsection 19(3).
[22] Subsection 19(2).
[23] An entity may object, in the manner set out in Part IVC of the *Taxation Administration Act 1953*, against a decision it is dissatisfied with that is a reviewable ABN decision. Part IVC applies in relation to a reviewable ABN decision as if references in that Part to the Commissioner of Taxation were references to the Registrar.
[24] Subsection 21(2) item 3 is a reviewable ABN decision made under subsection 18(1).
[25] Subsection 21(2) item 5 is a reviewable ABN decision made under subsection 18(4).

- setting the date of cancellation of their registration.[26]

11. More information

For more information, see:

- cancel your ABN – see the material on our website
- PS LA 2011/9 *The registration of entities in the ABR*
- 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*
- Proof of Identity

Date issued 10 June 2016

Date of effect 10 June 2016

[26] Subsection 21(2) item 6 is a reviewable ABN decision made under subsections 18(2) or (5).