PS LA 2016/5 - The disclosure of information and documents collected by the Registrar of the Australian Business Register

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The disclosure of information and documents collected by the Registrar of the Australian Business Register

This Law Administration Practice Statement outlines the policy to be applied to the disclosure of information and documents collected by the Registrar of 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 on when a disclosure of information and documents collected by the Registrar of the Australian Business Register (ABR) can be made and to whom.

The Registrar collects information and documents that are protected by the secrecy provisions of the *A New Tax System (Australian Business Number) Act 1999* (ABN Act). These include:

- non-public ABR information, and
- necessary or incidental information that is collected for ABN Act purposes.

The Registrar also collects other information that is not protected by the secrecy provisions in the ABN Act. This information includes:

- public ABR information
- public whole of government information, and
- aggregated ABR information.

2. What is disclosure of information?

Disclosure is the act of the Registrar divulging or communicating protected information and protected documents that are collected about an entity to other parties outside of the ATO. By doing so, the Registrar releases the subsequent handling of the information from his effective control.

The Registrar can only disclose protected information and protected documents where authorised under the secrecy provisions provided for in the ABN Act.[1]

3. What is recording of information?

Recording information is the act of making a record of information that can then be used for later reference.

[1] The confidentiality of information provisions are set out in section 30 of the ABN Act.

4. What are protected documents and protected information?

'Protected document' means any document made or given under, or for the purposes of, the ABN Act. For example a completed application of ABN registration for individuals (sole traders) (NAT 2938) would be a protected document.

'Protected information'[2] in the ABR is information that meets all the following conditions:

- it relates to the affairs of a person other than the entrusted person
- it was obtained by the entrusted person, or by another person, in the course of official employment
- it was disclosed or obtained under, or in relation to, the ABN Act.

Non-public ABR information

This is protected information that is prescribed under the ABN Act and the *A New Tax System (Australian Business Number) Regulations 1999* (ABN Regulations) that the Registrar must enter about an entity in the ABR and cannot be released publicly. These details are listed at Attachment A.

Necessary or incidental information that is collected for ABN Act purposes

The Registrar can collect information where the details are for a purpose that is necessary or incidental to the function of maintaining the ABR or any other express function under the ABN Act[3], such as determining entitlement for registration.

[2] 'Protected information' is defined in section 41 of the ABN Act

[3] Refer to paragraph 9 of PS LA 2016/4 *Maintaining the ABR*

5. What information is not protected?

Public ABR information

Under the ABN Act, the Registrar is able to publicly release certain details that he has collected from an entity that he has registered in the ABR,

Once these details are publicly released, they are no longer protected information and therefore not subject to the secrecy provision in the ABN Act. These details are listed at Attachment A.

Public whole-of-government information

The Registrar can collect additional details about an entity where the details are publicly available and are considered necessary to facilitate service delivery functions for whole-of-government purposes.

As this information is not collected for a purpose of the ABN Act it is not protected information and therefore not subject to the secrecy provisions in the ABN Act.

Aggregate information

The Registrar can consolidate information recorded in the ABR to produce aggregated data sets where the identity of entities and associates of those entities can no longer be ascertained because details such as the name and address have been removed or modified. Aggregated data sets cannot contain details where the identity of any entity can be estimated or derived.

Aggregated information is not protected information and therefore not subject to the secrecy provisions in the ABN Act.

6. Who is an entrusted person?

A person who receives protected information or protected documents in the course of official employment[4] is referred to as an 'entrusted person'.[5]

The Registrar of the ABR is an entrusted person. When the Registrar discloses protected information or protected documents to other government agencies, the heads of those agencies also become entrusted persons.

An entrusted person is restricted with what they can do with protected information and documents that are obtained in the course of their official employment.[6]

7. Can the Registrar disclose or record protected information?

The Registrar has the discretion to disclose or record protected information where such disclosure or recording is permitted under the ABN Act.

The Registrar is able to disclose protected information where the disclosure:

- is for the purposes of the ABN Act
- happens in the course of the Registrar's official employment
- is to other government agencies that are eligible to receive it
- is to persons carrying out functions under a taxation law, and
- is to the Administrative Appeals Tribunal.

Disclosure is for the purposes of the ABN Act

The Registrar can disclose certain protected information about an entity publicly for the purpose of the ABN Act.[7] These details are listed at Attachment A.

The Registrar makes these details publicly available[8] through:

- ABN Lookup at www.business.gov.au
- Superfund Lookup at www.superfundlookup.gov.au (in relation to superannuation entities)

[4] Section 41 of the ABN Act defines 'Official employment' to mean:
- appointment or employment by the Commonwealth, or the performance of services for the Commonwealth; or
- the exercise of powers or performance of functions under a delegation by the Registrar; or
- appointment or employment by a State or Territory, or the performance of services for a State or Territory; or
- appointment or employment by a local governing body, or the performance of services for a local governing body.

[5] Subsection 30(1) of the ABN Act provides that section 30 restricts what an entrusted person may do with protected information or protected documents that the person has obtained in the course of official employment.

[6] Subsection 30(2) of the ABN Act states that the entrusted person must not make a record of protected information and must not disclose it to anyone else unless the recording and disclosure is done in accordance with subsection 30(3) of the ABN Act.

[7] Subsection 26(5) allows the Registrar to make publicly available limited details listed in subsection 26(3) of the ABN Act in relation to an entity.

[8] The Registrar may make publicly available limited details listed in subsection 26(3) of the ABN Act in relation to an entity.

The Registrar also makes these details available via bulk download through:

- ABN Web services at www.business.gov.au[9]
- Requests of datasets at www.data.gov.au[10]

In the course of official employment

The Registrar can disclose or record protected information where the disclosure or recording happens in the course of the performance of duties of official employment of the Registrar. For example, the Registrar can disclose protected information about an entity to an individual that has been nominated by that entity as their authorised representative. This disclosure happens in the course of the performance of duties of the Registrar's official employment.

Government Agencies

The Registrar can disclose protected information[11] to:

- an Agency Head within the meaning of *the Public Service Act 1999* for the purpose of carrying out functions of the Agency.[12]
- the accountable authority of a non-corporate Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013* (Cth) for the purpose of carrying out functions conferred on the entity by a law of the Commonwealth
- the head of a Department of State of a State or Territory for the purposes of carrying out functions of the Department
- the head of a body established for a public purpose by or under a law of a State or Territory for the purpose of carrying out functions conferred on the body by a law of the State or Territory
- a prescribed body for the prescribed purposes.[13]

[9] The ABN Lookup web services allows an organisation to integrate ABN Lookup validation and data into their own applications. Web services can be used to pre-fill forms and keeping ABN details stored in that organisation's data base up to date.

[10] data.gov.au provides a central catalogue of government public datasets.

[11] Paragraphs 30(3)(c) and 30(3)(d) of the ABN Act

[12] 'Agency Head' is defined in section 7 of the *Public Service Act 1999* (Cth) to mean:

- the secretary of a department
- the head of an executive agency, or
- the head of a statutory agency.

[13] Prescribed bodies and their prescribed purposes listed in regulation 9 of the *A New Tax System (Australian Business Number) Regulations 1999.*

The Registrar generally discloses protected information to government agencies where:

- satisfied that a sufficient nexus exists between the use of the protected information and the furtherance of the function of the government entity, and
- the government entity agrees to be party to a Terms and Conditions agreement with the Registrar.[14]

Persons carrying out functions under a taxation law

The Registrar may disclose protected information to another person for the purpose of carrying out functions under a taxation law.

Administrative Appeals Tribunal

The Registrar may disclose protected information to the Administrative Appeals Tribunal in connection with proceedings under a taxation law.

8. Are there any restrictions on disclosure of protected information?

Disclosure to Ministers and other elected members

Protected information cannot be disclosed to a Commonwealth, State or Territory Minister or an elected member of a body established under a law of a State or Territory.[15]

Disclosure to a court

An entrusted person is not required to produce a protected document or disclose protected information to a court except where it is necessary for the purpose of giving effect to a taxation law.[16]

Disclosure to a government body with a commercial arm

Whilst the Registrar may be able to disclose protected information to a government body, the Registrar may choose not to as the government body may receive a commercial advantage from accessing the ABR information.

[14] A Terms and Conditions agreement sets out the rules that are to be abided by between the Registrar and the agency head or accountable authority for access to ABR information.

[15] Subsection 30(4) of the ABN Act.

[16] Subsection 30(5) of the ABN Act.

9. Are there other considerations for the Registrar?

When making a decision about the disclosure of protected information, the Registrar must consider other Commonwealth laws as well as the ABN Act.

Taxation laws

Information that is protected for ABN Act purposes is also protected by the secrecy provisions contained in Division 355 to Schedule 1 of the *Taxation Administration Act 1953*(TAA).

These secrecy provisions allow the Commissioner to disclose protected information to various third parties for very specific purposes.

There may be instances where the disclosure of ABR protected information cannot be made under the ABN Act but may be permissible under the TAA secrecy provisions. For example a taskforce may request information that pertains to the ABN Act. The taskforce would not be able to receive the information from the Registrar under the ABN Act. However the Commissioner would be able to disclose ABR protected information to the taskforce under the TAA secrecy provisions as this disclosure is permissible.

Privacy laws

Any disclosure of information about individuals is also subject to the *Privacy Act 1988* (Privacy Act).

The Privacy Act regulates how personal information is handled.[17]

The Registrar must ensure that he complies with the Australian Privacy Principles provided for in the Privacy Act as the ABR contains records that include the personal information of individuals.[18]

Where the Registrar makes a disclosure of personal information that is made under the secrecy provisions it will be authorised by law and therefore lawful for the purposes of the Privacy Act.

[17] Personal information is defined in section 6 of the *Privacy Act 1988* to mean information or an opinion about an identified individual, or an individual who is reasonably identifiable:
(a) whether the information or opinion is true or not; and
(b) whether the information or opinion is recorded in a material form or not.

[18] APP 6 outlines the circumstances when an APP entity can use or disclose personal information that it holds.

10. Can the Registrar disclose information he collects that is not protected information under the ABN Act?

The Registrar is able to disclose to any third party information that he has collected or derived that is not subject to the secrecy provisions in the ABN Act. This information includes public ABR information, public whole of government information and aggregated ABR information.

11. Can information the Registrar discloses be on disclosed?

Government agencies

The heads of government agencies that receive protected information from the Registrar become the entrusted person. As such, the entrusted person is bound by the secrecy provisions in the ABN Act. An entrusted person, who is not the Registrar, may on disclose that information in the course of the performance of the duties of their official employment.

Government agencies that receive information about an entity from the Registrar that is not protected information and is publicly available may on disclose that information.[19]

Contractors of government agencies

Government agencies may on disclose protected information about an entity to any contractors they engage in the course of the performance of the duties of their official employment.

Third parties

Third parties may on disclose information that the Registrar has made publicly available about an entity.

12. Can an entity choose not to have their details publicly available?

An individual can apply to the Registrar requesting a detail relating to an entity registered in the ABR not to be disclosed publicly.[20] The Registrar will consider the application for the non-disclosure of the details in the following circumstances:

- where an individual's personal safety is at risk
- where content is a risk to community confidence

[19] The government agency does not contravene section 30 of the ABN Act by recording or disclosing information which has been made accessible to the public in accordance with subsection 26(5) of the ABN Act.

[20] The individual who may apply to the Registrar may be an individual associated with the entity or a third party.

- the details in the ABR are not consistent with the objects of the ABN Act.

Where the Registrar does not disclose the details publicly, the details are also not disclosed to other government agencies.

Personal safety

The Registrar will be satisfied that it is not appropriate to publicly disclose a detail where the entity or their individual associates are at genuine risk of physical and/or mental harm, or harassment and the disclosure of their details may:

- cause or contribute to personal harm, or
- have a detrimental effect on these individuals who, by virtue of their profile in the community, generate a high level of interest in their personal affairs.

This includes those persons who:

- are or have been affected by domestic violence
- have an assumed identity and is registered as a participant in the National Witness Protection Program
- professionals who deal with dangerous individuals or groups such as psychiatrists, the judiciary and senior public servants, or
- high profile public individuals.

Community standards

The Registrar will be satisfied that it is not appropriate to publicly disclose a detail where there is a risk to community confidence because certain details listed in the ABR may affect the promotion of ATO values in activities relating to, but not limited to:

- fair administration
- adherence to service standards, or
- community values.

This may include words that are defamatory as they contain:

- profanities
- discriminatory connotations, or
- obscene connotations.

Administrative remedy

The Registrar will be satisfied that it is not appropriate to publicly disclose a detail where that detail may compromise other legislation or legitimise a name the entity is not entitled to use.

This may include circumstances where a name used by the entity infringes copyright, a patent, a trademark, other intellectual property or a registered business name

A registration should not have taken place as the entity has been registered with an incorrect entity type

Review Rights

An entity can lodge an objection against a decision refusing an application not to disclose details about an entity registered in the ABR.[21]

13. More information

For more information refer to:

- PSLA 2011/9 *The registration of entities in the ABR*
- PSLA 2016/3 *The cancellation of registrations in the ABR*
- PSLA 2016/4 *Maintaining 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.*

[21] Subsection 21(2) Item 7 of the ABN Act is a reviewable ABN decision made under subsection 26(4) or 27(7) of the same Act.

Attachment A: Information about entities held in the Australian Business Register

Public		Non-Public
1. Entity's name	14. If a Registrable Superannuation Entity (RSE) licensee – entity's class of licence	26. Entity's principal place of business
2. Entity's ABN	15. If an RSE licensee – entity's address recorded by APRA	27. Entity's address for service of notices
3. Date of effect of entity's registration	16. If an RSE licensee – entity's postal address	28. ANZSIC code for entity's business
4. Entity's registered business name/s	17. If an RSE licensee – entity's telephone number	29. Details of entity's associates requested for registration
5. Date of effect of entity's GST registration	18. If a registrable super entity – entity's address recorded by APRA	30. Name of entity's public officer
6. Date of effect of entity's GST cancellation	19. If a registrable super entity – entity's postal address	31. Name/s of entity's trustee/s
7. Any deductible gift recipient statement for the entity	20. If a registrable super entity – entity's telephone number	32. Entity's email address
8. Any charity/fund endorsement statement for the entity	21. If a registrable super entity – entity's contact person	33. Name of entity's representative
9. Entity's ACN	22. If a registrable super entity – entity's RSE licensee	34. Entity's representative's email address
10. Entity's ARBN	23. Date of change of entity's ABN (if changed)	35. Date of effect of registration of entity's representative
11. Kind of entity	24. Date of cancellation of entity's ABN (if cancelled)	
12. State/Territory of entity's principal place of business	25. Name used by entity for business purposes previously in ABR	
13. Postcode of entity's principal place of business		