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

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PS LA 2016/5
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 protected information and protected documents collected by the Registrar of the Australian Business Register.

[NB: The principles in this Law Administration Practice Statement equally apply to the recording of protected information.]

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 protected information and protected documents collected by the Registrar of the Australian Business Register (ABR) can be made and to whom.

2. What are protected documents

'Protected document'[1] means any document made or given under, or for the purposes of, the *A New Tax System (Australian Business Number) Act 1999* (ABN Act). For example a completed application for registration in the ABR is a protected document.

3. What is protected information

'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[3]
- 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.

Protected information includes details that the Registrar must enter in the ABR when an entity is registered. These details are listed at Attachment A.

Protected information also includes information that is necessary or incidental to the Registrar carrying out the functions under the ABN Act. For example the Registrar may request an entity to provide information that is relevant to the entity's entitlement to be registered.

4. What information is not protected?

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.

[1] 'Protected document' is defined in section 41 of the ABN Act.
[2] 'Protected information' is defined in section 41 of the ABN Act.
[3] A person who receives protected information or protected documents in the course of official employment is referred to as an 'entrusted person'.

5. What are the Registrar's obligations in relation to protected documents and protected information?

The Registrar must protect the confidentiality of protected documents and protected information. Protected documents or protected information cannot be disclosed unless the disclosure is permitted by the secrecy provisions in the ABN Act.[4]

6. What is disclosure of information?

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

7. When can the Registrar disclose protected information?

The Registrar has the discretion 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
- is to the Administrative Appeals Tribunal.

Disclosure is for the purposes of the ABN Act

The ABN Act gives the Registrar the discretion to disclose certain protected information about an entity publicly. These details are listed at Attachment A.

The Registrar makes these details publicly available[5] through:

- ABN Lookup at www.business.gov.au
- Super Fund Lookup at http://www.superfundlookup.gov.au/ (in relation to superannuation entities).

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

- ABN web services at www.business.gov.au[6]
- requests of datasets at www.data.gov.au.[7]

Any details that the Registrar makes publicly available lose their character of confidentiality and therefore are no longer protected by the secrecy provisions in the ABN Act.

Disclosure happens in the course of official employment

The Registrar can disclose protected information where the disclosure happens in the course of the performance of the duties of the Registrar's official employment. 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.

Disclosure is to government agencies

The Registrar can disclose protected information to:

- an Agency Head for the purpose of carrying out functions of the Agency[8]
- 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.[9]

[4] Section 30 of the ABN Act provides for the protection of confidentiality of information.

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

[6] The ABN Lookup web services allow 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.

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

[8] '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.

The Registrar generally discloses protected information to government agencies where:

- 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.[10]

Disclosure is to 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.[11]

Disclosure is to the Administrative Appeals Tribunal

The Registrar may disclose protected information to the Administrative Appeals Tribunal in connection with proceedings under a taxation law.[12]

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.[13]

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.[14]

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.

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 relates to the ABN Act. As the taskforce would not be eligible to receive the information from the Registrar under the ABN Act, 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.[15]

The Registrar must comply with the Australian Privacy Principles provided for in the Privacy Act as the ABR contains records that include the personal information of individuals.[16]

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.

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

[10] 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.

[11] Subparagraph 30(3)(c)(iii) of the ABN Act.

[12] Subparagraph 30(3)(c)(iv) of the ABN Act.

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

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

[15] 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.

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

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

The Registrar is able to disclose to any third party information that has been 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 other parties on-disclose protected information?

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 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.[17]

Contractors of government agencies

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

Other 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?

A person can apply to the Registrar requesting a detail relating to an entity registered in the ABR not to be disclosed publicly.[18] 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
- 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
- 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
- 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
- community values.

This may include words that are defamatory as they contain:

- profanities
- discriminatory connotations
- 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,

[17] 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.

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

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.[19]

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.*

Date issued	4 August 2016
Date of effect	4 August 2016
Business line	ABRS

[19] 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

The Registrar enters the following details in the ABR in relation to a registered entity:

DETAIL		PUBLICLY AVAILABLE
1.	The entity's name	Yes – ABN Lookup
2.	The entity's ABN	Yes – ABN Lookup
3.	The date of effect of the registration of the entity in the ABR	Yes – ABN Lookup
4.	An address for service of notices under the *A New Tax System (Australian Business Number) Act 1999*	No
5.	Details of the entity's associates that were requested in the approved form for registration in the ABR	No
6.	Any business name registered to the entity on the Business Names Register that is established and maintained under section 22 of the *Business Names Registration Act 2011*	Yes – ABN Lookup
7.	The entity's principal place of business	No (except the postcode and the State or Territory in which the principal place of business is located)
8.	The kind of entity that is being registered	Yes – ABN Lookup
9.	The Australian New Zealand Standard Industrial Classification code for the business being conducted by the entity	No
10.	The entity's email address	No
11.	The date of effect of any change to the entity's ABN	Yes – ABN Lookup
12.	The date of effect of the cancellation of the entity's registration in the ABR	Yes – ABN Lookup

If an entity has nominated a representative to facilitate the entity's electronic dealing with government, the Registrar must also enter the following details:

DETAIL		PUBLICLY AVAILABLE
13.	The representative's name	No
14.	The representative's email address	No
15.	The date of effect of the representative's registration in the ABR	No

If the entity is a company or body registered under the *Corporations Act 2001*, the Registrar must also enter the following details:

DETAIL		PUBLICLY AVAILABLE
16.	The entity's Australian Company Number	Yes – ABN Lookup
17.	The entity's Australian Registered Body Number	Yes – ABN Lookup
18.	The name of the entity's public officer	No

If the entity is a trust, the Registrar must also enter the following details:

DETAIL	PUBLICLY AVAILABLE
19. The name of the entity's trustee or trustees	No

If the entity is an RSE (registrable superannuation entity) licensee, the Registrar must also enter the following details in the ABR:

DETAIL	PUBLICLY AVAILABLE
20. The class of licence held by the licensee	Yes – Super Fund Lookup
21. The address of the licensee recorded by the Australian Prudential Regulation Authority for the purposes of the *Superannuation Industry (Supervision) Act 1993* (SIS Act)	Yes – Super Fund Lookup
22. The licensee's postal address	Yes – Super Fund Lookup
23. The licensees' telephone number	Yes – Super Fund Lookup

If the entity is a registrable superannuation entity (RSE) within the meaning of the *Superannuation Industry (Supervision) Act 1993*, the Registrar must also enter the following details:

DETAIL	PUBLICLY AVAILABLE
24. The address for the entity recorded by the Australian Prudential Regulation Authority for the purposes of the SIS Act	Yes – Super Fund Lookup
25. The entity's postal address	Yes – Super Fund Lookup
26. The entity's telephone number	Yes – Super Fund Lookup
27. The entity's contact person	Yes – Super Fund Lookup
28. The RSE licensee of the entity	Yes – Super Fund Lookup

The Registrar must also enter the following details in relation to a registered entity where applicable:

DETAIL	PUBLICLY AVAILABLE
29. The date of effect of any GST registration of the entity	Yes – ABN Lookup
30. The date of effect of any GST cancellation of the entity	Yes – ABN Lookup
31. If the entity is endorsed as a deductible gift recipient, a statement that it is so endorsed for a specified period	Yes – ABN Lookup
32. If the entity is endorsed as a charity under subsection 176-1 of the GST Act, a statement that the entity is so endorsed for a specified period	Yes – ABN Lookup
33. If the entity is endorsed as an approved worker entitlement fund under subsection 58PB(3) of the *Fringe Benefits Tax Assessment Act 1986* (FTBTA Act), a statement that the entity is so endorsed for a specified period	Yes – ABN Lookup
34. If the entity is endorsed for the operation of an approved worker entitlement fund under subsection	Yes – ABN Lookup

DETAIL		PUBLICLY AVAILABLE
	58PB(3A) of the FBTA Act, a statement that the entity is so endorsed for a specified period	
35.	If the entity is endorsed as a public benevolent institution under subsection 123C(1) of the FBTA Act, a statement that the entity is so endorsed for a specified period	Yes – ABN Lookup
36.	If the entity is endorsed as a health promotion charity under subsection 123D(1) of the FBTA Act, a statement that the entity is so endorsed for a specified period	Yes – ABN Lookup
37.	If the entity is endorsed as a registered charity under subsection 123E of that FBTA Act, a statement that the entity is so endorsed for a specified period	Yes – ABN Lookup
38.	If the entity is endorsed as being exempt from income tax under section 50-105 of the *Income Tax Assessment Act 1997*, a statement that the entity is so endorsed for a specified period	Yes – ABN Lookup
39.	If the entity is a public ancillary fund, a statement that it is a public ancillary fund	Yes – ABN Lookup
40.	If the entity is a private ancillary fund, a statement that it is a private ancillary fund	Yes – ABN Lookup
41.	If the entity is registered as an employer of working holiday makers, a statement to that effect and the day on which the registration takes effect	No
42.	If an entity's registration as a working holiday maker is cancelled, a statement to that effect and the day on which the cancellation takes effect	No

Amendment history

Date of amendment	Part	Comment
26 June 2018	Item 7, Attachment A	Clarify information under ‘Publicly available’.
14 May 2018	All	Adjustments to order of content; other minor adjustments to formatting and updated Attachment A to indicate category of entity and whether the detail is publicly available.
4 August 2016	All	First published.