

Designing a modern Australian Business Number system

Submission to the Treasury
September 5, 2018

The Australian Business Number – an identifier

The Australian Chamber of Commerce and Industry (Australian Chamber) welcomes the opportunity to respond to the Designing a modern Australian Business Number (ABN) system consultation paper.

The government's commitment to the Modernising Business Registers (MBR) Program provides an opportunity for significant changes to be made to the ABN system, which will strengthen its data integrity. The MBR program proposes to cleanse a significant amount of ABN data, reducing the risk of misuse of ABNs.

While the Australian Chamber understands the MBR Program is a long term project that will require substantial time to implement, the Australian Chamber cautions against applying temporary solutions to the ABN system without considering the broader impact of concurrent government programs such as the MBR Program.

For example, Director Identification Numbers (DINs) will go a long way to identifying and preventing phoenix behaviour, and the creation of data pools sourced from multiple government agencies will assist in identifying incorrect data. As such, the current concerns around the ABN system may largely be overcome through the MBR program and other relevant government projects.

The Australian Chamber is concerned that the ABN registry will be used as a tool to encourage compliance with tax obligations, particularly if poor tax compliance is used as a reason to cancel an ABN. The ABN system is a registry first and foremost, used as an identifier of businesses. There are other substantial enforcement provisions that can be used to ensure businesses comply with their statutory obligations.

Adjusting ABN entitlement rules

The Australian Chamber does not support the exclusion of particular groups from the ability to obtain an ABN. As the consultation paper mentions, these groups could have genuine reasons for obtaining an ABN. An apprentice, for example, could be running a business outside the time s/he dedicates to being an apprentice.

The Australian Chamber does not believe too much should be read into the data showing a sharp increase in individuals applying for an ABN. The Australian economy is changing as it adopts new business models, giving rise to the 'gig economy'.

The gig economy has created temporary, flexible jobs for individuals. Many of those working in the gig economy use the money earned to supplement other earnings.¹ For an individual to be part of the gig economy, it generally requires obtaining an ABN. This could explain the substantial increase in individuals applying for an ABN.

The Australian Chamber does not believe the entitlement rules for an ABN are the correct medium to combat such things as:

- Whether an individual is an employee or contractor;
- The claiming of fraudulent GST input tax credits;
- Duplication of ABNs for the same entity.

All of these can be overcome through an extension or application of existing measures. For example, the duplication of ABNs for the same entity can be targeted through tightening up the identification verification process for the individual applying for an ABN and data matching at the time of an ABN application. The implementation of DINs should help with this as well. Similarly, claiming fraudulent GST input tax credits falls under the comprehensive enforcement and auditing powers given to the ATO.

Imposing conditions on ABN holders

Increasing the cost and/or complexity around compliance will only encourage black economy behaviour. As the Black Economy Taskforce noted in their report, one of the drivers of black economy behaviour is onerous regulatory burdens.

Creating additional conditions for ABN holders may also discourage entrepreneurs from pursuing their business ideas, particularly given there is already substantial regulatory burdens imposed on businesses. This has the effect of decreasing competition and innovation.

Businesses in many industries have certain requirements imposed on them through other means. For example, through licensing requirements, consumer law provisions etc. To impose a set of conditions or obligations on an ABN holder just imposes an additional layer of regulatory burden on a business, particularly as specific industry regulations are nuanced and are more likely to be encourage particular types of behaviour in a business.

ABN holders should be clearly informed and educated on their obligations. The consultation paper notes that some ABN holders view their ABN as a right rather than a set of conditions or obligations. However, most ABN holders receive their 'legitimacy' as a business through compliance with other legislative provisions relevant to their industry. If the ABN system was to be used to correctly identify and notify the public of non-compliant behaviour, it would also need to link with other government agencies that administer business compliance programs outside of the ATO. This would need to include state and territory based government agencies.

Particularly concerning are the proposed consequences of not meeting ABN conditions. Creating the ability to view a change in ABN status runs the risk of impacting the relationships a business has with other businesses. Endangering continuing business relationships risks the viability of businesses who are reliant on these relationships.

How a business is meeting its taxation obligations should not be the key condition in determining whether a business is entitled to an ABN. The ability for the Registrar to cancel an ABN where a business fails to be a good tax citizen is concerning as it creates a new weapon in the Tax

¹ David Marin-Guzman (Jul 27, 2018), 'Why the gig economy hasn't taken your job', *Australian Financial Review*

Commissioner's already comprehensive arsenal in policing compliance. The entitlement to hold an ABN should not be used by the Tax Commissioner as a way of ensuring tax compliance.

The Australian Chamber understands that failure to, for example, pay Pay As You Go (PAYG) withholding or superannuation guarantee (SG) amounts on time can be an indicator of a business that is encountering cash flow issues.

However, it shouldn't necessarily be a condition of holding an ABN. The allocation of an ABN identifies the entity as a business – its viability as a business should be tested through another medium. Where the business is found to no longer be a going concern, through enforcement of either PAYG or SG provisions, then the removal or hiatus of their ABN would be understandable.

The use of traffic light systems to signify an ABN holder's non-compliant behaviour over-simplifies the myriad types of 'non-compliant' behaviour and their possible effect on those interacting with the ABN holder. If information on an ABN holder's compliance with particular obligations is to be provided publicly, it needs to be clear what these obligations are and how 'bad' the non-compliance is. Furthermore, it shouldn't only be restricted to an ABN holder's tax compliance. As mentioned previously, businesses have other statutory obligations they need to meet outside of tax that might better reflect their 'legitimacy' as a business.

Introduction of a renewal process

The introduction of a renewal process, in addition to imposing conditions on ABN holders, will create significant administrative burden on businesses. As mentioned above, there are industries which already require licenses to be acquired by businesses and renewed periodically. The decision to impose, in addition, a renewal process to hold an ABN should not be taken lightly.

An ABN, broadly speaking, has become necessary in order to carry on a business in Australia. While adding a fee or introducing a renewal process may legitimise the process of getting an ABN, it will add an additional step in an already comprehensive list to carry on a business. It would be particularly burdensome on small business and entrepreneurs, as they try to navigate the complex regulations imposed on businesses that differs in each state and territory.

If a renewal process were to be introduced, the Australian Chamber encourages a fee-free or nominal fee approach. Many industries are already subject to substantive fees in order to operate.

Ideally if the purpose for a renewal process is to ensure the data in the register is up to date, this can be done by linking numerous government data sources together. The Australian Chamber understands the MBR Program is proposing to move in that direction. If the MBR Program were to be implemented quickly, there would be no need for interim changes to the ABN system.

Additionally, attaching a fee to the renewal may not necessarily nudge ABN holders to update their information. ABN holders could simply pay the fee and consider checking the details attached to the ABN at a later date. There are more effective ways of encouraging ABN holders to update their data.²

² The European Nudge Network, <http://tenudge.eu/project/a-prompt-to-nudge-better-company-data/>



About the Australian Chamber

The Australian Chamber of Commerce and Industry speaks on behalf of Australian Businesses at home and abroad.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, making us Australia's most representative business organisation.

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