

2022

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL
2022: STRENGTHENING THE ABN SYSTEM

EXPOSURE DRAFT EXPLANATORY MATERIALS

Table of Contents

Glossary	iii
Chapter 1: Strengthening the ABN System	5

Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
ABN	Australian Business Number
ABN Act	<i>A New Tax System (Australian Business Number) Act 1999</i>
ASIC	Australian Securities and Investments Commission
Registrar	The Registrar of the Australian Business Register

Chapter 1: Strengthening the ABN System

Table of Contents:

Outline of chapter	5
Context of amendments.....	5
Summary of new law.....	6
Comparison of key features of new law and current law	7
Detailed explanation of new law	8
Consequential amendments	10
Commencement, application, and transitional provisions	10

Outline of chapter

- 1.1 Schedule # to the Bill reforms and strengthens the Australian Business Number (ABN) system to target misuse, enhance the quality of ABN data, and improve ABN holder engagement and compliance.

Context of amendments

The ABN System

- 1.2 The ABN System established by *A New Tax System (Australian Business Number) Act 1999* (the ABN Act) is a system for registering businesses and issuing them with unique identifying numbers so that they can identify themselves reliably in their dealings with the Australian Government. The system allows businesses to efficiently meet their regulatory obligations and access information and assistance from Government.
- 1.3 There are over 9 million active ABN holders. The ABN allows businesses to identify themselves reliably and report regularly for the purposes of taxation laws.

The Black Economy Taskforce

- 1.4 Treasury's Black Economy Taskforce was established to develop an innovative, forward-looking, multi-pronged policy response to combat the black economy in Australia, recognising that these issues cannot be tackled by traditional tax enforcement measures alone. The Taskforce's Final Report issued on 8 May 2017 highlighted the harm that the black economy causes to honest businesses and the community, penalising honest taxpayers, undermining the integrity of Australia's tax and welfare systems, and creating an uneven playing field for the majority of small businesses doing the right thing.
- 1.5 This Schedule introduces reforms to the ABN system to disrupt black economy behaviour.
- 1.6 The Black Economy Taskforce found that when the ABN system was introduced, the goal was to ensure ABNs could be obtained by those eligible to hold them as easily and quickly as possible. However, the Taskforce also found that there are many ABNs which are either out of date or held inappropriately. There is also a significant number of ABN holders who are not complying with their ongoing income tax return lodgement obligations.
- 1.7 An ABN remains active until the Registrar cancels the ABN under the grounds set out in section 18 of the ABN Act, or the ABN holder requests the ABN be cancelled. There is no periodic renewal process for ABNs. This contrasts with, for example, the operation of the ASIC company registration system which has ongoing obligations following registration.
- 1.8 In response to the Final Report of the Black Economy Taskforce, the Government agreed to implement measures to ensure the integrity of the tax system. The measure *Black Economy – strengthening the Australian Business Number system* was included in the 2019-20 Budget. The measure was deferred by 1 year in the March 2022-2023 Budget.
- 1.9 The measure seeks to strengthen the ABN system while maintaining the system's navigability and low barriers to access. It does so by making ongoing registration contingent on the lodgement of relevant income tax returns and the regular confirmation of the accuracy of holder details.

Summary of new law

- 1.10 Schedule 1 to the Bill amends the ABN Act to provide that the Registrar may cancel a person's registration in the Australian Business Register (that is, the person's ABN) in either of the following circumstances:
 - Where a person is required to lodge income tax returns, they have failed to lodge returns for 2 or more income years and those returns remain outstanding.

- The person fails to confirm the accuracy of their details held by the Registrar in a 12-month period together with confirmation that their ABN is still required.
- 1.11 Where a person’s registration is cancelled in these circumstances, the Registrar must reinstate the registration if:
- The person lodges or makes arrangements with the Commissioner of Taxation to lodge, the relevant income tax returns that had not been lodged.
 - The person confirms the accuracy of their details held by the Registrar and that they still require an ABN.

Comparison of key features of new law and current law

Table 1.1 Comparison of new law and current law

<i>New law</i>	<i>Current law</i>
<p>In addition to the Registrar’s existing cancellation powers, the Registrar may cancel a person’s ABN where, in relation to 2 income years, the person has outstanding income tax lodgment obligations.</p> <p>The Registrar may also cancel a person’s ABN if the person fails to confirm the accuracy of their details with the Registrar or fails to confirm they still require an ABN.</p>	<p>The Registrar may cancel a person’s ABN if the Registrar is satisfied that the person is registered under an identity that is not their true identity, or if, at the time of their registration, the person was not entitled to have an ABN, or they are no longer entitled to have an ABN.</p>
<p>In addition to the Registrar’s existing reinstatement obligations, if a person’s ABN has been cancelled because of a failure to lodge their income tax returns, the Registrar must reinstate the person’s ABN if the Registrar is satisfied the person has made arrangements with the Commissioner of Taxation to lodge the relevant tax returns. The Registrar must also reinstate the person’s ABN if the person updates their details, and confirms they require an ABN, with the Registrar.</p>	<p>The Registrar must reinstate a person’s ABN where that ABN has been cancelled, if the Registrar is satisfied that the ABN should not have been cancelled.</p>

New law	Current law
An ABN holder may notify the Registrar in the approved form that they still require an ABN and that all the information they have given to the Registrar remains accurate and complete.	No equivalent.

Detailed explanation of new law

- 1.12 Section 18 of the ABN Act lists grounds under which a person’s registration in the Australian Business Register, their ABN, may be cancelled by the Registrar.
- 1.13 Schedule 1 to the Bill provides for two new grounds under which the Registrar may cancel an ABN, and contains corresponding provisions for the reinstatement of ABNs cancelled under these new grounds.
- 1.14 Unless otherwise provided, references to legislation in this section are to the ABN Act.

Cancellation for outstanding income tax lodgement obligations

Cancellation

- 1.15 A person must, if required by the Commissioner of Taxation, provide an income tax return for a year of income (see section 161 of the *Income Tax Assessment Act 1936*).
- 1.16 The amendments provide that the Registrar may cancel a person’s ABN if satisfied that they are required to lodge an income tax return in relation to an income year and the person has not lodged income tax returns in relation to two or more income years where the period specified by the Commissioner of Taxation for lodgement of the income tax returns has ended. The income years in which a person fails to lodge their returns do not need to be consecutive years. [*Schedule 1, items 3 and 4, sections 18(1) and 18(1)(d)*]
- 1.17 This ground for cancellation applies in relation to a failure to lodge tax returns beginning with income years commencing on 1 July 2022. Therefore, the earliest the Registrar may cancel an ABN under this ground is in the second half of 2024 following a person’s failure to lodge an income tax return for the income years beginning on 1 July 2022 and 1 July 2023. [*Schedule 1, item 7(1)*]

Reinstatement

- 1.18 If the Registrar cancels a person's ABN because of a failure to lodge income tax returns, the Registrar must reinstate the ABN where the Registrar is satisfied that the person has lodged, or has made arrangements with the Commissioner of Taxation to lodge, the relevant income tax returns. [*Schedule 1, item 5, section 19(1)(b)*]
- 1.19 Arrangements to lodge include arrangements to engage with the Commissioner of Taxation on lodging relevant overdue income tax returns. For example, the Registrar may be satisfied that a person has made arrangements to lodge the relevant returns where the person has communicated an intention to lodge to the Commissioner of Taxation and has undertaken to provide their lodgements by a certain date.
- 1.20 Where an ABN is reinstated in this way, the reinstatement has effect on and from the day on which the Registrar cancelled the ABN. Where the Registrar has reinstated the ABN, the Registrar can again cancel the ABN where the arrangements made with the Commissioner of Taxation to lodge outstanding income tax returns has not been satisfied.

Registration

- 1.21 The Registrar must not register a person where the person has had a previous ABN cancelled due to failure to lodge income tax returns, and the person has not lodged those returns and has not made arrangements with the Commissioner of Taxation to lodge those returns. [*Schedule 1, item 1, section 10(3)*]
- 1.22 These provisions are necessary to prevent a person whose ABN has been cancelled for their failure to lodge income tax returns from simply applying again and being re-registered.

Cancellation for failure to confirm ongoing requirement for an ABN and currency of information

Notification

- 1.23 ABN holders may confirm the accuracy of their information held by the Registrar and confirm with the Registrar that they still require an ABN. Details to be confirmed include the details required to apply for an ABN (see Division 4 of Part 2 of the ABN Act). An ABN holder may notify the Registrar of these matters at the same time as notifying the Registrar of any changes of circumstances (see section 14(1) of the ABN Act). [*Schedule 1, item 2, section 14A*]

- 1.24 These notifications must be made in the approved form. [*Schedule 1, item 2, section 14A(2)*]

Cancellation

- 1.25 The amendments provide that the Registrar may cancel a person's ABN if satisfied that the person has not notified the Registrar under new section 14A(1) about still requiring the ABN and the currency of information given to the Registrar. The Registrar's power to cancel an ABN in this way applies where the ABN holder has not provided a notification within the previous 12 months. [*Schedule 1, item 3, section 18(1)(e)*]
- 1.26 This ground for cancellation applies in relation to an ABN holder's failure to confirm their details and their continued requirement for an ABN. It can be exercised after 1 July 2024. In effect, this requires an ABN holder to notify the Registrar in accordance with section 14A at least once in the period between the commencement of these provisions and 1 July 2024, and at least once in each subsequent 12-month period. [*Schedule 1, item 7(2)*]

Reinstatement

- 1.27 If the Registrar cancels a person's ABN in this way, the Registrar must reinstate the ABN if the person notifies the Registrar of their details and their need for an ABN in accordance with section 14A. Where an ABN is reinstated in this way, the reinstatement has effect on and from the day on which the Registrar cancelled the ABN. [*Schedule 1, item 5, section 19(1)(c)*]

Consequential amendments

- 1.28 The amendments insert definitions for the terms income tax return and income year into the dictionary in section 41. The terms are defined to have the meaning given by section 995 1(1) of the *Income Tax Assessment Act 1997*. [*Schedule 1, item 6, section 41*]

Commencement, application, and transitional provisions

- 1.29 The amendments commence on the first 1 January, 1 April, 1 July or 1 October that occurs after the day the schedule receives the Royal Assent.
- 1.30 Cancelling a person's ABN due to the failure to lodge two or more income tax returns applies from income years commencing on or after 1 July 2022. The earliest an ABN may be cancelled under this ground will be the later half of

2024, following the failure to lodge income tax returns for income years commencing 1 July 2022 and 1 July 2023. [*Schedule 1, item 7(1)*]

- 1.31 The Registrar may cancel a person's ABN from 1 July 2024 following the person's failure to confirm their details and their need for an ABN within a 12-month period. Initially ABN holders will have from the commencement of these provisions, up until that date, to first update or confirm their details. [*Schedule 1, item 7(2)*]