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Designing a modern  
Australian Business  
Number system  
consultation

Black Economy  
Division Treasury  
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## **RESPONSE: Designing a modern Australian Business Number (ABN) system**

NAVA welcomes the opportunity to advise on possible changes to the ABN system in response to the Black Economy Taskforce findings.

The National Association for the Visual Arts is the peak body representing the professional interests of the Australian visual and media arts, craft and design sector, comprising of 20,000 practitioners, galleries and other art organisations. Since its establishment in 1983, NAVA has been influential in bringing about policy and legislative change to encourage the growth and development of the visual arts sector and to increase professionalism within the industry. Through the Code of Practice for the Professional Australian Visual Arts, Craft and Design Sector, NAVA sets best practice standards for the contemporary arts industry.

In January 2005, on the advice of NAVA and industry colleagues, the Australian Tax Office (ATO) issued the Public Taxation Ruling: carrying on business as a professional artist (TR 2005/1). This Ruling provides clear income tax entitlement guidelines as to who can be regarded as a professional artist rather than a hobbyist in order to claim their art business expenses against all forms of income, whether from their art practice or any other income source. Currently, having an ABN is considered a signifier to be recognised as a practicing professional artist. If you do not have an ABN then you are considered to be operating your practice as a hobby.

While some changes to the ABN system may be helpful, NAVA is concerned that adjusting ABN entitlement rules and imposing conditions on ABN holders will be detrimental to artists and some arts workers operating as sole traders. The focus of any changes should instead be directed to employers who avoid responsibility for employee entitlements by operating 'sham contracting' and other fraudulent behaviour identified by the taskforce.

NAVA's responses to the designing a modern Australian Business Number system consultation questions are as follows:

**1. Are changes needed to the ABN system to take into account the expanded purposes for which ABNs are used today? If so, what changes?**

No comment.

**2. In your experience, is an ABN viewed as a sign of authenticity or legitimacy? If so, what impact does this have?**

Yes, having an Australian Business Number (ABN) allows you to conduct business as a sole trader or partnership which is currently considered to be a signifier of being a practicing professional artist or arts worker.

NAVA Premium Plus Memberships are offered to individual professional practicing artists and arts workers who are operating as a sole trader or partnership. A 'sole trader' or 'partnership' is a business structure recognised by the Taxation Office and commonly adopted by professional artists and arts workers. The Tax Ruling: carrying on business as a professional artist (TR 2005/1) provides clear income tax entitlement guidelines as to who can be regarded as a professional artist rather than a hobbyist.

**3. Who should be entitled to an ABN? Who should not be entitled to an ABN? What are the risks or benefits from any changes to ABN entitlement rules?**

Those who genuinely operate their own business or intend on establishing their own business should be entitled to an ABN as per the current system.

Having an ABN is important to professional artists because the practitioner is considered to be 'in business', and therefore other businesses with whom they deal will not be required to withhold 46.5% of any payment as required under Pay As You Go (PAYG). As well as being able to claim business expenses.

NAVA agrees with two observations made by the Black Economy Taskforce:

- the reason for some increase in ABN users is likely due to increased entrepreneurship, flexible work patterns and the rise of the gig economy;
- some people working as employees are incorrectly told that they are independent contractors and required to have an ABN and submit invoices.

Some employers contract their workers as a way to cut down their own costs, devolving their legal responsibility of paying tax and

superannuation for their employees. NAVA recommends that the entitlement rules be made clearer and simpler. This is important, so employers don't believe there is a loophole to avoid on costs or make the mistake of misunderstanding the rules, and so employees who are asked to provide an ABN and submit invoices can be more confident in rejecting the request without jeopardising their jobs.

NAVA is concerned that by adjusting ABN entitlement rules and imposing conditions on ABN holders, the impact will be felt by artists and arts workers operating as sole traders or partnerships, instead of by those employers who avoid responsibility for employee entitlements by operating 'sham contracting' that these changes are aiming to prevent. More needs to be done to penalise the employer operating 'sham contracting' rather than the ABN holder/contractor.

#### **4. What is the best way of ensuring that only those who are entitled apply for and are granted an ABN?**

Making the application process for ABNs more complicated is likely to penalise more honest people in business than those abusing the system.

#### **5. Should individual contractors holding ABNs be required to register for GST regardless of the amount of their annual turnover?**

No, individual contractors should not be required to register for GST.

Most professional artists carry on their business as sole traders. As part of TR 2005/1, the Courts recognised that a person can be carrying on a business in a small way. This will necessarily limit the size or scale of their activities. The Tax Ruling is based on standard industry practices not only for visual artists and craft practitioners but all Australian creators including performers, writers, composers and choreographers. After very prolonged negotiations, the ATO now recognises that although most professional artists have the intention to make a profit from their art practice, often this success is slow to come or erratic over the course of their careers. Consequently artists usually have to undertake other work in order to survive.

Recently, the Australia Council research report '[Making Art Work](#)' revealed that about 61% of artists make less than \$10,000 per year from their creative work. At the other end of the income scale, only 11% of visual artists made more than \$50,000 in the financial year 2014-2015.

Currently you can obtain an ABN and choose to register or not register for the GST if your business income is below \$75,000 per annum. Some practitioners may have decided not to register for GST based on their overall income position; their unwillingness to undertake the necessary

paperwork; and their preparedness to absorb the GST component of materials, equipment, and other items related to the production of their work, including the GST component of any commission fees charged by the gallery/retail outlet (the full amount of these costs can be claimed as professional expenses at the end of the financial year).

According to the ABR, there are over 13 million ABN holders in Australia and currently less than 3 million of those are registered for GST. The impact of making every ABN holder register for GST would not only be onerous for the ATO, but the government is likely to lose a great deal of revenue from increased GST credits.

**6. Could the ABN application process or ABR guidance material be made clearer to help applicants (and employers) distinguish between an employee and a contractor, or to better highlight the consequences if an applicant is caught intentionally ignoring the ABN entitlement rules?**

Yes, entitlement rules should absolutely be made clearer and simpler. Employers need to better understand the rules and the consequences of contracting workers who should be deemed employees. Current advice from the ATO and the ABR is vague and ambiguous for people trying to determine the difference between a contractor and an employee. The advice given to employers and potential employees/contractors can also be conflicting, with the employer's voice having more weight than the employee/contractor.

**7. Should an ABN holder be required to meet certain conditions or undertake certain obligations? If so, what obligations should apply? Should any exemptions apply and under what circumstances?**

ABN holders may be required to meet certain conditions or undertake certain obligations in addition to the current conditions of keeping contact details up to date and submitting tax returns, even when making a nil income. The current conditions, in addition to any new conditions or obligations need to be more clearly outlined to ABN holders. Any new conditions or obligations should not be administratively heavy or complicated to avoid any additional burden on sole traders. Additionally, it should not be a condition that an ABN holder make a profit in order to maintain status as an ABN holder.

**8. What consequences should apply if an ABN holder does not meet the required obligations (e.g. cancellation of an ABN, publication of a non-compliant status, penalties)? How could these consequences be designed to avoid unfair consequences for businesses?**

NAVA recommends that a step process be implemented to avoid unfair consequences for honest businesses. ABN holders should be given notice with sufficient time to rectify and comply with obligations before penalties are issued.

**9. What notification should be given to an ABN holder of the ABR's intention to cancel their ABN?**

ABN holders should be notified via mail, email and by phone with a set time period in which to respond to this notification in order to stop the cancellation of their ABN.

**10. Are changes to the ABN system, or related systems and laws, needed to support easier verification of an ABN holder? For instance, this might include increased visibility of ABNs as part of business dealings or better linking ABNs to other systems (such as payment platforms).**

No comment.

**11. Should specific action be taken to require ABN verification:**

- **for market stalls and food trucks?**
- **in order to access trade discounts?**

No comment.

**12. How could the quality of ABN data be improved?**

No comment.

**13. As an end user of ABN data, what information on ABN holders is, or would be, most useful to you?**

No comment.

**14. As an ABN holder, what information would you want to be publicly available on the ABR, noting that there are options to suppress information from being released publicly in certain circumstances?**

No comment.

**15. Should ABN holders have to renew their ABNs? If so, how often? Should the same renewal period apply for all ABN holder entity types?**

A renewal system may be appropriate in order to ensure that ABN holders are carrying out the conditions and obligations of holding an ABN. Any renewal process should not be administration heavy or complicated in order to avoid any additional burden on sole traders. A simple online process would allow ABN holders to keep their contact details up to date as well as confirm their compliance with conditions and obligations.

**16. What consequences should apply - and when - if an ABN holder does not renew their ABN on time? This could include late fees, a change in ABN status published on ABN Lookup, eventual suspension and/or cancellation.**

NAVA recommends that a step process be implemented for ABN holders who do not renew on time. Reminder notices should be sent via mail, email and by phone and given with sufficient time to renew before penalty. Reminder notices should also outline the penalties of not renewing on time, and any reason for penalty should also be made clear.

**17. Are ABN registration and renewal fees the most appropriate way to fund an ABN renewal process? Are there other options that should be considered?**

NAVA is concerned of the impact that prohibitive registration and renewal fees will have on low income earners and honest start-up businesses. As previously mentioned most artists make less than \$50,000 total income per year. When incomes are at this level, even a small fee can impact on an artist's ability to sustain their business. The establishment of renewal fees should take this in to account.

If the Black Economy Taskforce figures are correct, penalties charged to ABN holders and employers operating 'sham contracting' and other fraudulent behavior should drive enough revenue to support additional administration required to run the ABN renewal system.

**18. If a fee is thought to be the most appropriate option, should the same registration and renewal fees apply for all ABN holder entity types? What ABN fee arrangements should apply to entities that are also subject to company or business name fees?**

If ABN renewal fees are to be introduced, NAVA recommends that a sliding scale rates be implemented for different sized entities to ensure that smaller businesses with lower turnovers pay fees that are proportionate to their business size. Not for profit and charity organisations should be exempt from ABN renewal fees.

Australia's 8,000-9,000 practicing professional visual artists make a substantial contribution to the economy collectively, even though individually the contribution may be low. The way independent artists model portfolio careers for the gig economy is watched closely by all social enterprises and entrepreneurial industries. Impacting on the dynamism of the small scale can have massive impacts and this must be avoided.

NAVA strongly advises Treasury not to make changes to the ABN system that will be prohibitive to artists and low income sole traders from either obtaining or managing an ABN.

Please do not hesitate to contact me for any further information I can provide.

Sincerely,



Penelope Benton  
General Manager