

## **Submission responding to the Treasury Consultation paper 'Designing a modern Australian Business Number system'.**

15 November 2018

In this submission we

- a) Are critical of the ATO's current approach to denying and cancelling ABNs. We argue that their approach
  - threatens the integrity of the tax withholding system
  - has become a trigger for expanded black economy activity
  - is damaging job creation and job maintenance
  - is pushing otherwise working people onto social welfare
  - is harming economic activity and Australian entrepreneurship
- b) View the Treasury discussion paper as helpful to a balanced debate on the ABN issue.
- c) Put our views as to the way forward

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## **1. The Treasury Consultation: The perception of a problem**

The Treasury Consultation paper draws on Treasury's Black Economy Taskforce report. The Taskforce:

- Presents a picture of a 'problem' even a 'crisis' with self-employed people being involved in alleged black economy activity.
- Reflects alleged community concern but certainly media coverage purporting to show that a problem exists. Much of this media coverage has been generated by the Australian Taxation Office (ATO) through its media releases over the past few years.
- Proposes remedial solutions that mainly involve the expansion of ATO powers and red tape reporting.
- Proposes that much of the alleged self-employed black economy activity can be restricted by denying self-employed people ABNs. It is not explicitly stated but we surmise the reasoning is that, by denying the self-employed ABNs, people will be forced to become employees. This will have the effect of nudging them into classic PAYG tax and other regulatory compliance arrangements that the Australian Tax Office prefers. This reflects a strong institutional bias.

The Treasury Consultation paper discusses the Taskforce's asserted 'problem' and its proposed solutions. It does so in a balanced manner. The Consultation Paper displays an understanding of the unintended consequences of many of the Taskforce's proposed solutions.

## 2. Putting the discussion within a factual context

### The number of self-employed

The data in the table below is sourced from the Australian Bureau of Statistics and is recorded here <https://www.selfemployedaustralia.com.au/Research/How-Many/independent-contractors-how-many>. It shows the numbers and percentages of self-employed since 1978.

Year	Independent Contractors	Owner Managers		Total Self-employed
		With employees	Without	
2016 Aug <sup>13</sup>	1,028,800	729.4	1,288,000	2,017,400
2016 Aug <sup>13</sup>	8.70%	6.20%	10.90%	17.10%
2015 Aug <sup>12</sup>	1,012,200	764,700	1,310,200	2,074,900
2015 Aug <sup>12</sup>	8.70%	6.60%	11.2%	17.80%
		<b>Other Business Operators [may employ others]</b>		
2013 Nov <sup>11</sup>	986,400	1,013,500		2,017,400
2013 Nov <sup>11</sup>	8.50%	8.70%		17.20%
2012 Nov <sup>9</sup>	980,000	1,000,000		1,980,000
2012 Nov <sup>9</sup>	8.50%	8.70%		17.20%
2010 Nov <sup>8</sup>	1,100,000	1,000,000		2,100,000
2010 Nov <sup>8</sup>	10%	9.10%		19.10%
2009 Nov <sup>7</sup>	1,000,000	975,000		1,975,000
2009 Nov <sup>7</sup>	9.30%	9.10%		18.45%
2008 Nov <sup>5</sup>	967,100	1,064,400		2,031,500
2008 Nov <sup>5</sup>	9.10%	10%		19.10%
<b>Definition used until 06</b>	<b>Own-account workers or owner unincorporated enterprise</b>	<b>Employers or owner-managers of incorporated enterprises</b>		
2006 Nov <sup>5</sup>	673,700	1,231,700		1,904,700
2006 Nov <sup>5</sup>	6.60%	11.9%		18.80%
2004 Nov <sup>4</sup>	7.20%	12.70%		19.90%
1998 Aug <sup>3</sup>	7%	12.80%		19.80%
1998 Aug <sup>2</sup>	8.60%	7%		20.40%
1978 Feb <sup>2</sup>	6.70%	9.70%		16.40%

#### References

- (1) Institute of Public Affairs: Just How Many Are There?
- (2) Productivity Commission of Australia, Pub 2001, ISBN 1 74037 053 8
- (3) Australian Bureau of Statistics, Pub 2000, Forms of Employment 6359.0
- (4) Australian Bureau of Statistics, Pub 2005, Forms of Employment 6359.0
- (5) Australian Bureau of Statistics, Pub 2007, Forms of Employment 6359.0
- (6) Australian Bureau of Statistics, Pub 2009, Forms of Employment 6359.0
- (7) Australian Bureau of Statistics, Pub 2010, Forms of Employment 6359.0
- (8) ABS Media Release, November 2010
- (9) ABS Media Release, November 2012
- (10) Australian Bureau of Statistics, Pub 2011, Employee Earnings, Benefits and Trade Union Membership 6310.0, November 2012
- (11) Australian Bureau of Statistics, Pub 2013, Forms of Employment 6359.0
- (12) <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6333.0>
- (13) <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6333.0>

The following observations are relevant to the ABN discussion.

- The number of self-employed people has been stable for the last decade (since at least 2008) fluctuating around the 2 million mark.
- The percentage of self-employed people in the workforce has been in slight decline for the last decade.

This ABS data is at odds with the Black Economy Taskforce report. The report talks of increasing numbers of self-employed. It claims that this supposed growth is a problem that will result in increasing tax non-compliance. The Taskforce report is reacting to a proposition regarding growth that is not supported by ABS data.

#### Decline in self-employed employers

Although not completely identifiable in the above data what does seem to be occurring more recently is that there is a shift away from self-employed people being employers.

- In 2008 there were 1,064,000 self-employed employers (10% of the workforce)
- In 2016 there were 729,000 self-employed employers (6.2% of the workforce)

This apparent shift away from self-employed people being employers, and working as individuals may perhaps have sparked concerns for the Black Economy Taskforce. Speculatively the view may be that where individuals earn their income as a 'business of one' (non-employing self-employed), those people are more likely to engage in black economy activity.

Conversely, if solo businesses are on the rise (as the ABS suggests) this is just as likely to be a long-term economic trend made possible by efficient contemporary technology. One of the risks of reacting against solo businesses is that such actions impede the natural evolution of a service-based economy that is increasingly amenable to solo businesses.

The Treasury Consultation paper on page 5 shows a significant increase in the number of individuals applying for an ABN between 2011 and 2017. Whether this trend constitutes a 'problem' should be viewed with an open mind. We know very little about the self-employed sector as a whole. Research on the sector is poor, although it constitutes nearly one-fifth of the workforce. Likewise too little is understood about emerging dynamics in contemporary economies. Modelling and assumptions tend to be dated.

A lot of subtle restructuring of economic behaviours has taken place since 2008. One factor is increased business flexibility. For example, a person who has an ABN in a business partnership may want a solo ABN for an unrelated enterprise with a different business structure that they wish to conduct separate from their partnership enterprise. In this case, the person is choosing to engage in two separate business entities with different business structures, one a partnership, one a solo structure.

Innovation is a further consideration. Innovation is a crucial driver of long-term economic performance. An established business that is viable and successful will be registered for GST when its turnover exceeds the GST turnover. Many experimental businesses in their early years of operation will never exceed the GST threshold or

come close it. Again, the business structure is inherently different for an experimental and an established business. In a period of increased business innovation, an increase in applications for solo ABNs is to be expected. The 2011-2017 time frame identified in the Treasury Consultation paper coincides with an economy recovering its innovation energies after the deep 2008 downturn.

### **3. What is black economy activity and the practicality of addressing it?**

Simply, black economy activity is when income earners, whether as individuals or structured businesses either small or large, do not report all their income to the ATO and hence pay less tax than they should or no tax.

Black economy activity has many forms. But there are several common identifiable patterns including:

- Clear criminal activity such as drug- and people-trafficking and illegal prostitution.
- Apparently legal and legitimate businesses underreporting income.

In terms of suppressing black economy activity:

- Where business activity is legal and legitimate, the first priority would be to ensure that as much of that business activity is properly reported.
- Where criminal activity is the issue, resolution is difficult, complex and often dangerous involving law-enforcement agencies.

For the purposes of the current discussion, the public policy priority should be on ensuring the reporting of legitimate business activity is accurate. Yet the Black Economy Taskforce report gives mixed even confusing signals in this respect.

The balanced discussion in the Treasury paper seems to recognise that confusion.

The overriding question is why would government not want people who are engaged in legitimate business activity to not have an ABN? This seems illogical. First it creates by fiat arbitrary distinctions and assumptions about what is and is not business activity. Second it reduces rather than increases tax compliance capability.

### **4. The ABN historical context and the black economy**

It is helpful to properly understand the historical background to the development and implementation of the ABN and why it was put in place. We say this is helpful because the ABN was introduced to reduce black economy activity amongst self-employed people and create more compliance. There is significant risk, that given the current debate and discussion, if the wrong moves are made the black economy problems that the ABN rectified will re-emerge.

In Australia it was during the 1980s and 1990s that a significant revival in self-employed numbers occurred after a visible decline had occurred in the mid-twentieth century. In the mid-twentieth century, an organization-focused economic model dominated. Self-employment accordingly shrank. It revived again in the 1980s and 1990s due to the possibilities opened up by communication and information

technologies, the shift to a service economy and the growing attraction to more flexible and autonomous forms of employment.

Since the late 1980s the share of self-employed in the Australian workforce has been broadly constant. Solo businesses and partnerships are common in construction, retail and wholesale, professional and technical services, and the health sector as well as in information, finance, and real estate industries. These industries encompass high, middle and low-income workforces as well as traditional industries and contemporary service sectors.

## **5. The Australian Tax Office**

The Australian Tax Office (ATO) has been influential in creating a ‘climate of opinion’ about the self-employed sector. From the ATO’s perspective the self-employed presented a major ‘threat’ to revenue collection. Built into the ATO’s view is an historical bias left-over from the mid-twentieth century, where the prevailing ethos was one of big institutions interacting with other big institutions. This was an era when it was assumed that small operators were disappearing (which for a time they were). The ATO’s philosophy of taxation has not adapted to the more recent era when smaller business entities have become more prominent, not only as a share of the total workforce but also as a share of business receipts.

Historically, going back to the 1980s, the Tax Commissioner did not have the legislative authority to collect withholding tax from self-employed people. Income tax withholding was legislatively tied to the employer-employee relationship. That is that only employers had a responsibility to withhold and remit taxes. Arguably this encouraged the black economy to thrive within the self-employed community particularly in the construction sector.

To address the legislative gap the Prescribed Payment System (PPS) was introduced in the late 1980s and the ATO conducted aggressive auditing particularly in the construction industry through the 1990s. The ATO auditing ran parallel to considerable industrial disputation in construction and attempts by construction unions to stop self-employment operating in construction. This resulted in high politicisation of the self-employed issue in which the ATO reluctantly became caught. What further became clear however is that the PPS arrangements did not achieve the desired withholding compliance objectives. Black economy activity was widespread and substantially out of the ATO’s legislative reach.

By the late 1990s the proposal to introduce a GST created the circumstance to reform the withholding arrangements at the same time. Where the GST was politically controversial, the withholding reforms had cross-party political support. The resulting PAYG arrangements were a carefully thought-out and integrated package that united GST and income tax withholding under the PAYG (as opposed to the old PAYE) system.

PAYG has three legislative legs

- 1) Where an employment arrangement exists the employer has withholding obligations.
- 2) Where a direct self-employment arrangement exists the self-employed person has the withholding obligations. The holding of an ABN is central to this. It is the unifying number that applies under both the BAS (Business Activity Statement) and IAS (Instalment Activity Statement) returns.
- 3) Where self-employment operates through labour hire, the self-employed person does not require an ABN. Instead the labour hire entity has withholding obligations.

The system was supposed to operate to optimise ATO auditing through a system of cross-referencing ABNs, TFNs and bank account details. This auditing 'net' should have been capable of capturing data on legitimate business income and 'red flagging' unexplained income and wealth. That is, it should have delivered accurate reporting of business income.

## **6. Lessons and questions**

The question now is, has this auditing system worked or has it not delivered the auditing and reporting capacity that the policy makers envisaged and the ATO needs?

The Black Economy Taskforce report suggested that the ATO's auditing capacity utilising ABNs, TFN, bank account details, BASs and IASs in a system of cross referencing is not achieving the required results. That is, the ATO is collecting a massive amount of data but its use of that data is ineffective. The Taskforce report portrays the black economy as enormous and almost unrestrained. That implies that the ATO's method of auditing has failed.

Another possibility is that the ABN-related system of auditing and reporting has produced required results and has kept a lid on black economy activity as envisaged in 2000 when PAYG was introduced. As the Black Economy Taskforce report admits, its analysis of the size of the black economy (chapter 2) is pretty speculative. The Australian Bureau of Statistics in 2012 estimated the size of Australia's black economy at 1.5 percent of GDP, only a tiny fraction bigger than it was in 2001, up from 1.3 percent of GDP. The Black Economy Taskforce in 2017 doubled the size of the ABS estimate by including an estimate of the size of illegal criminal activity such as illegal drugs as opposed to the ABS focus on under-reporting income and over-claiming expenses. The Taskforce concluded that the size of the black economy "could be" as large as 3 percent of GDP. Fine, but that doesn't mean the size of the black economy is any bigger as a portion of GDP than it was in 2001. Criminal activity existed in 2001. Like with legitimate business activity, the profile and composition of criminal activity changes over time, as does the nature of under-reporting and over-claiming. That doesn't mean such activities necessarily get bigger or worse but rather just different.

What is clear in the Black Economy Taskforce report is a distinct undertone of moral panic. In chapter 2, it claims without evidence that the black economy is an 'endemic cultural problem' with casual support for it becoming 'more entrenched' with the passage of time. There is also an anxiety evident over the 'adoption, up-take and

spread of new business models in the economy’. The report acknowledges briefly in passing that this is ‘a positive development’ but then immediately casts aspersions on that idea as it complains that regulation can’t keep up with the changes. It singles out the ‘shift of contracting into new sectors (including human services) [and] the sharing or gig economy’ as examples, underlining the well-established aversion of government organizations to independent contracting. No evidence is provided in the report for any of these claims. They are simply asserted.

That there are new business models is true. That’s how dynamic economies evolve and prosper. The Black Economy Taskforce report makes no effort to demonstrate in a systematic or plausible manner how or why such developments might or might not contribute to making the black economy worse, or whether in fact as business models evolve a small but constant fraction of business behaviour is illegal irrespective of the prevailing business model. Conversely the Black Economy Taskforce does not ask whether proposed measures to reduce illegal behaviour might have a much larger unintended consequence of suffocating new business models or reducing the efficacy of established sound techniques of fighting illegal business activity.

It is essential that we ensure that the suppression of the black economy that was designed to be achieved under PAYG is not undone through a miscalculation of changes to ABN entitlement. The unintended consequence of any misstep on the ABN issue could be to reignite rather than suppress black economy activity. We are not certain what levels of black economy activity have occurred when, or whether this activity has grown or (as the ABS has estimated) has remained roughly stable. There is also the question of whether it is not the illegal business activity that is the real operational issue but rather whether the ATO’s data analytics and its cross-referencing of data sources effectively services the PAYG architecture. Other data cross-referencing solutions are important. For example the use of what the Black Economy Taskforce describes as ‘real-time ABN authentication’, digital tools to check on the spot that a business’ claimed ABN is authentic.

## **7. ATO behaviour toward ABNs over the last few years**

It is unfortunate but there is a perception that the ATO has an unbalanced perception of the community.

This was perhaps best identified by recently-retired Federal Court Judge Richard Edmonds. In a letter to the *Australian Financial Review* (April 2018) he referred to:  
“... the existence of a mentality, maintained by too many ATO officers for too long, that taxpayers on the whole are cheats and liars and anything the ATO does to bring them to account can be justified...”

Edmonds is one of Australia’s most knowledgeable tax jurists with 50 years’ experience in tax law.

The ATO’s perception of taxpayers has come into sharp relief over the ABN issue. What seems to have been forgotten by the Australian Tax Office is that the ABN was intended to capture as many people as possible who wanted to be self-employed. That is, that the ATO was expected to have a culturally-neutral attitude toward self-employed people. The PAYG system was designed to be impartial and unconcerned



with whether people were employees or self-employed. The task of the ATO was to focus on effective tax collection no matter what the legal status of the person.

But the actual ATO culture suggests otherwise. It is unsympathetic to self-employment. Its culture is anchored in the mid-twentieth century when self-employment had largely disappeared and the expectation was that most business activity would be channelled through large or mid-sized employing organizations and most taxpayers would be employees. The ATO in practice has found it hard to shake off these assumptions. Its policies may have changed but it's more deeply-rooted attitudes have not. It has not adapted to an economy that has more self-employed than the mid-twentieth century and that has a greater emphasis on flexibility and innovation.

As a result the ATO has a tendency to see self-employed people as 'cheats or liars and anything the ATO does to bring them to account can be justified.' The reason is its tacit culture. It's a large traditional twentieth-century organization with a large number of employees. It prefers to deal with big employee-based organizations. It feels most comfortable with employee contracts. It has an implicit disposition to look on independent contracting as 'sham' contracting. It has an unspoken preference for nudging people into employment contracts in place of independent contracts. This is not explicit policy. It's the organization's deep culture. Its unstated preference is that businesses are employers who enforce withholding. One of the ways to achieve this is to deny the self-employed ABNs or remove those ABNs from self-employed entities.

## **8. ATO operations with respect to ABNs**

The ATO's process for denying or removing ABNs is flawed. This is so because:

- The ATOs (ABRs) internal processes are not transparent or accessible to the persons/entities that are subject to the process of denial or removal.
- Any appeal of an ATO decision to deny or remove an ABN is to the ATO itself. That is, the ATO is the assessor, judge and jury.
- The ATO as an executive agency makes interpretive judgments of what is and is not a business enterprise. This usurps the role of the courts (see further below).
- Applications for ABNs can take up to 3 months to be decided.
- ATO phone staff have a tendency to be rude, off putting and abrupt to people asking why an ABN has been rejected or withdrawn.
- The ATO's contractor/employee tool meant to be used to work out whether a person is an employee or a contractor for tax purposes is misleading and unreliable.

## 9. ABN entitlement under the law

Determining whether someone is entitled to an ABN is subject to a chain of statutory definitions. It might be expected that the ATO adheres to these statutory requirements

The chain of statutory definitions are as follows

### 1) *Are you entitled to an ABN?*

- (1) \* You are entitled to have an Australian Business Number (\* ABN) if:
- (a) you are \* carrying on an \* enterprise in \* Australia; or  
(A NEW TAX SYSTEM (AUSTRALIAN BUSINESS NUMBER) ACT 1999 - SECT)8

### 2) *Dictionary*

*"carrying on "* an \* enterprise includes doing anything in the course of the commencement or termination of the enterprise.

*"enterprise "* has the meaning given by section 9-20 of the A New Tax System (Goods and Services Tax) Act 1999

(A NEW TAX SYSTEM (AUSTRALIAN BUSINESS NUMBER) ACT 1999 - SECT 41

### 3) *Enterprises*

- (1) An enterprise is an activity, or series of activities, done:
- (a) in the form of a \* business; or  
(b) in the form of an adventure or concern in the nature of trade; or
- (2) However, enterprise does not include an activity, or series of activities, done:
- (a) by a person as an employee or in connection with earning \* withholding payments covered by subsection (4) (unless the activity or series is done in supplying services as the holder of an office that the person has accepted in the course of or in connection with an activity or series of activities of a kind mentioned in subsection (1)); or  
(A NEW TAX SYSTEM (GOODS AND SERVICES TAX) ACT 1999 - SECT 9.20)

3) *"business "* includes any profession, trade, employment, vocation or calling, but does not include occupation as an employee.

(A NEW TAX SYSTEM (GOODS AND SERVICES TAX) ACT 1999 - SECT 195.1 Dictionary)

From the above it can be concluded that

- A person is entitled to an ABN if they conduct an 'enterprise'
- An enterprise is defined as a 'business', an 'adventure' or a 'trade'
- A business includes a 'profession,' 'trade' 'employment' 'vocation' or 'calling.'

On this reading the legal entitlement to an ABN is a broad one, as it should be. Yet the ATO quite regularly rejects or cancels ABNs. This is based on the ATO's assessment that a person is not conducting an 'enterprise.'

The ATO sees itself as a judge of what is and is not an enterprise. Yet the only clear circumstance in which an ABN cannot be allocated is for a person who is an employee.

On the basis of this clear legal precept, the Australian Business Register (ABR) would seem to be obligated

- To provide an ABN to anyone who applies who says they are an 'enterprise; but
- To reject/withdraw an ABN to someone who is an employee

To deny someone an ABN on the basis that they are an employee would require

- An admission from that person that they are an employee, or else
- The ABR would need to conduct a common law assessment to determine that the person was an employee.

An executive branch agency is not a competent body to perform common law assessments.

## **10. What of the specific issues and questions raised in the Treasury consultation paper?**

The specific issues that the ABN review seeks to address include

The circumstances that lead to the original design of ABNs has moved on.

- Our reply is what circumstances? The Black Economy Taskforce did not provide hard, rigorous, reviewed or compelling evidence either that (beyond speculation) Australia's black economy has grown markedly in the last decade or that innovative business models today provide a richer environment for illegal behaviour. Simply asserting X does not make X true.

Self employment is increasing

- This is wrong. The percentage of the workforce that is self-employed has been broadly stable since the late 1990s.

The ABN has become a defacto 'licence to do business'

- We think this is a considerable overstating of the case. The ABN is only a registration system. It doesn't authorize business.

The ABN facilitates sham employment

- We agree that there is cause for review in this area. There are occasions when employers mask an employment relationship as an independent contracting arrangement. This is a matter for the courts to resolve not the ATO. To do otherwise to the usurp centuries of jurisprudence. The Fair Work Ombudsman can also impose penalties on employers who misrepresent an employment relationship as an independent contracting relationship. The Fair Work Ombudsman can also apply to the courts for injunctions and orders in relation to such matters. The ATO has no legitimate role in this arena let alone the proper expertise.

Phoenixing needs to be stopped

- Phoenixing (deliberating liquidating a company to avoid obligations) is an illegal activity. But it is not the product of the necessarily universal use of ABNs. A phoenix company must apply for an ABN but that ABN is not the cause or even the remedy of the illegal behavior involved in setting up such a company. A potential sign of phoenixing is when a company changes its ABN but its business address remains the same. But a sign of possible behavior is not the same as actual behavior. The two should not be confused.
- Various regulators have a carefully defined and specific share in addressing of

phoenix behavior. The ATO can take action in relation to unpaid PAYG withholding liabilities or the superannuation guarantee charge. The Department of Jobs and Small Business, which administers the Fair Entitlements Guarantee (FEG), provides help to claim unpaid employment entitlements. ASIC provides advice for creditors and employees of phoenix companies. No executive agency, indeed no branch of government, should be charged with anticipating illegal behavior and trying to stop it. It is wrong for agencies to try and anticipate what might happen and act, in this case by denying or removing an ABN. Executive agencies are not oracles. They cannot foresee what will happen. If they try to, they end up behaving in an arbitrary, random and despotic fashion.

There should be specific conditions associated with an ABN

- This is perfectly sensible. An ABN is an entitlement that holds with it certain administrative obligations, namely completion of regular BAS and IAS, submitting of tax returns and so on. If an ABN holder fails to perform these obligations it makes perfect sense that the holder loses their ABN entitlement.

The idea is raised that the ABN should be used to verify 'legitimate' businesses.

- This is an abhorrent idea. It constitutes an enormous overreach of the legitimate role of government. No one can legitimately predetermine what is a 'legitimate' business. A non-legitimate business is one that violates the law or violates a regulation that is defined by the law. Employing executive fiat and non-transparent processes to define the 'legitimacy' or 'validity' of a business will necessarily end badly. It opens the door to the making of prejudicial, arbitrary, capricious, illogical and indiscriminate decisions.
- The question of 'legitimacy' arises because, as the The Black Economy Taskforce put it, 'Black economy operators hide behind their ABN, which is treated by their counterparties as proof that they are fully compliant with tax, workplace relations and visa laws. In some cases contractors intentionally misquote ABNs to avoid detection by the tax authorities.' What that states is that a minority of persons commit fraud, and they do so using forms of identification that mask and facilitate their behaviour. How could a government agency predetermine with any certainty that operator X was engaging in dishonest behaviour in order to strip them of their ABN? This supposes omniscience on the part of the government. It also opens the door to suspicion, claim, bad-mouthing, rumour-mongering and misreading of the 'signs' becoming the basis for deciding that an ABN was valid or not.

## 11. Short responses to specific questions form the consultation paper

Consolidated list of questions:	JF comment
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?	We disagree that there is an expanded purpose for the ABN. It is and should remain an identifier for tax collection purposes.
2 In your experience, is an ABN viewed as a sign of authenticity or legitimacy? If so, what impact does this have?	No. ABN is used only in relation to the withholding obligations, nothing more.
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?	The Act clearly specifies who is entitled to an ABN, <i>A NEW TAX SYSTEM (AUSTRALIAN BUSINESS NUMBER) ACT 1999 - SECT 8 Are you entitled to an ABN?</i> This should not change
4 What is the best way of ensuring that only those who are entitled apply for and are granted an ABN?	Follow the system as now legislated. But follow it correctly and accurately. A key factor in ensuring the integrity of ABNs is the quality of government agency data analytics based on the cross-referencing of reported business information.
5 Should individual contractors holding ABNs be required to register for GST regardless of the amount of their annual turnover?	No. Small innovative start-up companies regularly do not reach the GST turn-over threshold but are essential to the ecology of business innovation. A clear distinction between an established company with GST-generating capacity and an experimental company with no such capacity is very useful especially for people involved in both kinds of enterprise simultaneously.
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?	No. The finest legal minds in the common law countries have written hundreds of pages in judgments on this topic. Wiser minds acknowledge that some things cannot be reduced to legislation. It is nonsense to think that a bureaucracy can devise a written decision making tool. And employment or contracting is an evolving business concept. To try to “deep freeze” the concepts will forever inhibit entrepreneurship and the development of new and innovative business solutions. The existing ATO ‘decision tool’ should be abandoned
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?	There are already clear administrative obligations for ABN holders. There should be an expectation of adhering to those obligations. But to extend the obligations beyond the tax administration issues is to turn the ABN into something it is not designed to do and risks the integrity of the withholding system. (ie) beware unforeseen and unintended consequences.
8 What consequences should apply if an ABN holder does not meet the	If an ABN holder does not comply with the administrative requirements it is reasonable to

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?	withdraw the ABN. It is reasonable because it can be clearly identified what has not been done (eg) lodgment of BAS and what to do to rectify the situation.
9 What notification should be given to an ABN holder of the ABR's intention to cancel their ABN?	28-days notice to lodge an objection. Consideration of the objection before a decision. An adverse decision to be independently reviewable before cancellation.
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).	The system of ABN Lookup is perfectly adequate. It links back to the ASIC ACN
11 Should specific action be taken to require ABN verification:	
a for market stalls and food trucks?	These are very small businesses and in a market. How on earth are shoppers going to verify an ABN? Why on earth would they want to do that?
b in order to access trade discounts?	Why would government get involved in this? Trade discounts are a Business-to-Business issue of no relevance to government. This proposal would extend the ABN beyond its purpose as a tax administration tool.
12 How could the quality of ABN data be improved?	The problem that is most likely to exist is not the quality of the data but rather the quality of the data analytics applied by government agencies to understand the significance of the data that they collect. As is widely understood, government analytics are generally poor, and it has to be noted that the very architecture of the PAYG system was premised on the effective cross-referencing of data.
13 As an end user of ABN data, what information on ABN holders is, or would be, most useful to you?	Data extension should not occur. The basic data that is currently available should be retained. If entities want additional data on businesses, go talk to the Australian Bureau of Statistics. Don't turn the ABN into something it is not supposed to be. That will corrupt the tax collection system.
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?	Nothing to be public except for the business name and ABN, linked to an ACN where that exists.
15 Should ABN holders have to renew	No, leave the system alone. This is just more red

<p>their ABNs? If so, how often? Should the same renewal period apply for all ABN holder entity types?</p>	<p>tape.</p>
<p>16What 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.</p>	<p>The system should not require ABN renewal. And forget about late fees, this is an intrusion that again tries to turn the system into something it is not designed to be, in this case a fee-raising tool.</p>
<p>17Are ABN registration and renewal fees the most appropriate way to fund an ABN renewal process? Are there other options that should be considered?</p>	<p>Recalling that government introduced the ABN system as a tax collection mechanism, if government stopped mucking around with the system, there would be much less cost involved.</p>
<p>18If 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?</p>	<p>There should be no fees. Full stop.</p>