

Our ref: Not-For-Profit Law Committee

5 March 2013

Mr Mark Jackson
Deputy Commissioner, Business Reporting and Registrations
Australian Taxation Office
PO Box 9977, Civic Sq
CANBERRA ACT 2608

By Post and Email to: [REDACTED]

Dear Deputy Commissioner

ISSUE AFFECTING NOT-FOR-PROFIT ORGANISATIONS- AUSTRALIAN BUSINESS NUMBER (ABN)

The Queensland Law Society draws your attention to a complication that has developed in the Australian Taxation Office (ATO) for not-for-profit organisations. The issue follows from the implementation of the simplified process in each State enabling an incorporated association to transition to a public company limited by guarantee under various State legislations and Part 5B.1 of the *Corporations Act 2001*.

An incorporated association may have an ABN. Upon the registration of the company (into which it is transitioning), the company is given an Australian Company Number (ACN). This will be a completely unrelated number to the existing ABN.

According to information provided by the Australian Business Register (ABR), the entity has the choice to:

1. Retain its existing ABN and simply ask the ABR to change the entity type on the ABN register; or
2. Seek a new ABN (which will then be consistent with the ACN) and cancel the old ABN.

Given the significance of the ABN, this is an important choice and it should continue to be available.

A number of our member legal practitioners acting for not-for-profit organisations have recently had the experience of being told by the ATO that there was no option but for the organisation to obtain a new ABN after its transition. The significance of the choice is illustrated by considering the following:

1. If the company determines to continue to use the existing ABN (that of the old incorporation), the ABN will not be consistent with its ACN. The company will need to ensure that it uses the correct numbers in public documents and in correspondence with ASIC and the ATO. Using different numbers may be confusing internally and externally but this might be preferable for some institutions compared to having to reapply for an ABN.
2. If the organisation keeps its ABN there will be no need for all of the administrative work and costs associated with such a change and all of the organisations current tax endorsements will go with the ABN. In comparison if the organisation chooses to apply for a new ABN (so it is consistent with its new ACN), then it is placed in the position of having to reapply for all of its current tax office endorsements, and inform all relevant stakeholders.

We ask that the ATO publish the two options referred to above (and the process to be undertaken in each case) so that not-for-profit organisations can make an informed decision about the matter.

The Society will provide a copy of this letter to the Australian Charities and Not-For-Profits Commission and the Change of Entity Type and Name Registrar for their information.

Please contact our Policy Solicitor, Ms Raylene D'Cruz on [REDACTED] or [REDACTED]; or Graduate Policy Solicitor, Ms Jennifer Roan on [REDACTED] or [REDACTED]

Yours faithfully



Annette Bradfield
President