1. **Statement**

The purpose of this standard is to provide information relating to: policy in respect of Australian Business Number (ABN) quotations, payments subject to withholding, consequence of not quoting an ABN, exceptions to withholding, procedure where an ABN is not quoted, voluntary PAYG agreements, withholding from employees and other persons and what to do with withholdings.

2. **Scope**

Compliance with this standard is mandatory.

This standard shall apply to all employees, contractors and consultants within the Department of Health divisions and commercialised business units as well as Hospital and Health Services.

3. **Requirements**

**Introduction**

The Pay As You Go (PAYG) system is part of the Commonwealth Government’s range of tax reforms that are collectively referred to as "A New Tax System" introduced in 1999. Specifically, the system is enforced through the *Taxation Administration Act 1953* ("TAA53").

PAYG replaced eleven systems including Pay As You Earn (PAYE), the Prescribed Payments System (PPS) and Reportable Payments System (RPS).

"Withholding" refers to the obligation imposed upon the payer to deduct tax (46.5% from 1 July 2006 up to and including 30 June 2014 then 49% from 1 July 2014) from payments made to others, in certain circumstances, and to remit these amounts to the Australian Tax Office (ATO).

Within this Business Procedure, the term “supplier” is used to refer to a person or business that is making a supply of goods and/or services, and the term “vendor” is used to refer to a person or business for whom an account has been established in the accounts payable module of FAMMIS regardless of why payment is being made. These two terms will not be used interchangeably. Thus, payments may be made to a vendor without there having to be a supply. A reference to “Finance Branch” is a reference to Finance Branch, System Support Services Division.

1. **Policy in respect of ABN quotation**

The policy adopted within Queensland Health regarding Australian Business Numbers is that if an ABN is quoted by the supplier, that ABN is to be validated and verified at the time of, or prior to, the vendor account being set up or amended.

2. **Payments subject to withholding**

There are twenty-four withholding events identified in the legislation. Salaries and wages are included in these. However, the two that have the greatest impact outside salaries and wages are:
• A supplier failing to quote, or being unable to provide, an ABN;
• A supplier of a service having a voluntary withholding arrangement with the Department.

3. Consequence of not quoting an ABN

It should be noted that registering for an ABN is not mandatory. However if the business entity derives an annual turnover of more than $75,000 ($150,000 for charities and not-for-profit bodies) (before GST) per annum, GST registration is mandatory. In order to register for the GST, the business must have an ABN. So, if a business that is below the threshold above chooses not to have an ABN, it is free to do so.

Under PAYG withholding, if a business either does not have or does not quote an ABN, payments made to it for (or in relation to) supplies may be required to have PAYG tax deducted at the time of payment. The tax is then remitted to the ATO by the paying entity.

GST Legislation requires a tax invoice to show the suppliers ABN in order to be recognised as a compliant tax invoice. In limited circumstances there are provisions where this is not required, for details refer to GST Business Procedure “Tax Invoices”.

However, under the PAYG provisions, which govern the withholdings and which are separate from the GST law, the ABN may be quoted on other documents relevant to the supply. Such documents include the quotation, correspondence, emails, order forms, price lists and catalogues, brochures or a business card.

To avoid having an amount withheld, the supplier's ABN must be quoted to the payer before or at the time the payment is made. The essential point is that the payer has the ABN relating to the supply when the payment is made.

The department may hold lists of approved suppliers from whom it will purchase goods or services on a regular basis. Where that list contains a supplier's ABN, there is sufficient connection with the supply to meet the quotation requirements where it is reasonably intended to cover future supplies of that nature. It is reasonable to rely on an earlier quotation contained on the list where it relates to periodic supplies. To reasonably rely on this list, the list should be checked at least once a year with vendors to ensure currency of the list and that the nature of the supplies to which it will apply is correct.

Where a supplier issues a document before it is certain that the supply will be concluded, because the document is merely an offer (e.g. insurance renewal notices, motor vehicle registration and subscription notices), there is no supply until the recipient accepts the offer.

If a purchaser chooses to pay by credit card, the cardholder must ensure that the ABN is quoted at or before the time payment is made by ensuring that the ABN is printed on the docket. The ATO will permit the purchaser to ask the vendor for the ABN and for the purchaser to write the ABN on the voucher at that time. Otherwise, the ATO expects the purchaser to ensure that the payment to the vendor is net of the PAYG tax.

The amounts withheld are available to the supplier through its annual income tax assessment process, as a credit against the assessment.

4. Exceptions to withholding

If there is no supply involved, and the payment is not related to or for a supply (see Section 6 below), the withholding provisions have no application, regardless of who (or what) the payee is.
Into this category fall subsidy payments to patients under the Patient Travel Subsidy Scheme, for example.

We should not withhold the PAYG tax from payments to suppliers if:

- The supplier has quoted its ABN on any document pertinent and relevant to the transaction; or
- The total payment to the supplier is $75 or less\(^1\). See A New Tax System (Goods and Services Tax) Regulations 1999, r.29-80(1), referenced by TAA53 Schedule 1, s.12-190(4)(b); or
- The supplier is an individual under 18 years of age, is not an employee, and the payments do not exceed $120 per week; or
- The supply is wholly input taxed under the GST regime; or
- The supply is made in the supplier’s private capacity, or as a hobby. Note that the supplier in this instance must be an individual, and the supplier must give a written statement to the payer about the capacity in which the supply has been or will be made, and the payer has no reasonable grounds to suspect that the statement is false or misleading in any material respect\(^2\); or
- The payment is exempt income for the supplier (for example, the supplier is a non-profit body), but this is a determination that the supplier has to make; or
- The payment is to a non-resident who is not carrying on a business in Australia or through an agent in Australia; or
- The supplier is not carrying on an enterprise because there is no reasonable expectation of profit or gain (for this to apply the supplier must provide us with a written statement to this effect as a matter of policy).

A Statement by Supplier form has been produced by the ATO for the convenience of payers to assist payers in obtaining assurance that withholding tax need not occur. The statement is not a legislative requirement.

Each of the preceding situations assumes that there is a supply from the payee to the department. For the last three situations, we recommend that all suppliers be asked to provide a written statement such as the Statement by Supplier mentioned above, stating that the supply is excluded from the withholding requirements.

This statement must be kept for 5 years. Suppliers taking this action must be asked to seek independent advice to ensure that they are eligible to submit the statement, (refer to the “Carrying on an Enterprise Self Assessment Questionnaire” to help identify if the supplier fits into these criteria).

### 5. Procedure where an ABN is not quoted

Where a supplier fails to or chooses not to quote its ABN when required, the process to be followed is:

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\(^1\) Threshold was $50 until 30 June 2007

\(^2\) TAA53, Schedule 1, Section 12-190(6)(a)
1. The Accounts Payable staff, or other personnel involved with the purchase should firstly attempt to ascertain if the ABN is available on any other documentation associated with the supply. If this is available, payment may proceed without any withholding. It may be advisable to refer to (cross-reference) that document on the invoice, for future reference if the need arises to confirm the existence of the ABN.

2. Failing point 1 above, the supplier should be contacted, to ascertain whether it is a simple omission that they have failed to supply an ABN or that the business does not have an ABN.

3. If the failure to quote is not merely an oversight, the supplier must be informed that the department is required to deduct withholding tax unless the supplier can provide evidence to support the fact that they do not have to provide an ABN.

4. Where the supplier can support the contention that it is not required to quote an ABN and that withholding is not necessary, then the payment should be processed as normal once that evidence is produced. This will also be subject to the withholding flag being set appropriately in FAMMIS so that withholding does not occur. The exceptions noted above must be tested firstly. For example, a supply that is totally GST input taxed, such as residential property rental, does not need the quotation of an ABN.

5. If the supplier is unable to supply this evidence or does not wish to do so, then they should be encouraged to apply for an ABN, with the recommendation that payment is not made until they have obtained their ABN. If they do not wish to do this, then withholding tax will need to be deducted. The vendor account must be set up or amended to have the tax code set to “Z2”, so that withholding will occur.

Evidence mentioned above can be as simple as the ‘statement by supplier’. A similar document or statement is acceptable.

Suppliers can call the ATO on 13 72 26 for assistance with obtaining an ABN.

Note: ABN details should be included on the Vendor Registration Form (VRF).

6. Payments related to the supply

Example: A locum issues two invoices (without ABN), one for his labour, the other for reimbursement of his air fares and accommodation, all of which are to be paid for as part of the supply of locum services. The locum expects to receive payment for his labour, net of the No ABN withholding. On the other hand, he wishes to receive payment for the outlays without any withholding. That wish should not be granted even though the payment for the outlays might only be a reimbursement.

S.12-190(1) of TAA53, Schedule 1, provides that:

An entity (the payer) must withhold an amount from a payment it makes to another entity if:

(a) the payment is for a supply that the other entity has made, or proposes to make, to the payer in the course or furtherance of an enterprise carried on in Australia by the other entity; and

(b) none of the exceptions in this section applies.

Subsections 2 to 6 of the Act set out the exceptions. These will not be repeated here.
The legislation uses the word ‘payment’ to describe the withholding transaction. This means that every payment made by a payer to a supplier will be subject to withholding if the supplier does not provide the payer with its ABN and it does not fit into any of the exceptions.

According to Paragraph 4 of Taxation Ruling TR 2002/9, the payer is obliged to withhold PAYG “from a payment made for a supply.”

Paragraphs 48, 76 and 86 of that ruling use the terminology “in relation to the supply” when talking about the payment. This suggests that the payment need not be, as in the case of the example as the start of this section, for the labour alone.

Instead, all payments for the supply of the services under the agreement or arrangement as a whole would be caught, and the payer is obliged to withhold from all payments made in respect of the same supply.

Although the second payment may only be a reimbursement, there is sufficient nexus between the supply and the reimbursement for the second payment to be ‘in relation to the supply’. This is because the supply would not have occurred if the payer had not agreed to those terms, and the reimbursement would not occur if the supply did not transpire.

If the payment is ‘in relation to a supply’ and the payee has not quoted an ABN, PAYG must be withheld from the reimbursement as well as the payment for the services or labour ³. This will also apply to progress payments as well as payments for the handing over of retentions.

Payments in the nature of security deposits would not require a withholding to be made because there is no supply involved at that point. The payment is being made only to secure the eventualty of a supply. Should that deposit be subsequently applied as part settlement for the supply, the PAYG withholding must now be against the amount ultimately paid AND the deposit.

7. Incorrect ABN quoted

Currently (as at 6/11/12), there are no types of supply specified in the Taxation Administration Regulations 1976 as referred to in either of Division 415 or Division 417 in TAA53, Sch.1, which require the ABN quoted to be verified absolutely, or the supplier to be identified, respectively.

Accordingly, it is presently unnecessary (from the point of view of the legislation) for the ABN that has been quoted by a supplier to be validated, unless the payer has reason to question the ABN quoted. In that case, the ABN must be verified according to the policy stated in Section 1 of this Procedure before the payment is made, and if necessary it must have PAYG tax withheld.

Should it become apparent during processing and verification checks that the ABN quoted is incorrect, the payment process should then proceed as if an ABN has not been quoted, after the supplier has been informed.

Circumstances that should put the payer on notice would include names that differ between that of the vendor and that under which the ABN is registered, a numeric sequence or a series of the same digit in the ABN (12 345 678 900, 22 222 222 222). The different names would possibly not be revealed unless the ABN registration was searched. The need to confirm the ABN is therefore strengthened.

When the names are found to differ, an enquiry must be made of the vendor. Should the explanation be unsatisfactory, the account must be configured to withhold the tax. See also Section 5 of this Procedure.

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³ Private ruling dated 20 March 2007 from the ATO to Queensland Health
FMPM: PAYG Withholding Obligations
Chief Finance Officer
System Support Services
09/06/2015
8. Procedure when a refund is required

Occasionally suppliers may seek refunds of withheld amounts from agencies where they mistakenly failed to quote their ABN. The refund has to be obtained before the end of the financial year, and it must be requested in writing through the department, and then remitted to the supplier. Under no circumstances is a refund to be made before the amount is returned by, or recouped from, the ATO, and the related payment summary must also be returned to the department. Refunds are not to be made when the supplier subsequently obtains an ABN. The ABN has to exist at or before the time of payment.

If the supplier requests a refund of any withholding tax, then generally they should be referred to Finance Branch. The only situation where we can refund withholding tax is where it was withheld in error and the payment has not yet gone to the supplier.

9. Voluntary PAYG agreements

Agencies and certain contract workers can agree to bring payments to the workers into the withholding system by means of written voluntary agreements. They are only available to individuals. To be eligible, the payments cannot be subject to any other form of withholding (such as payments to an employee) and the individual must have an ABN.

Entering into a voluntary agreement usually means GST does not apply to services supplied. Agencies will need to carefully consider the use of such agreements on a case-by-case basis because of the added complications for transactions. However, a request from a supplier should not be avoided, because the supplier is acting within choice provided in TAA53.

If a payee (that is, the supplier) is registered for GST, it should only charge GST under the voluntary agreement if the payer is not entitled to a full GST input tax credit for the goods or services being supplied. The payer must indicate, on the voluntary agreement form, whether or not it is entitled to a full input tax credit.

If the payer would normally be entitled to a full GST input tax credit, the payee cannot charge GST on the goods or services supplied under the voluntary agreement.

If the payer is not entitled to a full GST input tax credit, the payee (if registered for GST) must charge GST on any taxable supplies it makes under the voluntary agreement. Taxable supplies are goods and services that are subject to GST.

10. Withholding from employees

The existing requirement to withhold part of payments to employees will continue under PAYG and will also apply to:

- Payments to company directors,
- Payments to office holders,
- Payments for unused leave,
- Return-to-work payments,
- Retirement and eligible termination payments, and
- Bonuses, benefit and compensation payments.
These are well covered by the payroll system, and policies and procedures are contained in Chapter 6 of the Financial Management Practice Manual.

11. Withholding from other persons
Suppliers with whom the department has entered into a voluntary withholding agreement are discussed above.
Reimbursements of expenditure to other persons, such as volunteers employees and patients, do not require PAYG withholding, because there is no supply involved as part of an enterprise.

12. What to do with withholdings
If tax has been withheld from payments (salaries and wages excluded) made by Queensland Health, there are certain obligations. These are to:

- Notify the ATO of amounts withheld. Finance Branch attends to this centrally, through an annual return. Separate returns are prepared for the No ABN withholdings and the voluntary agreement withholdings.
- Provide an end-of-year payment summary to the businesses that you have withheld from, under a voluntary agreement. The original is to be sent to the ATO. This is attended to by Finance Branch.
- Remit the tax withheld to the ATO on all the withholdings on a weekly basis. This is attended to by Finance Branch.

The withholding amounts are automatically posted to a special clearing account (#210560) in the general ledger. Hospital and Health Services and other business areas do not need to take any action in respect of this account.

4. Related legislation and documents

- Vendor Registration (Setup) Form (Queensland Health internal document)
- Statement by Supplier (Australian Taxation Office document NAT3346)
- Carrying on an Enterprise Self-Assessment Questionnaire (Australian Taxation Office document)
- Voluntary agreement form for pay as you go (NAT2772)
- PAYG Withholding, Australian Taxation Office
- Taxation Administration Act 1953, Schedule 1, Section 12-190(4)(d)
- Taxation Administration Regulations 1976
- Taxation Ruling TR 2002/9: Withholding from payments where recipient does not quote ABN
- GST Ruling GSTR 2013/1 Goods and Service Tax – Tax Invoices
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