

PROPOSED NATIONAL BUSINESS NAME REGISTRATION SYSTEM

Frequently Asked Questions

Businesses need to register a business name if they carry on a business or trade within Australia and are not trading under their own entity name. An entity name may be an individual's name, partners' names or a company name. This is so that consumers can easily identify the person(s) or company behind a business (trading) name through a public register.

Currently business names are registered in each State or Territory a business trades in. It is proposed that a new national system for business names registration will start in the first half of 2012. The new national system is a Council of Australian Governments initiative in which the States agreed to refer their business names registration powers to the Australian Government.

This FAQ sheet has been prepared to help explain the new proposed system.

THE NEW SYSTEM

Q1. What are the proposed key changes to business names registration?

- Business names will be registered nationally, thus there will no longer be a need to register in each State a business trades in.
- There will be lower fees for registration and renewal and options for one or three year registration periods.
- Businesses will be able to apply to register a national business name online and receive confirmation of their registration at the same time.
- The business name registration will also be available as a joint online registration in conjunction with the Australian Business Number (ABN) registration with pre-filling from one registration to the next.
- There will be information on and links to the trade mark and domain name searches.
- New businesses will need to have an ABN or be in the process of applying for an ABN and not have been refused an ABN in order to register a business name.

Q2. What changes are being proposed to the application process?

Business Names registration will be managed and administered by the Australian Securities and Investments Commission (ASIC). ASIC already has responsibility for the registration of companies.

On commencement of the new national system, businesses will be able to register for an ABN and a national business name in a single integrated online registration process by visiting www.abr.gov.au. Businesses that already have an ABN can register separately online at www.asic.gov.au.

A paper based form will also be available which can be mailed to the Registrar, Australian Securities and Investments Commission (ASIC).

Q3. For businesses that don't have access to the internet, where can they go to register business names?

Clients will be able to access the online services from home, or other locations, if they have access to the internet.

Access to the online national business names service will be available through a range of service centres across Australia including ASIC and Australian Taxation Office (ATO) office locations. Designated State or Territory agency offices, business enterprise centres or small business centres

will be able to offer information about how/where to access the online national business name service and will continue to provide other business licensing services (e.g. trade licences).

Those who do not have internet access can call ASIC for alternative registration methods on 1300 300 630.

Q4. Will businesses need to register their business names in their State and Territory also?

No, the new system replaces separate State or Territory business name registrations with a single national business name registration.

Registration of limited partnerships, limited associations and the like plus licensing and professional registration will continue to be administered, as per current arrangements, mostly by States and Territories.

Q5. Who can complete the online business name registration on behalf of a business?

A person legally responsible for the business, or their nominated and suitably qualified business advisor (e.g. accountant or solicitor), may complete the online application. ASIC Registered Agents can also lodge information for a client after the client has nominated them to act on their behalf.

All members of a partnerships or unincorporated association can nominate a principal contact authorized to act on their behalf in dealings with ASIC.

OPTIONS AND FEES

Q6. What is the proposed fee under the new business name registration regime?

It is proposed that registering a new business name is in the order of \$30 for a one year registration period and \$70 for a three year registration period. Renewal of the national business name registration is proposed to be in the order of \$30 for a one year registration period and \$70 for a three year registration period. A payment advice and a Business Name Extract will be supplied by ASIC to confirm registration.

Q7. How do these fees compare with previous State/Territory registration systems?

Previously, different States and Territories each had different fee structures and different options for registration periods. On commencement of the new national business names registration system, Businesses will pay a lesser fee and in some cases significantly less. Currently business names fees in certain States can be as high as \$248.20 or \$156.00 for three years. These savings for business are primarily due to efficiency gains related to rationalising the delivery of eight services to one and from a new online system.

Q8. What payment options are available when registering in the new system?

The client will be offered a range of payment options in line with existing ASIC payment options for company services e.g. BPay and Australia Post BillPay. In addition, online electronic payments will be available via Mastercard and Visa through a secure transaction process.

Q9. Are there any fees for applying for an ABN in the new integrated business name registration process?

Registering for an Australian Business Number will remain free.

ABN REQUIREMENTS

Q10. Will it be mandatory to have an Australian Business Number (ABN) to register a business name?

New businesses will need to have an ABN or be in the process of applying for an ABN and not have been refused an ABN in order to register a business name. The combined ABN/business name online registration process will help facilitate this.

Q11. If a business has an ABN but hasn't told the Fair Trading Office, what will happen?

At the commencement of the national business name service ASIC will encourage businesses to declare their ABN if they have one. Transitional arrangements will assist businesses meet this requirement. For more information go to www.asic.gov.au.

Q12. Sometimes ABN registration isn't instantaneous and can take up to 28 days to be processed. Will those businesses affected be able to get a business name registered?

If a business has applied for an ABN, not been refused an ABN, but has not yet received it, the business name registration process will allow for a name to be 'pending' and not able to be registered by someone else. Once the business name application and payment has been received and ABN provided, the business name will then be registered. If payment is not received or if the ABN has not been allocated within 28 days the name will not be registered.

Q13. If a current business has a registered business name but doesn't have an ABN, will it still be able to keep on renewing its business name registration?

Yes, business owners will still be able to renew their business name without an ABN. However, they will require an ABN to register for an AUSKey, the single key to access government online services.

AUSKey is a new online security credential designed for businesses to access government online services. Businesses will have less need for different user IDs and passwords as AUSKey becomes accepted by more government agencies for their online services.

More information go to www.abr.gov.au/auskey

PUBLIC INFORMATION

Q14. How will consumers find out who is behind a registered business name?

Consumers will be able to search online for free at www.asic.gov.au for the business name and other details behind the business name including the name of the entity (such as a company) behind the business name, the entity's principal place of business and an address for service. Home-based businesses will only have their suburb and State or Territory displayed on the free online register. Businesses will be able to seek suppression of any otherwise publicly available details upon request to ASIC. This would suppress details on the public register but not to nominated government agencies.

Business will be required to include its business name and ABN, if applicable, on all written communications, if the communication does not relate primarily to the internal administration of the business.

[The Government is particularly interested in the views of business and consumers on this aspect of the legislation]

NAME ALLOCATION

Q15. How will ASIC determine if a business name can be registered?

Proposed business names that are identical or nearly identical to names already on the register will not be available for registration. A name will not be registered if it is inappropriate, or likely to offend, mislead or deceive consumers and traders.

An online and automated test will be used to determine registerable names, hence allowing the process to be fast, objective and repeatable. The restrictions on what can be registered is similar to what is allowed for company names and under state business name legislation.

Q16. How will the system deal with protected titles?

The online registration system will not prevent the registration of a protected title (e.g. pharmacist or doctor) or a licensed trade (e.g. plumber) but will display a warning to registrants that to use such terms in a business name they must comply with State or Territory laws and have appropriate Australian qualifications, memberships or approvals where applicable.

Q17. How will the new system handle business names that need Ministerial approval?

Names that require Ministerial approval such as those that use words or terms that may imply government endorsement or an official advisory body status, are expected to go through a process where Ministerial approval is sought. ASIC will advise businesses regarding this process.

This is similar to the existing process for company names.

FRANCHISES

Q18. How does the new system deal with franchise names?

As is the case now, unless the franchised business is trading under its own entity name e.g. company name, they will need to register the franchise name. This would normally include some sort of region or location in the title e.g. Summer Salad Richmond.

Registration of a franchise name will not require the franchisee to provide the written permission from the franchisor to ASIC. However a business that applies to register a franchised name should ensure it has the authority to trade under that name through its franchise agreement. Messaging on the business name registration application system will advise applicants of this responsibility.

It remains the responsibility of the business to ensure that do not pass off as another business or infringe on other businesses trade marks.

TRADE MARKS

Q19. What is the difference between a business name and a trade mark?

The differences between trade marks, business names, company names and domain names sometimes cause confusion. Registration of a business name, company name or domain name does not in itself give any proprietary rights (property rights) - only a trade mark can give that kind of protection. The same word(s) may be registered by different people as business names and trade marks. However, the registered trade mark owner can sue the business owner for infringing the trade mark if the business name owner uses it on goods or services similar to those covered by the trade mark registration. Links will be provided during the business name registration process to give applicants the opportunity to search the trade mark database. For more information go to www.ipaustralia.gov.au.

Q20. Why can't the system check whether a business is infringing on someone's trade mark?

It is the responsibility of a business to ensure their business name does not infringe on the rights of trade marks both here in Australia and, if businesses are planning on exporting and/or having a web presence, overseas.

Trade marks are registered in different categories (45) of goods and services and there may be instances where the same or a similar trade mark is registered to different businesses in different categories. If a business is trading online and/or exporting, there may be overseas trade marks that need to be checked. It can be a very complex area, and it may be best to consider seeking advice regarding a proposed name should a business wish to invest much time, money and energy in developing a brand.

Although IPAustralia has some general information on trade marks and also a freely accessible database (ATMOSS) to check pending and registered trade marks in Australia, advice could be sought from a registered trade marks attorney or lawyer experienced in intellectual property matters. An intellectual property advisor can assist businesses in developing a branding strategy, clearance searches and obtaining trade mark rights in Australia and overseas.

Checking for trade marks is an ongoing responsibility of businesses as new trade marks are being used and/or applied for continuously. This can be done by watching out for new applications on the free database or checking whether trade marks have been accepted in the Official Journal of Trade Marks. For three months after the advertisement date of acceptance, anyone who believes that the trade mark should not be registered may oppose its registration.

To access the ATMOSS database, or for more information about trade marks, the application process, fees and other information go to www.ipaustralia.gov.au

APPEALS

Q21. What happens if the national business name applied for is rejected?

Using the online system, in most cases the applicant will immediately receive a message advising that the name cannot be registered before they complete the transaction.

The system will explain the reason the name was rejected. The applicant can then choose another name and proceed with completing the application process.

Q22. If a business is told it can't register a certain business name, can it appeal the decision?

Yes, an applicant dissatisfied with the rejection of a business name application will have 28 days to seek a review by ASIC. There is no fee for the review.

Grounds for review and appeal will be whether the rule/s, as specified in the Business Names Registration Act and regulations, has/have been satisfied.

If dissatisfied with the outcome of that review, businesses can appeal to the Administrative Appeals Tribunal. The cost for an appeal to the AAT is currently \$777, however the majority of the fee is refundable if the applicant wins.

Q23. If a third party is aggrieved by ASIC registering a particular name to an applicant, can the third party seek a review by ASIC of that name determination decision?

Yes if:

- The name objected to is not grandfathered (or carried over) as part of the transition to the national system; and
- The third party is an entity in relation to whom there is a real risk of substantial detriment because of the registration of the business name; and

- The application for review is received by ASIC within 15 months of the date of registration of the name being objected to, or a longer period allowed by ASIC.

Since it is the responsibility of the original applicant to ensure they do not pass off as another business or mislead or deceive consumers, there are other areas of law in Australia which may be used to try and stop the unauthorised use of a business name including the Commonwealth Competition and Consumer Act and State Fair Trading Acts and the Intellectual Property law.

TRANSITION

Q24. What will happen to existing registrations of State/Territory business names?

The registration of existing State or Territory business names will be transferred into the national system at the introduction of the new national service. This is called 'grand-fathering'.

Businesses will be able to review and check their details online at www.search.asic.gov.au.

Business name registrations will still need to be renewed when the original registration period expires. If this is before the change-over date, the State/Territory fee is applicable, and must be paid to the appropriate State/Territory agency

On commencement of the new national business names registration system, all renewals due after the change-over date will occur through the national system. The national renewal fee shall apply and reminders will be issued from ASIC in due course.

Q25. How will businesses know when to renew their business name registration?

Existing business names originally registered in the States or Territories will still be due for renewal on their original expiry date.

Those who register using the new system will select either a one year or three year registration period, and will be able to align their renewal dates (if they have various business names registered, or if they also have a company registration).

All businesses with a registered business name will be reminded prior to the expiration date that their renewal is due. The reminder will be sent to the client, prior to the registration expiration date.

It is expected that renewals will continue to be issued by States and Territories up until the commencement of the new national system. All renewal notices thereafter will be issued by the Australian Securities and Investments Commission. Those businesses with renewals that fall due after the changeover date will be notified in plenty of time to renew their registration.

Q26. What happens if the same business name has previously been registered by different businesses in different States/Territories?

All business name registrations will be transferred to the national business name register on commencement of the national system. This will include some identical business names that have been registered (by different owners) in different jurisdictions.

For identical business names, ASIC may insert a distinguishing mark or expression on the register. The business name itself will not include the distinguishing word or expression, therefore businesses will not need to change their business name on their signage or stationary.

When a distinguishing word/ expression is added to the details held on a business name record, the assessment of new applications for business names will be impacted. A new business name will not be available if it clashes with the registered business name OR with the combination of business name plus the distinguishing word/expression.

E.g Joe Smith operates Joe Smiths Plumbing in Fremantle. Another Joe Smith operates Joe Smiths Plumbing in Brisbane. Both names will be grandfathered onto the national register. ASIC may insert (Fremantle) and (Brisbane) on the register as appropriate, to distinguish between the business names.

If this occurs, not only would another business not be able to make a new application to register Joes Smiths Plumbing, but also it would also not be able to register Joe Smiths Plumbing Brisbane or Joe Smiths Plumbing Fremantle.

Q27. For current business name registrations, during the sale of a business, will the business name registration be transferable to someone else, even though there happens to be another identical business name?

In this circumstance a current registration can be transferred to a new owner by lodging the appropriate notices with ASIC.

Q28. If a business has the same business name registered in two States, but registered on different dates, what will the business owner have to do?

ASIC will communicate to the business, confirm the list of identical names that belong to the business, notify them that only one name will be renewed and the renewal date (which will be the latest renewal date). Importantly the business will have a business name registered on the national system.

NEXT STEPS

Q29. When will the system go live?

The national business names registration system is expected to commence in mid-2012. However this is dependent on the passage of legislation in all jurisdictions. There will be comprehensive communications to ensure the business community, business intermediaries, industry associations and consumer groups are aware of the changes.

Q30. Who is responsible for the changes to the Australian business registration system?

The new proposed national business registration system is a joint initiative between the Australian Government, State and Territory governments through the Council of Australian Governments (COAG).

The delivery partners of this new national system are:

- Australian Securities and Investments Commission (ASIC)
- Australian Business Register
- IP Australia
- Department of Innovation, Industry, Science and Research (DIISR)
- The Treasury
- State and Territory small business and fair trading/consumer affairs agencies

Keep updated on progress by checking:

<http://www.innovation.gov.au/Section/AboutDIISR/FactSheets/Pages/AustralianBusinessNumberABNBusinessNamesRegistrationProjectFactSheet.aspx>

Comments can be sent to: businessnamesconsultation@innovation.gov.au