



A National Register for Business Names – Are you ready?

A new national business name register will replace all current state based registers in mid 2012. The actual timing is only subject to each state and territory passing respective legislation before then.

The National Register will

- be administered and maintained by ASIC
- be online,
- carry out automatic checks for identical or similar company or business names which are already registered.

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 (for example, an individual's name or each of the names of the partners' to a partnership). It will be an offence to carry on an enterprise under an unregistered business name in circumstances where registration is required.

Moving into the new register

New businesses will be required to obtain an ABN in order to apply for a business name. Applications for an ABN and a business name will be available under one integrated system. If a business registers for an ABN and a business name, the business name will be listed as 'pending' until an ABN has been issued.

All existing names on all state and territory business name databases will be transferred onto the national register automatically and will retain their current expiry date. Existing business names will not be required to apply for an ABN, nor will renewals of existing businesses require an ABN. You do not need to take any special action to have your business names entered on the new register.

The National Register has advantages and traps that all businesses including franchises need to be aware of.

Advantages

Businesses will only be required to register a business name once, regardless of how many States or Territories those businesses operate in.

Franchises, unless the franchised business is trading under its own entity name (for example, the franchise company name) should register the franchise name.

An advantage for the franchisee under the national register is they will not be required to provide evidence to ASIC of the franchisor's approval to register a franchised name. ASIC have proposed an online system to assist franchisors and other third parties to monitor the use of their name. Franchisees will need to ensure that they have the right in their franchise agreement to trade under their name.

Traps - What to be aware of.

The pool of available business names may be reduced as a consequence of the national system, due to the restriction on business names that are identical, to business names already on the register. If you are in the process of planning to trade under a new business name, you should consider whether it would be advantageous to register the business name under the existing state or territory system, however this cannot be a speculative registration.

If multiple entities apply for the same business name, priority will be given to the first application lodged.

Under the current registration systems, identical business names can be registered by different entities trading in different states and territories. However, under the new system an application for an identical name will not be able to be registered.

Because all the existing business names will be consolidated onto the national register, any identical names from different jurisdictions will be differentiated by a geographical suffix, for example: Tom's Plumbing (WA) and Tom's Plumbing (Vic). However, the business name itself will not include the geographical qualifier (ie, both proprietors would be able to trade as Tom's Plumbing), and it will stop any person registering the business name 'Tom's Plumbing WA'.

It would be prudent for businesses to ensure their business name registrations do not lapse before the introduction of the national register, because they may be unable to re-register the business name due to identical names being transferred from state systems onto the national register.

Similarly, if businesses have previously been unsuccessful in registering a business name in a particular state or territory, they may wish to register the name in another jurisdiction before the introduction of the national register. The name would then



automatically be transferred across and be available for them to use nationally under the new system.

The penalty for carrying on a business under an unregistered business name is \$3,300.

How much protection does a business name offer

Business owners must be aware that simply registering a business name, though a compulsory undertaking, does not grant them any intellectual property rights over the use of the name. Businesses need to register trade marks to acquire exclusive rights in a name and it is often advised to apply for trade marks and internet domain names at the time of registering a business name.

If you require any further information or need assistance in registering a business name or trade mark please don't hesitate to contact the Marsdens team on (08) 9382 3244.

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