

Franchising Alert

National Business Name Register

May 2012

Introduction

On 28 May 2012, the National Business Names Registration System will go live. This reform will automatically transfer business names registered under the existing State and Territory System to the online National Business Names Register, and significantly reduce registration costs.

The National Business Names Registration Bill 2011 received assent on 3 November 2011.

The Australian Securities and Investments Commission (**ASIC**) will be responsible for registering, renewing and administering business names for all Australian businesses.

This new system will affect all people and entities 'carrying on a business' under a State and Territory registered business names.

Registered business names

Business names that are registered under the existing State or Territory business names registration systems will be automatically transferred to the national system. The original expiration period will continue to apply to the transferred business name. On expiration of the registration period, the business name registration will be renewed under the National Business Names Registration System upon payment of applicable fees.

Once the registered business name has been transferred to the National Business Names Registration System, this name may be used by the business throughout Australia without the need to register in each State.

An ABN will not be required for automatic transfer of registered business names.

Online National Business Names Registry

The National Business Names Registry will be publicly available online 24 hours a day, 7 days a week. Any member of the public may access information about the entity which registered the name, including address for the principal place of business, ABN of the entity, the date of expiry of registration and any applications lodged to review a decision to cancel registration.

Reduced Registration Fees

The proposed registration fees under the National Business Names Registration System are:

- Registration paid for 1 year at a cost of \$30; or
- Registration paid for 3 years at a cost of \$70.

Transition

If the same business name is registered by different franchisees under different State and Territory registration systems, each business name will still be transferred to the National Business Names Registration System. However, and of some concern is that ASIC may add a mark or expression to the existing name which differentiates it from the same business names transferred from other States and Territories. Businesses will still be permitted to trade under the existing business name without displaying the added mark or expression.

For franchisees, their current business name can still be used in accordance with the transitional provisions above. However, franchisors will need to be mindful that new franchisees will need to ensure that their business name includes a geographical descriptor or similar to ensure a

distinctive name. This may necessarily require franchise agreements to be amended to properly describe the business name being granted under the relevant franchise agreement.

New Registrations under the National Business Names Registration System

You (and your franchisees) must register your business name if you are 'carrying on a business' in Australia and you are not exempt under the *National Business Names Registration Act 2011 (Cth)* (**the Act**).

You (and your franchisees) are exempt under section 18 of the Act from the requirement of registering a business name if:

- (a) You are trading as an individual under your own name;
- (b) You are trading as a registered company under your company's name; or
- (c) You are trading as a partnership under a business name which consists of all of the partners' names.

Further exemptions may apply to you (and your franchisees) under the *Business Names Registration Regulations 2011 (Cth)* regulation 4 if:

- (a) You are carrying on a business under a domain name which is registered to you and you are not prevented from using it; or
- (b) You are carrying on a business under a business name which results from excluding one or more host names, or domain extension of a business name where the domain name is registered to you.

Failure to register a business name is an offence under the new system and will attract fines.

Applicants for new business names will be required to have an ABN. Applications for an ABN and to register a business may be lodged concurrently. These are grounds for refusal of an application to register a particular business name if:

- (a) It is 'identical or nearly identical' to an existing registered business name;
- (b) It is likely to be offensive;
- (c) It contains prohibited or restricted words without appropriate permission; or
- (d) It is likely to mislead or deceive consumers and/or traders.

If the registration is refused, the applicant may lodge an application for review to ASIC within 28 days of the applicant being notified of refusal.

A third party may request review of the decision to register if they can show they are under a real risk of substantial detriment if the new business name is registered. Third parties must lodge their application for review within 15 months from the date of registration of the business name. Third parties do not have rights of review against the transfer of a registered business name under the State and Territory system.

Applicants may appeal the decision by ASIC to the Administrative Appeals Tribunal.

What this means for franchisors

You must ensure that your existing registered business name and those of your franchisees are correctly transferred to the new National Business Names Register. For any franchisee who has not registered a business name, they should be notified that their business name needs to be registered and thought will need to be given about how to differentiate each franchisee's trading name. A geographical descriptor is an obvious choice to differentiate franchisees.

At this time it is not entirely clear how ASIC intends to deal with cancellation of franchisee business names in circumstances where a franchisee disputes the cancellation or is delinquent. Many franchisors hold pre-signed business name cancellation forms but we are told these will be of no use under the new on-line registration system. We will provide a separate alert once further details are known from ASIC.

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[Relevant website links to further information about the National Business Names Registration System can be found on the following page.](#)

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Further information

Further information about the National Business Names Registration System can be found at the following sources:

ASIC

<http://www.asic.gov.au/business-names>

A Government Initiative

www.business.gov.au

South Australia - Office of Consumer and Business Affairs

<http://www.ocba.sa.gov.au/businessadvice/businessnames/howtoregister.html>

New South Wales - Fair Trading

http://www.fairtrading.nsw.gov.au/Businesses/Business_names.html

Victoria – Consumer Affairs

<http://www.consumer.vic.gov.au/news-and-events/news-updates/new-national-business-names-registration-service>

Queensland – Fair Trading

<http://www.fairtrading.qld.gov.au/register-business-name.htm>

Western Australia - Department of Commerce

<https://bizline.commerce.wa.gov.au/bnonline/misc/nbn.jsp>

Tasmania – Department of Justice: Consumer Affairs and Fair Trading

http://www.consumer.tas.gov.au/business_affairs/new_national_business_names_register

ACT – Justice and Community Safety

http://www.ors.act.gov.au/business/business_names

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