

ALERT

29 NOVEMBER 2011

New national business names register

The *Business Names Registration Act 2011* (**Act**) has been passed by the Commonwealth Parliament. The Act introduces a new national business names register, replacing the previous system that required business names to be registered in each state and territory.

This new system is expected to commence in the first half of 2012, however this is dependent upon each state and territory passing legislation to refer their business name registration powers to the Commonwealth. At present, New South Wales, Queensland, Tasmania and the Northern Territory have passed the relevant referral legislation, while Victoria, South Australia and the Australian Capital Territory all have bills pending.

New system

The Australian Securities and Investments Commission (**ASIC**) will be responsible for the administration and management of the new system.

The new system provides for:

- lower registration fees – \$30 to register a new business name Australia-wide for a one-year period and \$70 for a three-year period;

- all hours access – businesses can apply 24 hours per day, 7 days per week to register national business names;
- simultaneous registration of Australian Business Numbers (**ABN**);
- immediate confirmation or rejection of registrations (in most cases);
- appeal rights – ASIC decisions may be reviewed on application to the Administrative Appeals Tribunal; and
- free searches – the public will be able to conduct free searches of ASIC's online database to ascertain details about a business name holder.

If a business has a registered business name

All business names currently registered under either state or territory systems will be gradually transferred to the national business name register on commencement of the national system.

For identical or nearly identical business names, ASIC may insert a distinguishing mark or sign on the register. The business name itself will not include this distinguishing mark/sign and therefore businesses will not need to change their stationery and/or signage.



A new business name will not be available if it clashes with a registered business name or with the combination of business name plus the distinguishing mark/sign.

If a business needs to register a business name

Not registering a business name will be an offence if an entity carries on a business in Australia under an unregistered business name. To register under the new system, the business must have an ABN or at least have applied for an ABN.

A name will not be registered if it is inappropriate or likely to offend, mislead or deceive consumers and traders.

The difference between trade marks, domain names and business/company names

Registration of a business name, company name or a domain name does not in itself give any proprietary rights – only a trade mark can give that type of protection. It is the responsibility of the business to ensure their business name does not infringe on the rights of trade marks both in Australia and internationally.

Authored by: **Madeline Brennan**, Cornwall Stodart

[Want to republish any of this article?](#)

If you would like to republish any part of this article in your staff newsletter or elsewhere please contact our Marketing team on **+61 3 9608 2168**

Disclaimer

This article is intended to provide general information on legal issues and should not be relied upon as a substitute for specific legal or other professional advice.



For further information please contact:

Ian Sinclair, Partner
Phone (direct) **+61 3 9608 2166**
Mobile **+61 412 906 896**
Email i.sinclair@cornwalls.com.au