

LEGAL NEWS ALERT

MAY 2012

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What is in a Name? Protecting your Business Name from 28 May 2012

Your business' name is its most important asset – it is what distinguishes your products and services from that of your competitors. It is paramount that your business protects its right to use the name, as well as ensures it is not encroaching on those rights of another business.

From 28 May 2012 the National Business Names Register will replace the current state based system. It is important you are aware of the changes and possible effects on the level of protection offered to your business.

National Business Names Register

The National Business Names Register will streamline the business name registration process between states and allow easier and cheaper registration for businesses operating inter-state. The Australian Securities and Investments Commission (ASIC) will be responsible for administration of the new register. Benefits of the new national register include:

- Businesses operating inter-state will only be required to register the business name once, rather than having to register in every state under the current system;
- Business name registration and ABN registration will be incorporated into one transaction; and
- All current state registered business name will be automatically transferred over to the national register at no cost.

Implications of moving to a national database

While the new system is much more efficient and designed to better protect the owners of business names, there are few issues which need to be considered.

Where there are two business names that are identical or materially the same, ASIC will use a differentiator. An example is where there is Bob's Builders registered in both Queensland and Tasmania, the registration will be identified as "Bob's Builders (Queensland)" and "Bob's Builders (Tasmania)". It should be noted that the differentiator is **only used for identification purposes** – the actual name registered & protected will remain as "Bob's Builders" for both parties.

This can potentially create problems where one party expands into another's jurisdiction and could essentially pass themselves off as the other entity. If this applies to your business we would also recommend investigating trade mark protection.

Where a person operates interstate and has their business name registered in multiple states, each registration will be transferred with a differentiator added. As it is no longer necessary to register more than once, it is prudent that persons in this situation remove all but one registration. Alternatively, excess registration can be allowed to lapse but the person **must** ensure they maintain one.

Traps to Avoid

An adverse effect of moving to a national database is that there is now the possibility for persons to permanently lose the right over their business name where the registration expires. This will happen where:



1. Your current business name is the same or materially similar to a name registered in another state or territory;
2. After being transferred from your state register to the National Business Names Register, your business name has been identified as being the same or materially similar as another name and given an identity differentiator;
3. You allow the registration to expire (even by forgetting to pay renewal fees);
4. You are unable to re-register your business name as it is too similar to a currently registered name. It does not matter the other registered name is from another state or that they previously co-existed with differentiators. You will then be required to modify your trading name so that it does not clash with **any** existing names on the national database.

To avoid any chance of this occurrence, we would recommend:

- Where you have a business name registered in multiple states, all names are cancelled except one after 28 May 2012. This will minimise the chance of allowing all registrations to lapse at their expiry date (rather than keeping one effective).
- Reviewing your system of record keeping ensuring the expiry date for your business name registration is not overlooked.
- Where your business is looking to expand its trade outside the current state(s) of registration and is the same or similar to a registered business name in another state, to consider trade mark registration.

Cost of Business Name Registration

Queenslanders will benefit from reduced registration fees after the move to the new national register. The table below sets out the current Queensland fees compared to the new fees from 28 May 2012 under the national register. Businesses that trade inter-state will further benefit from the one registration fee, rather than paying a separate registration fee for each state.

Duration of Registration	Current Fees (for registration in Queensland only)	Current Fees (for renewal in Queensland only)	New Fees (for Australia wide registration & renewal)
1 Year	\$133.60	\$76.35	\$30.00
3 Years	\$255.60	\$206.85	\$70.00

Due to the impact of specific facts on any given case please treat this information as a general guide and not as legal advice. If you are business owner and curious about how we can help protect your rights please contact Adam Robinson.

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