

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

1 June – 3 June 2010

Question: BET 238

Topic: Business Registration

Hansard Page: Written

Senator BUSHBY and EGGLESTON asked:

1. Please outline the current process that businesses go through to register an ABN and business name:

I. If operating in a single State;

A business name is generally registered by lodging a paper form at a service centre counter or through the mail (with a state government consumer affairs agency). Business name processes differ in each state/territory but it can take up to 2 weeks for the business intender to receive confirmation of their business name. Victoria is historically the only state that has offered online business name registration; with 60% of clients choosing this option and 60% of the electronic lodgers receiving confirmation of their business name in the online transaction (approx. 40% of total Victorian registrations are completed online). South Australia has recently introduced an online business name registration capability with low take-up and online completion rates. All other jurisdictions offer counter and mail options only.

An ABN is registered with the Australian Business Register (ATO). A high proportion (over 90 percent) of ABN registrations are completed and finalised online.

II. If operating in a number of States;

See answer for single state above. A comparable process (to register a business name) will be undertaken for every state/territory jurisdiction within which the business wishes to operate. The business intender will need to lodge paper forms (service centre counter or mail) with the consumer affairs agency of each jurisdiction. The timing, cost and results of each application may differ depending on the name assessment rules and related registration processes in the relevant jurisdictions(s).

An ABN is registered with the Australian Business Register (ATO). A high proportion of ABN registrations are completed and finalised online.

and

Please outline what will occur in contrast under the new system for both i) and ii).

When the national business name regime commences a business intender will be able to register for both a 'national' business name and an ABN through the **one online registration service** (the joint ABN/Business Name registration service). The joint registration service will be hosted on the Australian Business Register,

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with a stand-alone business name only registration service also available on the ASIC website. The 'national' business name service, to be administered by ASIC, will have a single (lower) registration fee, a single set of rules for determining name availability, and a high online completion rate (ASIC is targeting a 70% completion rate within the first three years of operation).

Access to the online registration services (joint ABN/BN or BN stand-alone) will also be offered through selected service centres or shop-fronts (eg ASIC and ATO) for clients who do not otherwise have access to a computer terminal. This service offering will ensure that clients can gain a consistent level of service nation-wide. The client will be able to access a computer and complete their registration in the same way they would otherwise do at their home/business (in contrast to the current forms/counter model).

2. **Over the weekend of May 29-30 there was advertising regarding the proposed national business name registration scheme that included specific mention of proposed fee levels. At these fee levels, how much of the \$125 million will be recovered and to what extent to the proposed fee levels cover the recurrent operating costs of the scheme?**

Please refer to Treasury.

3. **What assistance is provided to successful businesses so that their company name is protected from use by new business operations? How will this appropriation assist companies that have had their name used by other businesses?**

Successful registration of a national business name will ensure that a subsequent application will not be accepted for an identical business name. Business names are also checked against the companies register (and vice-versa) to ensure there is no subsequent registration of an identical company name.

Some additional rules will be used to limit consumer confusion about differing businesses. Relevant Legislation is yet to be finalised and will provide guidance in this area.

The Business Names Registration Bill makes it clear that business name registration is not intended to affect the rights of any other entity, and that an entity does not acquire property in a business name upon registration. The purpose and effect of business name registration is therefore different from that of registering a trade mark, which gives the trade mark holder proprietary rights.

ASIC will be providing an online business name registration service on its website, which will include a link to a trade mark search, so that applicants can compare their proposed business names with registered Australian trade marks.

There will also be information on ASIC's website, and on ASIC's business name application forms, warning business name applicants that it is their responsibility to ensure that they do not infringe on a trade mark.

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Existing (grand-fathered) business names will 'all' be transferred to the national business names register. This will result in a proportion of identical business names on commencement of the national regime [same business name registered by different entities in two or more state/territories]. Identical business names will be differentiated by use of an identifier field within the national register business name record.

4. **Using the example of A & J Floor Sanding Pty Ltd (the company was registered and operated in and around Sydney since November 1992), in 2008 another company totally unrelated to A & J Floor Sanding Pty Ltd, registered using the name AJ Floor Sanding. The proprietors of A & J Floor Sanding Pty Ltd were informed by the (NSW) Office of Fair Trading the names were 'sufficiently different' because of the '&' symbol. Can you explain what assistance is available to A & J Floor Sanding Pty Ltd? Is the use of the '&' symbol all that is necessary to differentiate business names?**

As per current practice [NSW example], the existence of '&' or the word 'and' will differentiate a proposed name from an existing name on the register. Both of these names will be available for registration.

When an applicant enters a name on the ASIC business names search service, it will give a list of identical, near identical and similar names that exist. For instance when one enters 'Joe and Bill' or 'Joe & Bill' on the National Names Index ASIC search service, 'JoeBill' is presented back in a list as an existing name. In addition when 'Jack Jill' is entered, both 'Jack and Jill' and 'Jack & Jill' are displayed as existing names. The business seeking to register a business will be therefore aware of other similar names. While business names that are very similar may be registered by ASIC, it is important to remember that no property is acquired when registering a business name. Currently there are differences across the States and Territories in treatment of issues such as this. The new system will have an automated online name determination test (similar to company name registration) that will provide more consistent results.

5. **Will the new ABN and Business Names Registration System guarantee that business names that are only differentiated by '&' symbols and the like, and can therefore be easily confused with an already registered or reserved business name, cannot be registered?**

No – see responses to items 3 and 4 above. However, some additional rules will be used to limit potential consumer confusion. For example, 'Creative snacks' and 'Cre8ive snax' may be considered identical using a phonetic [pronunciation] test and a related word group table. These rules are currently in development.

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6. When will these changes take effect?

The project schedule is currently based on a 4 April 2011 commencement date,.
Legislative processes are currently under review (refer project policy lead –
Department of Innovation, Industry, Science and Research).

* This question was also asked in writing by Senator Eggleston on 8/06/2010