

Business names

Registering and using your business name

New national business names registration service coming in 2012

A new national business names registration service is expected to commence on 28 May 2012 and will replace the current state and territory registers. For more information about the changes visit the National business names register page or the Australian Securities and Investments Commission (ASIC) website Business names section for details about the new national register.

What is a business name?

A business name is simply a name or title under which a person or other legal entity may conduct its business.

Under the *Business Names Act 2002*, if you choose a name for your business that is not your own name then you must register the name with NSW Fair Trading. For example, if your name is Julie Smith and you are trading under 'Julie Smith's Salon', registration of that name is compulsory.

The Register of Business Names provides a means for finding out the details of the proprietors of a business in situations where the business is not trading under the proprietor's name. The Register contains details such as when a particular name was registered and when the registration is due to expire.

Who owns a business name?

Be aware that registering your business name does not give you ownership of that name. Registering a particular name does not stop another person from registering a similar name nor does it give you the exclusive right to use the name or part of the name.

For example, if you register your name as 'Michelle's Pies' there is nothing to stop someone else from

registering 'Michelle's Pies and Cakes' or 'Michelle's Savoury Pies'.

Also, registering a business name will not prevent the name being used by somebody who has registered it as a trade mark.

Choosing a business name

When choosing a business name it is important to appreciate that Fair Trading may refuse to register a name in certain circumstances, for example where:

- it is the same as an existing registered business, company or incorporated association name
- it is considered 'undesirable' for registration
- it will, in the opinion of Fair Trading, be likely to cause confusion during an inspection of the Register of Business Names
- the name or words in the name are restricted by Ministerial Prohibition or State or Federal law
- it contains foreign language characters.

In addition, if the proposed name suggests that the applicant is a professional person, evidence of the relevant qualifications/registration may be required, for example, doctor, lawyer etc.

Business names requested on an application are assessed in order and the first name available will be registered.

QUICK TIP – Make sure you check with IP Australia that there are no registered or pending trade marks identical or similar to your proposed business name. Call IP Australia on 1300 651 010 or visit www.ipaustralia.gov.au

Is your proposed name already registered?

The Australian Securities and Investments Commission (ASIC) keeps a record of all company and business names registered in Australia, as well as some

association names on its National Names Index. You can check the National Names Index to see if your proposed business name already exists.

It is important to note that a nil response from searching the National Names Index does not necessarily mean that Fair Trading will register your proposed business name.

Who can apply for a business name?

An applicant for a business name can be:

- an individual, corporation or incorporated association
- a government instrumentality, if its Act or constitution permits
- a trustee – the name of the trustee as well as the trust must be shown on the application form, for example, John Brown, as trustee for the Brown Family Trust
- the executor of an estate – the name of the executor as well as the estate must be shown on the application form, for example, John Brown, as the executor of the estate of Mary Brown.

IMPORTANT – Applicants who are individuals must be 16 years of age or older.

The Business Names Act states that a business name cannot be registered in the name of a person who is not carrying on business in New South Wales unless Fair Trading is satisfied that the person intends to carry on business in New South Wales in the immediate future.

The Act also states that, except with leave of the District Court, a business name cannot be registered in the name of a person who, within the last 5 years, has been found guilty or convicted of a prescribed offence including:

- an offence in connection with the promotion, formation or management of a corporation
- an offence involving fraud or dishonesty, punishable with imprisonment of 3 months or more
- an offence under the *Corporations Act 2001*.

Multiple registrations

Traders who carry on business, or intend to carry on business within the immediate future, in New South Wales may register multiple business names, although they may choose not to use all or some of the names to carry on business.

How to register a business name

Complete an *Application for registration* of a business name and lodge it with Fair Trading.

You can mail your application to NSW Fair Trading, PO Box 972, Parramatta NSW 2124.

Alternatively, you can enquire about business names and make an application for registration at any Fair Trading Centre. For the address of your nearest Fair Trading Centre, visit the Fair Trading Centres page on our website or call 13 32 20.

You can download an application form at blis.fairtrading.nsw.gov.au

Fees and charges

For all current fees and charges, please visit the Fees page of our website.

Wait until the name is registered!

Circumstances do occur where the business name you apply for is not available or approved for registration.

IMPORTANT – Before committing any money to signage, printing or advertising, make sure your business name is registered and you have received your Certificate of Registration from Fair Trading.

Renewing a business name

Registration lasts for 3 years. Fair Trading will send a renewal notice to the nominated proprietor at the address provided for service of notices prior to expiry of the registration.

What if I don't renew on time?

If the registration is not renewed by the due date it will expire. An expired registration may be restored within 3 months of the expiry date. An application for restoration attracts an additional fee.

If a registration is neither renewed nor restored it will lapse and the business name may be registered by any party.

Renew online and save

You can renew a business name online at www.licencedft.nsw.gov.au using Visa or Mastercard. You will save \$5 by renewing your business name online. In order to renew online, you will need an existing username or a reference number. The reference number is printed on the top right hand corner of the renewal notice that is automatically sent to you.

Renew by mail or in person

Renewals can be mailed to NSW Fair Trading, PO Box 972, Parramatta, NSW 2124 or can be processed at a Fair Trading Centre.

Payment options

Whether you're registering or renewing your business name, you can make a payment by cheque, cash, money order or credit card. Fees for mailed applications should be paid by cheque or money order. Cheques and money orders should be payable to 'NSW Fair Trading'.

What if my application is refused?

If you are dissatisfied with the decision made on your application, you may apply in writing to Fair Trading to have the decision reviewed.

If you are dissatisfied with the outcome of the review you may then lodge an appeal against the decision with the Administrative Decisions Tribunal.

Changes to the registered particulars of a business name

There is no fee for changing your details on the Register of Business Names.

Changing proprietors

You must notify Fair Trading within 1 month of changes occurring where a proprietor has started or ceased. All proprietors – existing, ceasing and starting – must sign the form. You can download the form at blis.fairtrading.nsw.gov.au. There is no fee payable when lodging this form.

Changing other details

A proprietor must notify Fair Trading within 1 month of changes occurring to the particulars of a business name, for example business or proprietor's address and ABN. Failure to do this may result in penalties being applied or the cancellation of the registration.

Make some changes online

You can make changes to addresses and the 'nature of business' online at www.licencedft.nsw.gov.au

To make the changes online you must have either an existing username or a reference number. You can request this number by contacting Fair Trading on 13 32 20. Reference numbers will only be sent to an address already recorded for the business. All other changes must be made in writing.

You can download the forms at blis.fairtrading.nsw.gov.au. There is no fee payable when lodging change forms.

Display of a business name

The business name must be displayed at all times, so as to be conspicuous to the public, at each place where the business is carried on under the business name.

The Certificate of registration must also be exhibited, so as to be conspicuous to the public, at the principal place at which business is carried on under that business name.

Your business name must be printed or written exactly as registered, on every business letter, invoice, receipt, or other document used by your business.

If your business name is registered in New South Wales and you trade or open a place of business in another state or territory, you need to be registered in that state or territory.

Trading on the internet

If your business trades only via the internet you do not have to register and display a business name in New South Wales.

What is a company?

A company is a separate legal entity and must be registered under the Corporations Act 2001 administered by the Australian Securities and Investments Commission (ASIC).

If a company wishes to trade using a name other than its own full name (eg. Frinstance Pty Ltd wishing to trade as Frinstance), it must register that trading name as a business name. For enquiries regarding companies, contact ASIC on 1300 555 600 or visit www.asic.gov.au

What is a trade mark?

Registration of a trade mark gives the owner the legal right to exclusively use or control the use of the mark. IP Australia is the Commonwealth agency that administers registration under the *Trade Marks Act 1995*.

Before registering your business name, it is a good idea to search the Register of Trade Marks.

Searches can be done free of charge on the IP Australia website at www.ipaustralia.gov.au or, for a fee, IP Australia will do the search for you.

It is important to remember that registering a business name will not prevent the name being used by somebody who has registered it as a trade mark.

If you have a dispute with someone over a business name, company name or trade mark, the matter may need to be resolved in court.

It is the proprietor's responsibility to check the Register of Trade Marks to ensure this situation does not arise.

Do I need an ABN (Australian Business Number)?

You don't need an ABN to register a business name, however you must tell us your ABN when and if you get one.

For information about applying for an ABN visit www.abr.gov.au

Need more information?

Business Licence Information Service

blis.fairtrading.nsw.gov.au

Tel: 13 32 20

Business licensing (motor dealers, travel agents, pawnbrokers and second-hand dealers)

Tel: 9619 8700

Property services licensing (real estate agents, business agents, stock and station agents, strata managing agents, on-site residential property managers and conveyancers)

Tel: 9619 8799

Certificates of registration (real estate salespersons, business salespersons, stock and station salespersons, strata managers, community managers, on-site residential property managers and valuers)

Tel: 9619 8799

www.fairtrading.nsw.gov.au
Fair Trading enquiries 13 32 20
TTY 1300 723 404
Language assistance 13 14 50

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