

Your Ref: Business Names Registration Bill 2011 and related bills

Quote in reply: Business Law Committee

22 July 2011

Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: economics.sen@aph.gov.au

Dear Committee Secretary

INQUIRY INTO THE EXPOSURE DRAFT OF THE BUSINESS NAMES REGISTRATION BILL 2011 AND RELATED BILLS

I write on behalf of the Queensland Law Society's Business Law Committee in relation to the Business Names Registration Bill 2011 and related Bills Inquiry ("the proposed Acts").

The Society supports a national Business Names Registration Scheme, which will provide prospective business owners a central repository to register and search for Australian businesses. There are a few comments the Society would like to make on the *Business Names Registration Bill 2011* ("the Bill").

Definition of business

Clause 4 of the Bill defines business, however does not refer to franchises. Clause 4(1)(c) is also unclear.

The Society therefore recommends that:

- Clause 4(1)(a) be amended to include a reference to a "franchise"; and
- The words "in the form of" in clause 4(1)(c) be replaced with "subject to."

Offences relating to business names

The Society notes that clause 17(1) of the Bill specifies that "an entity commits an offence if: the entity carries on a business under a name; and the name is not registered to the entity as a business name on the Business Names Register." The Society notes that there is no transition period for entities registering their application through mail, fax or in person at a Magistrates Court or QGAP Office.

In Queensland, business name registration applications have different processing times. The Queensland Office of Fair Trading website (accessible - <http://www.fairtrading.qld.gov.au/register-business-name.htm>) notes that applications by fax or post to Registration Services or SmartLicence could take between 5-10 business days to process, whereas an application made in person at a Magistrates Court or QGAP Office

could take at least 10 business days to process. Therefore a regional business, by virtue of its location, is at a disadvantage to metropolitan businesses.

To remedy this inequity, the Society recommends that the *Business Names Registration Regulations 2011* consider a transition period acknowledging that a lodged application is deemed to be accepted until further written notice confirming otherwise.

Franchising Matters

The Society recommends that the proposed Acts be reviewed to ensure they reflect the unique relationships that arise in franchises, which are discussed in more detail below.

Right to register a business

The Society notes that clause 22(1) allows an entity to lodge a business name registration form with ASIC to register a business. Clause 5 (1) defines “entity” but does not refer to a power of attorney.

As a franchise agreement may require a person as a power of attorney to lodge and register a business, the Society recommends that the definition of “entity” be widened to include this circumstance.

Similarly, a franchise agreement may require a person as a power of attorney to lodge a renewal and a cessation of business name (in the event the franchise is assigned or sold). The Society recommends that a power of attorney also be provided an opportunity to lodge these forms.

Transitional provisions

A franchise agreement may also require parties, who have agreed to a fixed term franchise, to complete a notice of cessation of business at the commencement of a franchise agreement (with the intent it is to be lodged at the completion of the franchise term.)

The Society enquires as to how long the transitional period will be that the Business Name Register will accept the equivalent State forms?

Overall, the Society welcomes a national business name registration scheme and urges the Commonwealth Government to provide literature and resources to assist business owners with the transition as well as guidelines for “nearly identical names” and “undesirable names”.

Thank you for the opportunity to make comments on the proposed Acts.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Louise Pennisi on 3842 5872 or l.pennisi@qls.com.au

Yours faithfully

Bruce Doyle
President