



Government of **Western Australia**  
Department of **Mines, Industry Regulation and Safety**  
**Consumer Protection**

Statutory review report on the  
*Business Names (Commonwealth Powers) Act 2012*

October 2017

## **Business Names Statutory Review**

### 1. Introduction

The *Business Names (Commonwealth Powers) Act 2012* (the WA Act) was enacted on 10 May 2012 and was part of a reform project which transferred responsibility for the registration of business names from the States and Territories to the Commonwealth Government. The main purpose of the WA Act was to adopt Commonwealth business names legislation and refer to the Commonwealth Parliament the power to legislate in regard to the registration of business names.

The new national Business Names Register (the National Register) commenced on 28 May 2012 and is operated by the Australian Securities and Investments Commission (ASIC).

In accordance with section 13(1) of the WA Act, a review of the operation and effectiveness of the WA Act is to be carried out as soon as is practicable five years after the commencement of the legislation. Section 13(2) of the WA Act requires the Minister to prepare a report based on the review and, as soon as is practicable after the report has been prepared, cause a copy of the report to be laid before each House of Parliament.

This report is the product of the statutory review of the WA Act. It outlines the background to and implementation of the business names reforms and considers the effectiveness of the new national system, in comparison to the previous state business names register.

## 2. Background

### *2.1 Pre-reform system*

Prior to the introduction of the National Register, every person, partnership or body corporate that sought to trade in Western Australia under a name other than its own legal name was required to register that business name under the *Business Names Act 1962* (WA) with the Department of Commerce (now known as the Department of Mines, Industry Regulation and Safety).

Similar legislation existed in every other Australian state and territory. A person that sought to trade under a business name in more than one state or territory was required to register that business name separately in each of those jurisdictions.

In Western Australia, the Department of Commerce provided a high level of service to people in regard to business names transactions. The majority of this service was provided over the counter. There were also a large proportion of paper forms received through the mail and the Department provided assistance over the phone to businesses and people wanting to search the Western Australian business names register. Online options were available for business name renewals and searches of the register.

The Commonwealth Parliament had no role in business names registration and lacked the constitutional authority to fully regulate business names.

### *2.2 Background to the reforms*

On 3 July 2008, the Council of Australian Governments (COAG) agreed to a new national business names registration scheme to be operated by the Commonwealth Government through ASIC. The intention behind this decision was to enable businesses to apply for their business name and Australian Business Number online, in one single streamlined process. A national system would also mean that businesses operating in more than one state or territory would no longer need to register separately in each jurisdiction, leading to significant savings in registration fees.

COAG also agreed that state Parliaments would refer power to the Commonwealth to enable it to legislate with regard to business names.

An Intergovernmental Agreement (the IGA) providing for the implementation of a national business names register was signed by all Australian jurisdictions at the COAG meeting on 2 July 2009.

### *2.3 Reform process - legislative*

The national business names regulatory scheme was implemented by the *Business Names Registration Act 2011* (Cth) and the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* (Cth), supported by a referral of legislative power from State Parliaments.

In Western Australia, the transfer of legislative responsibility was effected by the passage of the WA Act, which adopted the Commonwealth business names legislation and referred to the Commonwealth Parliament the power to legislate in regard to the registration of business names.

In addition to adopting the Commonwealth business names legislation and referring to the Commonwealth Parliament the power to amend the adopted legislation, the WA Act amended the *Business Names Act 1962* (WA) to facilitate the closure of the Western Australian business names register and the transfer of responsibility for the registration of business names to ASIC.

In particular, the WA Act:

- allowed the Department of Commerce to finalise any business names matters that were outstanding immediately before the transition (e.g. new applications or renewals that had not been finalised);
- authorised the transfer of business names data to ASIC; and
- provided immunity to state officers who acted in good faith when dealing with transitional business names matters.

The WA Act also made consequential amendments to a number of Western Australian Acts to replace references to the *Business Names Act 1962* (WA) with references to the *Business Names Registration Act 2011* (Cth).

#### *2.4 Reform process - procedural*

State and territory business names registers were closed immediately before the commencement of the National Register on 28 May 2012, and data from these registers (both historical and current as at 28 May 2012) was transferred to ASIC.

Existing business names were ‘grandfathered’ into the National Register, including names which were identical or nearly identical to names in other jurisdictions at the time of referral. To ensure that consumers continued to be able to identify any business with which they have been dealing, identical business names on the National Register were given a geographic identifier, e.g. ‘(WA)’ after the name. This identifier is listed on the National Register for identification purposes only and was not required to be integrated into the trading or advertising requirements of the proprietor.

### 3. Operation and effectiveness of the WA Act

This section of the report reflects upon a number of issues that arose before and during the transition to the National Register, how they were dealt with and the impact they had on businesses, consumers and Government agencies. It also considers how the system is currently operating and whether ASIC is meeting the needs of its stakeholders in its delivery of business names services.

#### *3.1 Issues – before and during transition*

In the lead up to the transition, there were a number of factors which led to delays in systems testing and policy development for the National Register.

The Department of Commerce actively participated in a number of interjurisdictional working groups throughout the reform process, and used these forums to raise concerns regarding the development of the National Register and ASIC's proposed approach to service delivery. These concerns were also addressed at Ministerial level, with the Hon Simon O'Brien MLC (the then Minister for Commerce) writing to relevant Commonwealth Ministers on three occasions before the commencement of the National Register.

Where necessary, and working with ASIC in some instances, the Department of Commerce took steps to develop contingency measures with the aim of minimising the impact on businesses and other entities that required access to business names services during this transitional period.

- Data

Due to delays in the development of the National Register, there were a number of issues surrounding the availability and accuracy of data when the new system commenced on 28 May 2012.

The Department of Commerce worked closely with ASIC in the lead up to the transition and made a number of recommendations which, had they been accepted, may have reduced or eliminated some of these issues. For example, the Department's IT team made repeated requests for access to the National Register prior to 28 May 2012 for testing purposes. Had access been granted, it is likely that some of the problems with the National Register would have been able to be fixed before its commencement.

Many of the issues stemmed from the fact that ASIC had not finished uploading business names data that had been transferred from the State and Territory registers prior to 28 May 2012. It took ASIC almost two months to resolve these data issues, during which time the National Register contained a large amount of incorrect information, causing significant problems for both business and government agencies that rely on the accuracy of such information.

ASIC advised the Department that, due to the need to direct resources towards ensuring the accuracy and completeness of data on the National Register, a number of other register functions were not available from 28 May 2012 as planned. For example, ASIC had to implement smart form technology for new business name registrations and changes of details, instead of providing customers with a purely online service. Smart forms require manual processing and ASIC was unable

to deal with the volume of smart forms received. In some instances, businesses that had applied for a business name had to wait for more than a month for their application to be processed.

The Department of Commerce monitored these issues, raising them with ASIC as required and providing assistance where possible to ensure a satisfactory outcome. In some instances, Departmental officers advocated on behalf of businesses experiencing difficulties due to incorrect information being displayed on the National Register to ensure that these businesses could continue to operate as normal.

Some of the functionality that was intended to be in place from 28 May 2012 took over a year to be implemented. For example, ASIC did not commence issuing renewal notices for five months after the National Register commenced. They were then issued retrospectively, with businesses being assured that their business name would not be cancelled in the meantime. ASIC did not commence issuing renewal notices prior to the expiry of a business name until August 2013.

- Service delivery

Clause 5.4(1) of the IGA requires ASIC to use its best endeavours to at least maintain existing service levels that were provided by State and Territory agencies in relation to business names prior to the commencement of the National Register, and to strive to enhance these levels of service.

Prior to the commencement of the National Register, the Western Australian Business Names Register was administered by the Department of Commerce and a high level of service was provided to people who were registering, renewing or searching for a business name. The majority of this service was provided over the counter or by phone, with approximately 50 percent of business names transactions being conducted over the counter.

By way of contrast, the National Register is an online-based service. There is a Customer Contact Centre that businesses can phone for assistance, and there are terminals at all ASIC offices which allow customers to access the National Register.

In the lead up to the transition, the Western Australian Government was proactive in seeking to ensure service levels would be maintained by ASIC in accordance with its commitments under the IGA. For example, it was initially proposed that ASIC's Customer Contact Centre would operate only during Victorian business hours and would be closed on Victorian public holidays. The Department of Commerce argued that this would create a significant disadvantage to Western Australian businesses, as there is a time difference of 2-3 hours between Victoria and Western Australia, depending on the time of the year. As a result, the Customer Contact Centre services business hours across Australia and is closed only on national public holidays.

The Department of Commerce also intended to make terminals available at its Perth and Bunbury offices for the purpose of allowing people to access the National Register. However, during the transition process ASIC advised that businesses would require an *ASIC Connect* account to register, renew or make changes relating to a business name. The creation of an ASIC account involved providing an email address and then activating a link sent via this address. As the Department could not offer access to email accounts through these terminals, it was determined that they would be of limited use and therefore this plan did not proceed.

Numerous complaints were received by the Department of Commerce in regard to ASIC's service delivery for several months after the commencement of the National Register. This was largely due to the data issues outlined above, which led to a higher number of calls to the Customer Contact Centre than had been anticipated by ASIC. It was not uncommon for customers to report having to wait on hold for more than an hour, and for the online functions of the National Register to be unavailable for extended periods of time. These problems were exacerbated by the fact that ASIC provided no over the counter services, leaving customers with no other method by which to seek assistance.

Concerns about the marked difference between existing and proposed service levels were raised on a number of occasions both before and after the commencement of the National Register. Assurances were received that resources were being invested with the aim of improving service delivery, and that paper based forms would be made available to those customers that either could not or did not wish to access the online services.

### *3.2 Ongoing issues*

- Service delivery

The Department of Commerce consulted with the Small Business Development Corporation (SBDC) as part of the statutory review of the WA Act. The feedback received indicated that a number of small businesses were finding it difficult to navigate ASIC's online services. Some common complaints received by SBDC include:

- The ASIC website is not user friendly, particularly if a person has only basic computer skills.
- There are no staff at ASIC's Perth office that can assist with business names matters.
- The ASIC website has constant service interruptions and frequently 'locks out' users.
- There are no paper forms available for business names matters.
- Wait times for the ASIC Customer Contact Centre being too long.

SBDC officers have also stated that they have difficulty navigating the ASIC website when assisting small business owners, despite using it on a regular basis.

In response to claims about long waiting times, ASIC reported that in 2016–17 its Customer Contact Centre's average time to answer calls across its entire customer base (which receives predominantly company and business name enquiries) was 4 mins and 35 seconds.

In relation to the complaint regarding the lack of paper forms, ASIC has advised that business name interactions are almost completely online and only under exceptional circumstances will a paper form be issued to a customer. It is understandable that ASIC is seeking to limit paper forms as a high number of paper forms would lead to an increase in workload and higher costs, which may be passed on to businesses.

#### 4. The National Register today

The National Register is now well established and, together with ASIC's other registry services, is a quality certified organisation under *ISO 9001 Quality Standard in Information Management*.

As of 30 June 2017, 2.19 million business names were registered on the National Register. Business names transactions are almost completely online, and during the 2016–17 financial year, 99.9 percent of all business names registrations were completed online and within one day.

There were 32.2 million searches of the National Register during the 2016–17 financial year.

##### *4.1 Positive aspects*

Prior to 28 May 2012, a business that operated in more than one State or Territory was required to register their business name and pay a registration fee in each of those jurisdictions. The National Register has streamlined the registration process for these businesses, and also provides Australia-wide business information to consumers in one central location.

One of the most significant advantages of the National Register for businesses is the reduced fees for registering and renewing a business name. Immediately before the transition, it cost \$90 to register a business name on the Western Australian Business Names Register for a three-year period, and \$75 to renew that name every three years thereafter. Businesses that operated throughout Australia were also required to pay registration and renewal fees in any other jurisdictions in which they traded.

The cost to register or renew a business name on the National Register was initially set at \$30 for one year or \$70 for three years. This figure has now risen to \$35 for one year or \$82 for three years. This small increase still represents a substantial saving to businesses that operate in more than one jurisdiction as compared to the previous system of individual State and Territory registers. These cost savings are in part due to ASIC offering an online-based service as data is entered directly into the National Register rather than needing to be processed manually.

Some aspects of service delivery have also improved with the commencement of the National Register, particularly for Western Australian businesses as the Western Australian Business Names Register offered only minimal online services. Business owners can now check business name availability to register a business name and update their details, all on one national online service at any time. ASIC has advised that 36.5 percent of business name applications were received outside of business hours during the 2015–16 financial year.

##### *4.2 Negative aspects*

It is recognised that in today's society there is an increasing reliance on technology and the internet, particularly in the business world. It is a reasonable assumption that the majority of business owners would have at least basic skills in regard to online transactions. However, as feedback from the SBDC indicates, there are business owners with a basic understanding of technology who struggle to navigate ASIC's online system.

The issues with ASIC's website that have been mentioned above (e.g. users being timed out, frequent service interruptions) also inhibit the ability of businesses to complete required online transactions. These concerns were raised with the Chairman of ASIC in July 2017. Mr John Price, ASIC Commissioner, subsequently met with Mr David Hillyard, Commissioner for Consumer Protection, in August 2017 to discuss the issues surrounding service levels. As a result of this meeting, ASIC has committed to reviewing the website to determine whether changes can be made to improve its usability. Mr Price indicated that he would seek to work with the SBDC to address concerns being raised by its clients.

Mr Price also committed to reviewing the policies relating to paper forms and the circumstances in which these will be provided to customers.

## 5. Conclusion

The WA Act includes the capacity for the Western Australian Parliament to revoke the adoption of the Commonwealth business names legislation and the referral of legislative power, should that prove warranted. However, such a course of action would leave a gap in Western Australian legislation in respect of business names registration and impose a burden on businesses that operate in both this State and other jurisdictions, as they would be required to comply with two separate registration schemes.

Although ASIC's service delivery does not match the level of service provided by the Department of Commerce when it operated the Western Australian Business Names Register, this is outweighed by the positive aspects of a national business names system.

With the increased reliance on the internet and technology, there is no longer the same level of demand for a full over-the-counter business names service such as the one provided in Western Australia before the National Register commenced. It would also be cost-prohibitive for ASIC to operate such a service and would lead to higher costs for businesses.

However, there should be a sufficient level of assistance available to businesses that have difficulty completing business names transactions online, either because they do not have the technical skills to navigate ASIC's online system or because the ASIC website is not functioning properly. ASIC's commitment to review the usability of its website is a positive step towards resolving this issue.

SBDC has indicated its willingness to work with ASIC to seek to improve the online functionality of the business names services. In addition, SBDC has committed to monitor ASIC's provision of services through the National Register and, where necessary, encourage ASIC to take steps to improve access to the National Register, particularly for small businesses.

## 6. Recommendations

1. That the Western Australian Government, through the SBDC, continues to informally monitor the operation of the National Register, with a particular focus on whether the services provided meet the needs of all users.
2. That, if it appears that the services provided by ASIC are not meeting user needs, the SBDC and the Department of Mines, Industry Regulation and Safety will address the issue with ASIC directly.

**Department of Mines, Industry  
Regulation and Safety  
Consumer Protection:**

**1300 304 054**

Gordon Stephenson House Level 2/140 William Street  
Perth Western Australia 6000  
Hours 8.30 am – 5.00 pm Mon, Tue, Wed and Fri  
9.00 am – 5.00 pm Thurs  
Locked Bag 14 Cloisters Square WA 6850  
Administration: 08 6251 1400  
Email: consumer@dmirs.wa.gov.au  
www.dmirswa.gov.au

**Regional Offices**

Goldfields/Esperance .....	(08) 9026 3250
Great Southern .....	(08) 9842 8366
Kimberley.....	(08) 9191 8400
Mid-West.....	(08) 9920 9800
North-West.....	(08) 9185 0900
South-West .....	(08) 9722 2888

National Relay Service: 13 36 77  
Quality of service feedback line: 1800 304 059  
Translating and Interpreting Service (TIS) 13 14 50

This publication is available in other formats  
on request to assist people with special needs.

