

## NEW NATIONAL BUSINESS NAMES REGISTRATION SYSTEM

As you may be aware, the registration and transfer of business names are now (since 28 May 2012) administered nationally by ASIC's online Business Names Registration System.



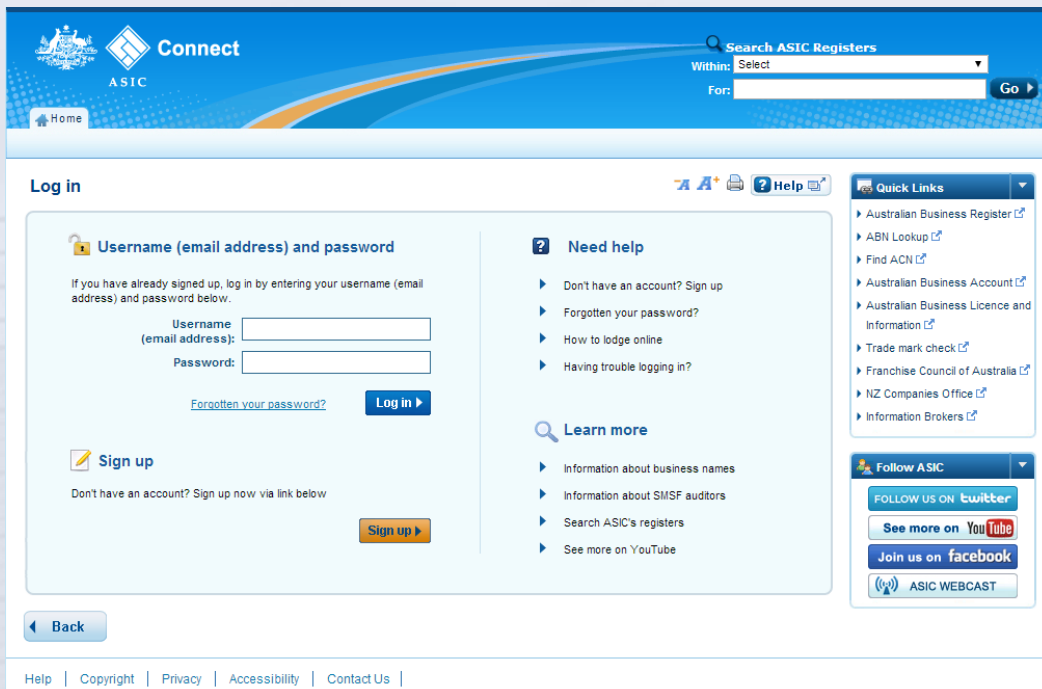
The screenshot displays the ASIC Connect website interface for the Business Names Register. At the top, there is a search bar for ASIC registers with options for 'Within' and 'For' (Name or Number). Below this, there are navigation tabs for 'Search company and other registers', 'Search business names register', and 'Search SMSF auditor register'. The main content area is titled 'Search business names register' and includes a search form with a 'Go' button. To the left, there is a 'Business names index' with links to 'Business names holder organisation', 'Business names holder person', and 'Check business name availability'. Below the index, there are sections for 'More about' (Information Brokers, Payment by credit card, Search other registers) and 'Need help' (How to use ASIC Connect search, Search tips, What are professional roles, Understanding free vs paid searches, Viewing your search results, Product examples, Fees, Troubleshooting, Frequently asked questions). On the right side, there are 'Quick Links' (Report a data issue, ABN lookup, ASIC website, Setup an alert, Franchise Council of Australia, Trademark check, Information brokers, NZ companies, Ask a question, Service availability), 'Recent Purchases', 'Recent Searches', and social media links for Twitter, YouTube, Facebook, and an ASIC Webcast.

### Key changes

1. Prior to 28 May 2012, registration of a business name was required in each state and territory in which a business operated. Under the new national system, only one registration is needed to register a business name throughout Australia.
2. ASIC has migrated all the previous state and territory Business Name registers to the national register.
3. If there are businesses that use identical names across the states and territories, ASIC may differentiate them by using a distinguishing word (such as a geographical marker).
4. Business owners are able to register and renew their business name online for a period of one or three years. Registering or renewing a business name will cost \$34 for one year or \$78 for 3 years.
5. ASIC will usually notify a business owner two months before the expiry of the business name to renew the same. However business name holders should not rely on this notification and should regularly check the register to confirm when their Business Name is required to be renewed (i.e. on or before the date of expiry).

6. Importantly, the registration of business names now requires that the business have an ABN. The business owners can apply for the ABN at the same time as registering their business name. This is to ensure that only businesses that are 'genuinely' trading are permitted to hold the business names.
7. A business owner can amend, update access the details in respect of their business name on ASIC Connect. Any person can set up an account with ASIC Connect.

<https://asicconnect.asic.gov.au/login/login.html>



8. In order to make changes to your business name including transferring, renewal or cancellation, you must have the "ASIC Key". This is a unique PIN for each registered business name. ASIC will post the ASIC Key to the registered address of business name holder.
9. If your business name was migrated from the old system, you may not have the ASIC Key. ASIC will provide the ASIC Key close to the time that you are required to renew the registration. If you need the ASIC Key in the interim, you can request for it from ASIC via ASIC Connect or as an inquiry through ASIC Connect.

### What these changes mean for businesses

1. Business owners should check that their current business names are validly registered on ASIC Connect and that they have not expired.

<https://connectonline.asic.gov.au/RegistrySearch>



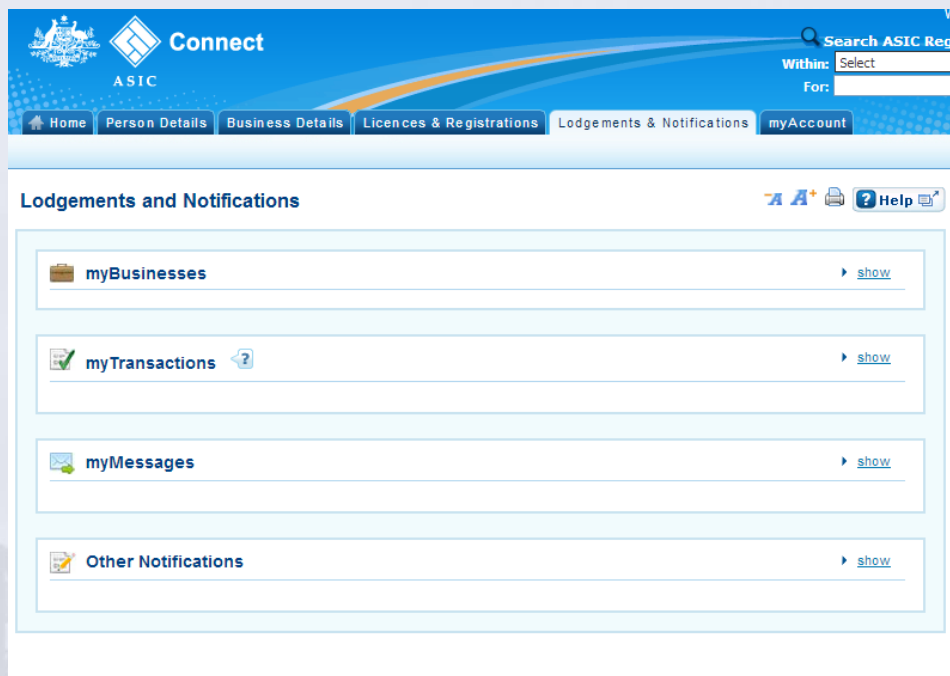
2. If a state or territory registered business name is accidentally allowed to lapse it may not be possible to re-register that business name if the business name is similar to another existing business name.
3. A business owner does not acquire any proprietary rights in a business name simply by registering a business name:
  - 3.1. if a business is using a name or brand in connection with particular goods and services, it should consider applying to register that name or brand as a trade mark. Trade mark registrations give greater legal protection to the trade mark owner in the event of a trade mark infringement.
  - 3.2. if you plan to use a new business name, you should conduct a trade mark search to assess whether there is a risk of infringing a registered trade mark. Murfett Legal can assist you with that.

## Transferring a Registered Business Name

Under the previous state-based business name system, a business that wants to transfer a business name (e.g. in a sale of business context) is only required to complete the physical '*Form 4 - Statement of Change in Registered Particulars*' and then lodge the form at the relevant government department (e.g. WA's Department of Commerce).

With the new national register, the following steps are now required to transfer a registered business name:

1. The current business name holder ("the Holder") has log into ASIC Connect using its ASIC Key;
2. The Holder then cancels and transfers the business name to the transferee;
3. The Holder will receive a "Consent to Transfer Number" from ASIC by email or by post;
4. The Holder provides the Consent to Transfer Number to the transferee; and
5. The transferee then registers the business name via ASIC Connect account (using the Consent to Transfer Number as authentication). The transferee has four months to register the business name from the date the Holder receives the Consent to Transfer Number. You must ensure that you pay the registration fees within ASIC's specified timeframe (currently 10 business days) otherwise the transfer will not be effected. The business name will then be available to other persons who wish to register the same name.



## Other points to note:

- Business name registration fees are required to be paid 10 days after application for registration. Failure to pay results in your application being refused and you will need to reapply for the business name. At the point the application is refused, the name becomes available to the public and there will be no guarantee when you reapply the same business name will be available.
- Generally, it is an offence to carry on a business under a name where that name is not a registered entity on the Business Names Register except where the business:
  - is an individual and the business name is the individual's name;
  - is a corporation and the business name is the corporation's name; and
  - is a partnership and the name consists of all the partners' names.
- There are other exceptions to the above and we can provide you with advice if required.
- Businesses may apply to suppress certain contact details.
- Where a business name is held on trust there is no obligation there is no obligation to disclose the trustee's name. This can make it difficult if you are trying to identify which entity the business name on behalf of the beneficiaries of the trust.



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