

ANFPAN Conference 2012

National Business Names and National Fund-Raising Reform

National Business Names Registration:

Effective from 28 May 2012 business names registrations will move from the various State Governments' departments to ASIC. A national business names scheme will then be in operation. Transitional arrangements have been made with each State and Territory to ensure the changeover operates smoothly.

Businesses operating under a business name in more than one State will henceforth only need to be registered under the new Commonwealth scheme. The individual State registrations will have closed effective from 25 May 2012. There will be links between the State websites and the ASIC site so that a person now seeking to register under the State system will be referred to ASIC automatically.

It is likely accountants have already been bombarded with information about these changes. However note that: -

- ASIC have a Q & A page which covers most issues;
- registration fees will be cheaper – at least in WA;
- in future ABNs will be needed for a business name before it can be registered or renewed. A new business name application can also incorporate an ABN application to simplify procedures.
- ASIC has a 'search' facility on its website under the "Search ASIC Registers" heading. This will enable interested parties to identify whether there is already a company or business name registered;
- the change eliminates the need for registration in multiple States;
- during the transition phase, if you have a business name registered in multiple States you may need to check each State registry to clarify information regarding the changes;
- in the event that the same name is registered in multiple States, ASIC will provide a State identifier to ensure there is no confusion.

Overall it is a simple and valuable reform which should not present practitioners with any complications.

In WA a church is barred by law from registering a business name for the church itself. Where a church is not an incorporated entity this leaves the identification of the church unclear. It also frees the church officers from visibility and therefore reduces their exposure to liability.

What is the position in your State?

National Fund-Raising Reform:

Reform of fund-raising activities was one of the very early COAG reforms proposed. National organisations seeking to raise money across Australia, whether using direct mail, website or other media, have found the current arrangements very onerous. The need to have a licence in each State and Territory, with different regulatory obligations in each instance, has imposed a major administrative burden. As a consequence such a reform has been welcomed.

Bureaucrats from each governmental area have been discussing the arrangements for several years and it was originally expected that this would be an early reform that would have been in place before now. Therefore it is a significant disappointment to hear two weeks ago that the harmonization of fund-raising laws was being deferred to a date to be advised.

The Government Discussion Paper on fund-raising required responses by 5 April 2012 – one of the last Discussion Papers to be issued. From the delays now in evidence and from some hearsay, it appears likely that a significant reason for the delay is the lack of common ground between some of the States and the Commonwealth. It ultimately comes down to how the matter will be administered. It appears likely there is resistance to handing over another State right to the Commonwealth from some States, - in particular my own State of Western Australia. However it also appears to be due to the delay in establishing the new definition of ‘charity’ for all Commonwealth purposes. There is already much diversity in the definition, with variations in different Acts in the individual States and Territories.

The objective is for the ACNC to handle the administration of issuing of licences and its one-stop shop could well handle the processing of reporting obligations. However the ACNC will merely be the agent of State Governments, at least in some instances. (In case the ‘t’other siders’ are unaware of it there are several instances in the West where the State Government administers a compatible law, whereas other States have handed over responsibility to the Commonwealth. Examples would be the Family Court of Western Australia and also the Industrial Commission to name two significant areas).

It seems the Treasury bureaucrats have a death wish regarding every area on which they have been commissioned to prepare Discussion Papers. The fund-raising reform task that should have already been well-researched with common ground established has become onerous. This is evidenced by a number of the matters that arose from the Discussion Paper. A major concern is the proposed definition of a fund-raising activity as “any activity that involved the soliciting or receipt of money (whether or not in return for a good or service) or other property, for a charitable purpose”. The term “charitable purpose” is also yet to be defined. The wording of the proposed definition means that any activity, even an involuntary activity, could be held to be a fund-raising activity requiring a licence. While the initial objective is related to charitable fund-raising, it would be expected to be broadened to incorporate other not-for-profit fund-raising. However one of the examples in the Discussion Paper indicated they were considering exempting from the fund-raising provisions a work place appeal for colleagues and families. This immediately appears to go outside of the whole NFP area and gives some idea of the bureaucratic frame of mind.

There is also a proposal to consider exempting donations to religious organisations from their own members. This very worthy proposal however immediately identifies that a fund-raising activity by an organisation from amongst its own members would require a fund-raising licence unless it was a religious organisation. There are numerous other examples in the Discussion Paper which indicate that the bureaucrats are seeking to obtain as much control of the voluntary activities of the whole NFP Sector as they possibly can. Key submissions have advocated that a fund-raising activity by an NFP organization from among its own members should be exempted. It is to be hoped that common sense will ultimately prevail.

This is a very worthwhile reform where bureaucrats are seeking to complicate the reform with additional regulation which may well invalidate the objective.