



# NSW Legislative Council Hansard

## Business Names Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 18 October 2006.

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### Second Reading

**The Hon. ERIC ROOZENDAAL** (Minister for Roads) [8.21 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

#### Leave granted.

The Bill I introduce today will make a number of minor, but important, amendments to the Business Names Act 2002, to ensure the Act continues to be effective and well administered.

The main purpose of the Business Names Act is to provide a means to identify the person or corporation who is currently or has previously been carrying on business in New South Wales under a particular business name.

Having access to this information enables consumers and business owners to identify the legal entity behind a business name and assists them to protect their rights.

Registration of business names also allows the Government to ensure businesses do not use names that are offensive or misleading.

Another purpose of the registration scheme is to avoid confusion in the marketplace by preventing businesses from operating under names that are the same as or closely resemble the names of existing businesses.

This Bill contains amendments to the Act that will streamline the registration process and deliver greater fairness and certainty in registering a business name.

To conduct a business in New South Wales under a name other than their own name, a person must apply to the Office of Fair Trading to register the business name. Registration of a name lasts for three years.

To continue using the name beyond that date, registration must be renewed for a further three-year term. A renewal application can be lodged with Fair Trading up to eight weeks before the registration expires.

Where a business name registration expires without being renewed, the Act currently provides for a new application to be made to re-register the name.

The Government recognises that it is not always possible to renew registration of a name before it expires. This can happen, for example, if the business owner is away at the relevant time or it can simply be the result of an oversight.

Over the past year, around 29% of renewal applications were received late. So as not to disadvantage business owners, the Office of Fair Trading has accepted and processed these renewals.

However, businesses that renew their registration late run the risk that someone else may apply to use the name during the period in which the registration is lapsed.

Fair Trading cannot hold an expired name in reserve indefinitely just in case the business owner may one day decide to renew it. A refusal by Fair Trading to allow another person to use the name would probably not be upheld in the Administrative Decisions Tribunal.

To address these issues, the Bill will amend the Act to give business owners a clear three-month window in which they can apply to restore an expired business name registration. The business name will also be unavailable to other applicants during the three-month restoration period.

Where a renewal application is not received on time, the registration of the business name expires. However, following these amendments, Fair Trading will be able to refuse other applications to register the same or a similar name until the three-month restoration period has ended.

After the end of the restoration period, if registration has not been restored, the business owner would need to re-apply to register the name. The name will also be available for potential registration by other applicants.

These amendments support the fair operation of the business name registration system by providing a clear time frame after which an expired name will be available for use by other businesses.

A second set of amendments in the Bill will clarify the Commissioner's ability to refuse or cancel the registration of a business name that includes the word "sheriff".

The Act already prohibits registration of a name containing the word "police" unless the use of the name has been approved by the Commissioner of Police under the Police Act 1990. Where Fair Trading is notified that approval to use the name has been revoked, the Business Names Act allows steps to be taken to cancel registration of the name.

The Sheriff Act 2005 contains similar provisions to those in the Police Act, in that use of a name containing the word "sheriff" is prohibited without approval of the Sheriff, and approval may be revoked in certain circumstances. It is appropriate that the Business Names Act deal consistently with these kinds of matters.

Accordingly, the Bill inserts a provision to enable registration to be refused if a proposed name containing the word "sheriff" has not been approved under the Sheriff Act. A further amendment will enable Fair Trading to cancel registration if the Sheriff's approval is revoked.

I think everyone would agree it would be inappropriate for business owners to be able to register a name which could mislead the public into believing the business is associated with the police force or the Sheriff's office.

I should mention that no currently registered names will be adversely affected by the amendments. Because the Sheriff Act prohibits use of the name 'sheriff' without consent, Fair Trading already refuses to register such names. The amendments will simply ensure parity of treatment with names containing the word "police" and will give Fair Trading firmer legal ground for refusing and cancelling registration of these names where their use is not approved.

The third main set of amendments to the Act relate to the age at which a person may apply for the transfer of registration of a business name.

The Act currently allows a person aged 16 or more to register a business name. Registration can also be transferred to another person or entity, for example, where the business is sold. A joint application for transfer is required to be made by the transferor and the transferee.

However, an anomaly in the legislation means that only a person aged 18 or above may sign the application as a transferee. The amendment will ensure that persons aged 16 or more are able to apply to have registration of a business name transferred to them.

This will make it easier for young people setting up a business to be named as the proprietor of the relevant business name.

Finally, the Bill makes several minor amendments of a statute law revision nature to clarify or update aspects of the Act. The definitions of "Department" and "Director-General" are brought up to date and made consistent with the definitions contained in other Fair Trading legislation.

The general regulation making powers are being amended to make it clear that the Governor is able to make regulations with respect to the waiver or refund of fees payable under the Act.

Currently, section 40 of the Act broadly allows regulations to be made with respect to any matter required or permitted to be prescribed, or that is necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

A regulation is in place permitting the Commissioner for Fair Trading to waive or refund a fee in certain limited circumstances, for example, where it would be unfair in the circumstances of a particular case to require payment. Should this regulation need to be amended or remade in the future, doubts could arise as to whether the general regulation making power is sufficient. The Bill rectifies this by including a specific regulation making power.

Although a full review of the Act will be undertaken in 2008 to ensure it is continuing to meet its objectives, these amendments are necessary in the interim to ensure the ongoing smooth operation of the business name registration scheme.

The changes being made by this amendment Bill will establish clear rights for business owners to have an

expired business name reinstated within three months of expiry, and will ensure that the name continues to be protected during this period.

The amendments will also increase certainty as to when an expired name becomes available for other potential businesses.

The Government, through the Office of Fair Trading, is participating in a national Business Name Registrations Project which will streamline the multiple registration processes required to set up a business in this country.

The project, which has been endorsed by COAG and the Small Business Ministerial Council, will enable business operators to apply for a range of different business registrations, including their business name and ABN, on one web site.

In closing, I would like to emphasise my ongoing commitment to reducing the administrative burden on business through the business name registration requirements and I will continue to explore ways in which this may be achieved.