

2010-2011

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BUSINESS NAMES REGISTRATION (FEES) BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Small Business, Minister Assisting on Deregulation and Public Sector
Superannuation, Minister Assisting the Minister for Tourism, Senator the Hon Nick
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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ASIC	Australian Securities and Investments Commission
COAG	Council of Australian Governments
Fees Bill	Business Names Registration (Fees) Bill 2011
National Business Name Registration Package	Business Names Registration Bill 2011, Business Names Registration (Transitional and Consequential Provisions) Bill 2011 and the Business Names Registration (Fees) Bill 2011 and other legislative instruments
Register	Business Names Register
Registration Bill	Business Names Registration Bill 2011
Registration System	National Business Name Registration System
Transitional Bill	Business Names Registration (Transitional and Consequential Provisions) Bill 2011

General outline and financial impact

Outline

The Business Names Registration (Fees) Bill 2011 (Fees Bill) forms part of the National Business Names Registration Package which also includes the Business Names Registration Bill 2011 and the Business Names (Transitional and Consequential) Bill 2011; and other legislative instruments including the Business Names (Availability of Name) Determination 2011.

This legislative package establishes a national business names registration system, a key regulatory reform initiative of the Council of Australian Governments.

The main purpose of business name registration is to protect consumers, by allowing them to identify the entity behind a business name.

Under the Registration Bill, various fees are to be imposed in relation to, amongst other things, the registration and renewal of a business name and for an extract of the Business Names Register (Register). These fees are imposed, as taxes, by the Fees Bill.

Date of effect: The Fees Bill commences at the same time as section 3 of the Business Names Registration Act 2011 commences.

Proposal announced: The proposal to transfer responsibility for business name registration to the Commonwealth was announced by COAG on 3 July 2008.

Financial impact: The 2010-11 Budget allocated \$125.2m over four years to implement the Registration System. These funds were distributed between the Department of Innovation, Industry, Science and Research (DIISR), the Australian Securities and Investment Commission (ASIC) and the Australian Taxation Office (ATO). This amount is being fully offset in unspent funding.

The National Partnership Agreement to deliver a Seamless National Economy committed the Commonwealth and the States and Territories to delivering on agreed implementation milestones and deadlines, which are tied to reward payments under the National Partnership Agreement.

Compliance cost impact: No net increase in compliance costs. The replacement of the existing State and Territory business names regimes with a single new Commonwealth business regime will result in a net reduction in compliance costs for businesses and those transacting with businesses.

Imposition of fees for chargeable matters

Outline of chapter

1.1 The Fees Bill provides for the imposition of fees for things done under the Registration Bill. It is a separate piece of Commonwealth legislation to ensure compliance with Commonwealth constitutional requirements in relation to taxation bills.

Context of new law

1.2 Any fees under the Fees Bill will be imposed as a tax in order to comply with section 55 of the Australian Constitution which provides in part that “Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect”.

1.3 A law will impose taxation where it authorises a compulsory exaction of money by a public authority for public purposes, enforceable by law.

1.4 The approach taken in the Fees Bill is generally consistent with the *Corporations (Fees) Act 2001* which deals with the imposition of fees under the *Corporations Act 2001* and the *National Consumer Credit Protection (Fees) Act 2009* which deals with the imposition of fees under the *National Consumer Credit Protection Act 2009*.

1.5 The fees imposed under the Fees Bill are payable to the Commonwealth (through ASIC) by the application of Part 9 of the Registration Bill.

Summary of new law

1.6 The Fees Bill establishes a comprehensive set of provisions concerning the imposition of fees and charges in the form of taxation legislation that complies with Commonwealth constitutional requirements. It deals with matters such as the:

- imposition of fees for chargeable matters;
- imposition of, and matters relating to the amount of, fees; and
- differential fees for electronic compliance in relation to a chargeable matter.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
The Fees Bill will impose fees for things done under the Registration Bill.	As the Fees Bill is part of the National Business Name Registration Package, there is no current law dealing with the imposition of fees. Each State and Territory has their own business names legislation which imposes fees.

Detailed explanation of new law

What is a chargeable matter?

1.7 The key provision in the Fees Bill is the definition of the term chargeable matter. *[Subsection 3(1)]* It is defined broadly as any of the following:

- a registration of a business name to an entity;
- a renewal of the registration of a business name to an entity; and
- an application by an entity for an extract of the Business Names Register.

Other definitions

1.8 Other expressions used in this Bill that are defined in the Registration Bill have the same meanings as they have in that Bill. *[Subsection 3(2)]*

Imposition of, and matters relating to the amount of, fees

1.9 Fees for chargeable matters may be prescribed in the regulations. *[Subsection 4(1)]* Any fees prescribed will be imposed as a tax to ensure compliance with constitutional requirements. *[Subsection 4(2)]*

1.10 It is anticipated that the regulations will provide for the increase of fees over time through indexation of fee amounts to the Consumer Price Index (CPI). This approach to indexation is consistent with that adopted in the *Corporations (Fees) Act 2001* and regulation 3 of the *Corporations (Fees) Regulations 2001* as amended by the *Corporations (Fees) Amendment Regulations 2010 (No.2)*. This approach is also consistent with the method of fee indexation adopted under the *National*

Consumer Credit Protection (Fees) Act 2009 and regulations 6 and 7 of the National Consumer Credit Protection (Fees) Regulations 2010 (No.2).

1.11 The inclusion of the CPI indexing mechanism in the Bill would impede the timely amendment of the indexing provisions to address any possible problems that may be identified in the future. CPI indexing provisions are basic machinery provisions. The CPI indexing mechanisms would determine fees by reference to a fixed and certain formula, the application of which would not rely upon the exercise of any discretion by the regulator and which would utilise objectively determinable inputs. Inclusion of the CPI indexing mechanisms in the regulations is therefore appropriate.

1.12 The regime for imposing fees in relation to business names should be viewed in light of paragraphs 6.1 and 6.2 of the Intergovernmental Agreement for Business Names, entered into between the Commonwealth and the States and Territories. These non-legally binding provisions provide that:

6.1. The Commonwealth will levy fees on private individuals and non-government corporate entities for registering a business name. These fees will be commensurate with the total costs involved in setting up and administering the national business names registration system.

6.2. Consistent with the objective of full cost recovery, the Commonwealth will seek to ensure that any new fee for national business name registrations will not be higher than the lowest business name registration fee currently paid by any State or Territory, taking account of the consumer price index increases. ASIC will consult with the States and Territories prior to recommending the level of registration fees or any change in the level of registration fees, to the Government.

1.13 Two or more fees may be prescribed for the same chargeable matter. [Subsection 4(3)]

1.14 Fees for chargeable matters may be prescribed in the regulations by specifying an amount as the fee (not exceeding \$10,000) or by specifying a method of calculating the amount of the fee. The \$10,000 maximum applies separately to each fee imposed if more than one fee is prescribed for the same chargeable matter. [Subsection 5(1)]

1.15 A fee for a chargeable matter need not bear any relationship to the cost of providing any service that forms part of, or is related to, that matter. [Subsection 5(2)] A fee, or the sum of fees, for a chargeable matter must not exceed \$50,000. [Subsection 5(3)]

Different fees in relation to chargeable matter

1.16 Regulations may prescribe that fees can be charged at different rates depending whether or not a chargeable matter is complied with by electronic means. [Section 6]

Regulations

1.17 The Fees Bill provides that the Governor-General may make regulations for the purposes of sections 4 to 6. [Section 7]