

Newsletter

Starting A Small Business

Aspiring small business people need to do their homework before registering a new business name. Before starting a business it is a good idea to understand how fair trading and licensing laws may apply to the business.

Extensive planning prior to starting up a new business is essential and it should address how the goods or services are going to be sold, how to handle customer complaints, business promotion, and compliance with advertising, packaging and labelling requirements.

A current business name registration is a legal obligation under the Business Names Act 1962, and helps new business owners establish and give credibility to their business identity. Business names can be registered at any of the Office of Fair Trading centres throughout Queensland by fax or mail.

Businesses such as motor dealers, real estate agents, property developers and letting agents are all required by law to be licensed. There are heavy penalties that apply for individuals and businesses operating without a licence, and fair trading inspectors conduct regular compliance checks to ensure this professional standard is met. Businesses also need to check that they are selling safe products which meet Queensland and Australian mandatory standards.

One of the first things to consider when establishing a business is the best way to structure the business. The legal structure of the business affects the ownership, tax structure, risks and future of that business. The three most common legal structures are a sole trader, a partnership with another person or persons, or a proprietary limited company. Licensing, permit or registration requirements vary for each of these structures.

The licensing, permit or registration requirements for each business will vary based on factors such as the structure of the business as mentioned above, whether the business is employing staff, the location of the premises and the type of business that is being operated. It is important to ascertain the specific licensing, permit or registration requirements applicable to your business.



There are some licences that are common to many businesses. Every business operating in Australia needs to apply for an Australian Business Number (ABN). The ABN is a single identifier for any dealings with the Australian Taxation Office (ATO) and for future dealings with other departments and agencies at all levels.

Proof of business name registration is required to:

- open bank accounts
- advertise in the Yellow Pages
- purchase from wholesalers at wholesale prices
- have business equipment connected
- help establish a business' reputation and credibility.

Registration must be renewed either every year or every three years if the business still operates.

In addition to business name registration, Australian company registration provides an applicant with an Australian Company Number (ACN) which, together with the name and the status of the company, serves to identify it. Applicants may reserve a proposed company name for a period of two months. ASIC is obliged to reject the proposed name if it is identical to another company or business name or if the name is of a kind, declared by regulations, to be unacceptable for registration.

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Another factor to consider when starting up a business is registration of a trade mark. Registration of a trade mark gives goods or services an individual stamp and is part of a business' intellectual property. Subject to certain tests and qualifications prescribed by law, a trade mark can consist of a word, phrase, letter, number, sound, smell, shape, logo, picture, aspect of packaging or a combination of these. Before designing and applying for a trade mark on goods or services, a search in the official trade mark records must be completed to find out if the trade mark is available for use.

Another important factor to consider when setting up a business is the registration of a domain name on the internet. An internet domain name allows a business to have a professional presence on the internet. There are a number of different domain name types to choose from. Some domains have special requirements while others are less strict. The following is a brief description of the most common domain types:

- **com.au**
Intended for Australian businesses, companies and incorporated bodies. An ACN or ARBN is required to apply (that is, you must be a company or have a registered business name). This domain is the most frequently used by Australian businesses.
- **net.au**
Mainly intended for Australian organisations providing network connectivity or some sort of network service, but available to all Australian businesses. You need an ACN or ARBN to apply.
- **asn.au**
For Australian associations, including incorporated bodies, political parties, trade unions, sporting and special interest clubs. Association incorporation number or ARBN required.

There are also a number of regulations on record keeping that businesses must abide by. Under tax law, a person carrying on a business must keep records that explain all transactions. These records include all documents that are relevant for the purpose of ascertaining income and expenditure. The person must keep their records in written English or enable the records to be readily accessible and convertible into written English. Any books of accounts, records or documents relating to the preparation of your income tax return must be retained for at least six years. For more comprehensive information about the rules, regulations and legislation that affects starting up a business, please contact Bruce Smith at Smith & Stanton.

Who Do I Appoint As My Executor When I Make My Will?

An Executor is the person who is selected by you to administer your estate. This person will collect, transfer and/or sell all your assets, pay any outstanding debts and then distribute your estate to your nominated beneficiaries. You can appoint an executor. It is also a good idea to have a substitute executor in case your first named person does not survive you, or cannot for some reason undertake that role.

An Executor should be someone who you trust to administer your Will according to your wishes. It is also preferable if your Executor resides in the same State as your estate assets as this can reduce the time it takes to complete the administration of your estate.

It is also important to consider the age of your Executor and their present health, so that he or she is likely to have the capacity to perform that role or indeed survive you.

Your Executor needs to be eighteen years of age and not a bankrupt.

If you are appointing family members such as children, it is important to consider whether they have a good relationship with their other named executor siblings, as sibling disagreements can delay the administration of your estate.

It is good practice to ask the person who you intend to appoint as your executor whether they will perform this role just in case that person is unwilling to act on your behalf. After you have signed the Will it is also a good practice to inform that person where you are keeping the original Will.



*“people you
can talk to”*

S M I T H & S T A N T O N
L A W Y E R S



Brisbane's First Environmental Covenant

Brisbane's first environmental covenant between a property owner and the Brisbane City Council has been signed, with the aim of helping to boost the city's bushland.

A conservation covenant is a voluntary agreement between a land owner and an authorised body to help the land owner protect and manage the environment on their property.

It is usually registered on the title of the land and can apply to all or part of a property. Although there are exceptions, it is usually permanent.

The terms of the agreement are negotiated between the land owner and the covenant provider and may only be changed with the agreement of both parties.

Voluntary conservation covenants are attached to the property title rather than the owner, legally binding current and future owners to restoration and protection.

Under the contract, the residential property will be reclassified as "conservation" under the Brisbane City plan.

Properties with canopy, mid-storey and under-storey forest areas of a minimum half-hectare, or the capacity to restore a half-hectare, are eligible for the covenant.



Spotlight On Real Estate Advertising

There are strict rules and regulations that aim to get rid of false and misleading representations by real estate agents and auctioneers.

Under the Property Agents and Motor Dealers Act 2000, it is illegal for someone to make false or misleading representations about a property or its value when they are promoting it for sale.

This includes making misleading representations and advertising low lead-in prices to potential buyers, if the buyer is not prepared to accept the price at which the property is promoted.

When a property is being auctioned, real estate agents and auctioneers are prohibited from giving any bidder advice on:

- whether a reserve price has been set;
- what the reserve price is; and
- the price the property is likely to sell for.

This prevents false inducements to bidders to attend auctions in the belief a suggested selling price could be achieved when in fact it is well underneath the reserve price. It also protects bidders from spending money on building and pest inspections based on unrealistic valuations.

Real estate agents and auctioneers who contravene these provisions face fines of up to \$40,500 for an individual and \$202,500 for a company.

The Property Agents and Motor Dealers Act 2000 aims to promote a fair and competitive marketplace by providing:

- a comprehensive licensing system, which sets minimum entry standards;
- establishes standards for industry practice
- safeguards for consumers.

Under section 154 of the Act, real estate agents are required to provide a complaint-handling process.



Partnership Changes

In 1977, Bruce and Judy Smith started the legal practice which ultimately became Smith & Stanton. Since that time, the firm has practised continuously as a general legal practice, with Bruce being involved in commercial and property law, Judy in succession law, and the third partner, Kerry Barnes in family law.

Today, there is an increasing need to provide specialised services. To accommodate this need, and to provide a more specialised service for its clients, on 30 June 2008, the partners of Smith & Stanton dissolved their former practice. Kerry Barnes has commenced her own specialised family law practice. The remaining partners, Bruce and Judy Smith, will continue to operate Smith & Stanton specialising in their areas of commercial and property law, succession law and conveyancing. Smith & Stanton will no longer practise family law.



Bruce Smith



Judy Smith

Our associate partner, Catherine McKenzie, will continue practising with Smith & Stanton, specialising in complex property matters and assisting Bruce with company work.

In August, two new solicitors started with us. Stephen Wall will help Bruce and Catherine with commercial, property work and business law. After a career teaching mathematics and electronics to military personnel, and as a finance accountant, Stephen was admitted in Queensland as a lawyer after which he practised in the property and commercial areas.

Jim Moore will help Judy with succession and retirement village work. Jim has extensive general law experience having practised both privately and as in house counsel with large corporations in Melbourne and Darwin. Before joining us Jim was the principal of a Bribe Island legal practice.



Jim Moore



Stephen Wall

Judy Smith Attends Advocacy Workshop In Solomon Islands

An advocacy workshop for the legal profession was held at the High Court in Honiara, Solomon Islands, on 2nd and 3rd June 2008. This workshop was arranged by the International Relations Section of the Queensland Law Society in response to a request from Solomon Islands Bar Association for a repeat of a similar workshop held in 2003. The workshop was conducted by Dr Jennifer Corrin from University of Queensland and Ms Judy Smith of Smith and Stanton. They were joined by Mr Dan O'Gorman, who took up the Section's invitation, extended to the Brisbane Bar Association, to send a representative to contribute to the workshop.

The workshop had a strong ethics component and was supplemented by a session on hearsay evidence. Participants took part in practical sessions on summary judgment and trial advocacy. The workshop was attended by between 22 and 24 lawyers each day, the majority coming from the Director of Public Prosecutions' office and the Public Solicitor's office. Two lawyers attended from the Law Reform Commission and others were in-house lawyers or private practitioners.

The workshop was opened by the Attorney-General of Solomon Islands, Mr Gabriel Suri, who thanked Queensland Law Society and Bar Association for facilitating the workshop. At the close of the workshop certificates of attendance were presented to participants by the President of Solomon Islands Bar Association, Mr Frank Kabui. The President also gave a speech, a copy of which is available on the QLS Web site, www.qls.com.au.



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