

## TASMANIA

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# **BUSINESS NAMES (COMMONWEALTH POWERS) BILL 2011**

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# **BUSINESS NAMES (COMMONWEALTH POWERS) BILL 2011**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*  
7 July 2011

*(Brought in by the Minister for Corrections and Consumer  
Protection, the Honourable Nicholas James McKim)*

## **A BILL FOR**

**An Act to refer certain matters relating to the registration and use of business names to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth, and to provide for related matters**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

### **1. Short title**

This Act may be cited as the *Business Names (Commonwealth Powers) Act 2011*.

### **2. Commencement**

This Act commences on the day on which this Act receives the Royal Assent.

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### 3. Terms used

In this Act, unless the contrary intention appears –

**“amendment reference”** means the reference under section 6(2);

**“business name”** has the same meaning as in the tabled text;

**“continuing business names matter”** has the meaning given by section 5;

**“entity”** includes an individual, body corporate or unincorporate, partnership and anything that is an entity within the meaning of the tabled text;

**“exemption provision”** means a provision in the terms, or substantially in the terms, of clause 19(5) or 20(3) of the proposed Bill for a Commonwealth Act mentioned in paragraph (a) of the definition of “tabled text”;

**“express amendment”** of the national business names legislation means the direct amendment of the text of the national business names legislation (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect

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otherwise than as part of the text of the national business names legislation;

**“government body”** means –

- (a) the State or an agency or authority of the State or of the State acting jointly with the Commonwealth, another State or a Territory; or
- (b) a council;

**“initial business names matters”** has the meaning given by section 4;

**“initial reference”** means the reference under section 6(1);

**“national business names instrument”** means any instrument (whether or not of a legislative character) that is made or issued under the national business names legislation;

**“national business names legislation”** means Commonwealth Acts enacted in the terms, or substantially in the terms, of the tabled text and as in force from time to time;

**“notified State register”** means a register that is maintained under a State law and is a **“notified State/Territory register”** within the meaning given by clause 6 of the proposed Bill for a Commonwealth

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Act mentioned in paragraph (a) of the definition of “tabled text”;

**“registration”** means the inclusion of information in any system for the recording of information (whether in written or electronic form);

**“State law”** means an Act of the State, or an instrument made under an Act of the State, whenever enacted or made and as in force from time to time;

**“tabled text”** means the text of the following proposed Bills for Commonwealth Acts:

- (a) *Business Names Registration Bill 2011*;
- (b) *Business Names Registration (Transitional and Consequential Provisions) Bill 2011* –

as tabled in the House of Assembly of Tasmania on 5 July 2011 by or on behalf of the Minister introducing the Bill for this Act.

#### **4. Initial business names matters**

The initial business names matters are the matters to which the provisions of the tabled text relate to the extent that those matters are included in the legislative powers of the Parliament of the State.

**5. Continuing business names matters**

- (1) Each of the following matters is a continuing business names matter to the extent that it is included in the legislative powers of the Parliament of the State:
- (a) the registration of business names;
  - (b) the regulation of the use of business names to assist entities who engage with an entity carrying on a business under a business name to identify the entity;
  - (c) the regulation of the use of business names to assist entities who engage with an entity carrying on a business under a business name to contact the entity;
  - (d) the regulation of the use of business names to reduce the risks that arise from an entity carrying on a business under a name that is not the entity's own;
  - (e) the prohibition or restriction of the use of business names that are undesirable, offensive or confusing;
  - (f) the prohibition or restriction of the use of a business name by an entity because –
    - (i) the entity has engaged in unlawful conduct; or
    - (ii) a person involved in the management of the entity has engaged in unlawful conduct.

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- (2) However, none of the following matters is a continuing business names matter:
- (a) the imposition of a restriction on a government body affecting the ability of the body to carry on business under a name;
  - (b) the imposition of a restriction on an entity affecting the ability of the entity to carry on business under a name registered to the entity on a notified State register;
  - (c) the imposition of a restriction on an entity affecting the ability of the entity to carry on business under a name that is specified as the name of the entity in a State law;
  - (d) the imposition of an obligation on a government body to include a name in a communication or to display a name;
  - (e) the imposition of an obligation on an entity to include in a communication, or to display, a name that is registered to the entity on a notified State register;
  - (f) the imposition of an obligation on an entity to include in a communication, or to display, a name that is specified as the name of the entity in a State law;
  - (g) the omission of an exemption provision without the insertion of an equivalent provision, or the imposition of a



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limitation on the operation of an exemption provision;

- (h) any matter relating to the imposition or payment of taxes under a State law.

**6. References**

- (1) The initial business names matters are referred to the Parliament of the Commonwealth, but only to the extent of the making of laws with respect to those matters by enacting Acts in the terms, or substantially in the terms, of the tabled text.
- (2) Each continuing business names matter is referred to the Parliament of the Commonwealth, but only to the extent of the making of laws with respect to the matter by making express amendments of the national business names legislation.
- (3) The operation of each of subsections (1) and (2) is not affected by the other subsection.
- (4) The reference of a matter under subsection (1) or (2) has effect only if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth).
- (5) Despite any provision other than section 9(4), a reference under subsection (1) or (2) has effect for a period –

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- (a) beginning when the subsection under which the reference is made comes into operation; and
  - (b) ending at the end of the day fixed under section 8(1)(a), (b) or (c) as the day on which the reference is to terminate –
- but not longer.

**7. Amendment of Commonwealth law**

It is the intention of the Parliament of the State that –

- (a) the national business names legislation may be expressly amended, or have its operation otherwise affected, at any time by provisions of Commonwealth Acts the operation of which is based on legislative powers that the Parliament of the Commonwealth has apart from a reference of any matters for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth; and
- (b) the national business names legislation may have its operation affected, otherwise than by express amendment, at any time by provisions of national business names instruments.

## **8. Termination of references**

- (1) The Governor may, at any time, by proclamation published in the *Gazette*, fix a day as the day on which –
  - (a) the initial reference and the amendment reference are to terminate; or
  - (b) the amendment reference is to terminate; or
  - (c) the initial reference is to terminate (if the amendment reference has been previously terminated).
- (2) A day fixed under subsection (1) must be no earlier than the first day after the end of the period of 6 months beginning with the day on which the proclamation is published.
- (3) The Governor may, by proclamation published in the *Gazette*, revoke a proclamation published under subsection (1).
- (4) A revoking proclamation has effect only if published before the day fixed under subsection (1).
- (5) If a revoking proclamation has effect, the revoked proclamation is taken, for the purposes of section 6, never to have been published but the revocation does not prevent publication of a further proclamation under subsection (1).

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**9. Effect of termination of amendment reference before termination of initial reference**

(1) In this section –

**“existing legislation”** means the national business names legislation as –

(a) amended by laws made under the amendment reference that have come into operation before the termination; or

(b) amended or affected by provisions referred to in section 7(a) or (b) that have come into operation before the termination –

and as in operation immediately before the termination;

**“termination”** means the termination of the amendment reference.

(2) A reference in this section to provisions referred to in section 7(b) includes a reference to national business names instruments made to carry out or give effect to the national business names legislation as amended by laws made under the amendment reference.

(3) It is the intention of the Parliament of the State that, if the amendment reference terminates before the initial reference terminates, the termination of the amendment reference does not affect –

- (a) laws made under the amendment reference before the termination; or
- (b) the continued operation in the State of the existing legislation or of the existing legislation as –
  - (i) amended after the termination by laws referred to in paragraph (a) that come into operation after the termination; or
  - (ii) amended or affected after the termination by provisions referred to in section 7(a) or (b).
- (4) Accordingly, the amendment reference continues to have effect for the purposes of subsection (3) unless the initial reference is terminated.
- (5) Subsection (3) or (4) does not apply to or in relation to an amendment of the national business names legislation that is excluded from the operation of this section by the proclamation that terminates the amendment reference.

#### **10. Evidence of tabled text**

- (1) A certificate of the Clerk of the House of Assembly of Tasmania certifying that a document is an accurate copy of the tabled text, or is an accurate copy of a particular part or of particular provisions of the tabled text, is admissible in evidence in any proceedings and is evidence –

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- (a) of the matter certified; and
  - (b) that the text of the proposed Commonwealth Bills was tabled in the House of Assembly of Tasmania as referred to in the definition of “tabled text” in section 3.
- (2) Subsection (1) does not affect any other way in which the tabling or content of the tabled text, or the accuracy of a copy of the tabled text or of a part or provisions of the tabled text, may be established.

**11. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Corrections and Consumer Protection; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

2010-2011

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Business Names Registration Bill 2011**

**No.     , 2011**

*(Innovation, Industry, Science and Research)*

**A Bill for an Act in relation to business names, and  
for related purposes**





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1     **A Bill for an Act in relation to business names, and**  
2     **for related purposes**

3     The Parliament of Australia enacts:

4     **Part 1—Preliminary**

5     **Division 1—Introduction**

6     **1 Short title**

7                 This Act may be cited as the *Business Names Registration Act*  
8                 2011.

Section 2

**2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Sections 3 to 17	A single day to be fixed by Proclamation.	
3. Part 2	A single day to be fixed by Proclamation.	
4. Section 22	At the same time as the provision(s) covered by table item 2.	
5. Sections 23 to 36	At the same time as the provision(s) covered by table item 3.	
6. Section 37	At the same time as the provision(s) covered by table item 2.	
7. Sections 38 to 62	At the same time as the provision(s) covered by table item 3.	
8. Sections 63 to 90	At the same time as the provision(s) covered by table item 2.	
9. Schedule 1	At the same time as the provision(s) covered by table item 2.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

**Division 2—Definitions**

**3 Dictionary**

In this Act:

**ABN** for an entity means the entity's ABN as shown in the Australian Business Register.

**affected Territory** means:

- (a) the Australian Capital Territory; and
- (b) the Northern Territory; and
- (c) the Jervis Bay Territory; and
- (d) the Territory of Christmas Island; and
- (e) the Territory of Cocos (Keeling) Islands.

**application fee**, for an application by an entity for an extract of the Business Names Register, means the fee imposed under the *Business Names Registration (Fees) Act 2011* in relation to such an application.

**ASIC** means the Australian Securities and Investments Commission.

**ASIC Act** means the *Australian Securities and Investments Commission Act 2001*.

**ASIC member** means a member of ASIC (as defined for the purposes of the ASIC Act).

**Australia**, when used in a geographical sense, includes the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include any other external Territory.

**Australian Business Register** means the register established under section 24 of the *A New Tax System (Australian Business Number) Act 1999*.

**available**: a business name is **available** to an entity in the circumstances set out in:

- (a) section 25 and subsection 31(3) of this Act; and

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- 1 (b) item 21 of Schedule 1 to the Transitional Act.
- 2 **business** has the meaning given by section 4.
- 3 **business day** means a day that is not a Saturday, a Sunday, a public  
4 holiday or a bank holiday in a referring/adopting State or an  
5 affected Territory.
- 6 **business name** means a name used, or to be used, in relation to one  
7 or more businesses.
- 8 **Business Names Register** means the register established and  
9 maintained under section 22.
- 10 **carrying on** a business includes doing anything in the course of the  
11 commencement or termination of the business.
- 12 **Commonwealth Minister** means the Minister.
- 13 **company** means a body registered as a company under the  
14 *Corporations Act 2001*.
- 15 **consent application** means an application for registration of a  
16 business name that includes a statement that the entity to whom the  
17 business name is currently registered has consented to the  
18 registration of the business name to the applicant.
- 19 **court** means any court.
- 20 **disqualified**: an entity is **disqualified** in the circumstances  
21 specified in section 32.
- 22 **entity** has the meaning given by section 5.
- 23 **entity on whose application a decision is reviewable** means an  
24 entity on whose application the decision is reviewable under  
25 section 56.
- 26 **Federal Court** means the Federal Court of Australia.
- 27 **government body** has the meaning given by subsection 11(3).
- 28 **identical**: means identical under rules made by the Minister under  
29 section 26.



1           **intelligence or security agency** has the meaning given by  
2           section 85ZL of the *Crimes Act 1914*.

3           **nearly identical**: means nearly identical under rules made by the  
4           Minister under section 26.

5           **non-entity joint venture** means an arrangement that the  
6           Commissioner of Taxation is satisfied is a contractual arrangement:

- 7           (a) under which 2 or more parties undertake an economic  
8           activity that is subject to the joint control of the parties; and  
9           (b) that is entered into to obtain individual benefits for the  
10          parties, in the form of a share of the output of the  
11          arrangement rather than joint or collective profits for all the  
12          parties.

13          **notified State/Territory register** has the meaning given by  
14          section 6.

15          **notified successor**, in relation to a business name, means an entity  
16          entered on the Business Names Register under subsection 40(4) as  
17          a notified successor in relation to the business name.

18          **priority**: an entity has **priority** over a business name in the  
19          circumstances set out in section 29.

20          **referring/adopting State** has the meaning given by section 8.

21          **registered owner**, in relation to a registered trade mark, has the  
22          meaning given by section 6 of the *Trade Marks Act 1995*.

23          **registered trade mark** has the meaning given by section 6 of the  
24          *Trade Marks Act 1995*.

25          **registration fee**, for the registration of a business name to an entity,  
26          means the fee imposed under the *Business Names Registration*  
27          *(Fees) Act 2011* in relation to the registration.

28          **renewal fee**, for the renewal of the registration of a business name  
29          to an entity, means the fee imposed under the *Business Names*  
30          *Registration (Fees) Act 2011* in relation to the renewal.

31          **reviewable**: a decision is **reviewable** if it is reviewable under  
32          section 56.

Section 4

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- 1                    **staff member** has the same meaning as in the ASIC Act.
- 2                    **State**, when used in a geographical sense, includes the coastal sea  
3                    of the State.
- 4                    **superannuation fund** has the same meaning as in the *Income Tax*  
5                    *Assessment Act 1997*.
- 6                    **Territory**, when used in a geographical sense, includes the coastal  
7                    sea of the Territory.
- 8                    **this Act** includes instruments made under this Act.
- 9                    **Transitional Act** means the *Business Names Registration*  
10                    *(Transitional and Consequential Provisions) Act 2011*, and  
11                    includes instruments made under that Act.

12                    **4 Business**

- 13                    (1) **Business** means an activity, or series of activities, done:  
14                    (a) in the form of a profession, a trade, employment, a vocation  
15                    or a calling; or  
16                    (b) in the form of an adventure or concern in the nature of trade;  
17                    or  
18                    (c) on a regular or continuous basis, in the form of a lease,  
19                    licence or other grant of an interest in property.
- 20                    (2) **Business** does not include an activity, or a series of activities, done  
21                    in circumstances in which an entity doing that activity or series of  
22                    activities in, or in connection with, Australia would not be entitled  
23                    to an ABN.

24                    **5 Entities**

- 25                    (1) **Entity** means any of the following:  
26                    (a) an individual;  
27                    (b) a body corporate;  
28                    (c) a corporation sole;  
29                    (d) a body politic;  
30                    (e) a partnership;

- (f) any other unincorporated association or body of persons;  
(g) a trust;  
(h) a superannuation fund.

Note: The term **entity** is used in a number of different but related senses. It covers all kinds of legal persons. It also covers groups of legal persons, and other things, that in practice are treated as having a separate identity in the same way as a legal person does.

- (2) Paragraph (1)(f) does not include a non-entity joint venture.
- (3) The trustee of a trust or of a superannuation fund is taken to be an **entity** consisting of the person who is the trustee, or the persons who are the trustees, at any given time.

Note: This is because a right or obligation cannot be conferred or imposed on an entity that is not a legal person.

- (4) A legal person can have a number of different capacities in which the person does things. In each of those capacities, the person is taken to be a different **entity**.

Example: In addition to his or her personal capacity, an individual may be:

- (a) sole trustee of one or more trusts; and  
(b) one of a number of trustees of a further trust.

In his or her personal capacity, he or she is one entity. As trustee of each trust, he or she is a different entity. The trustees of the further trust are a different entity again, of which the individual is a member.

- (5) If a provision refers to an **entity** of a particular kind, it refers to the entity in its capacity as that kind of entity, not to that entity in any other capacity.

Example: A provision that refers to a company does not cover a company in a capacity as trustee, unless it also refers to a trustee.

## **6 Notified State/Territory registers**

- (1) A register is a **notified State/Territory register** if:
- (a) the register is maintained under the law of a referring/adopting State or an affected Territory; and
- (b) notice of the names of entities entered on the register is received by ASIC in electronic form from that State or Territory, and updated electronically from time to time to reflect changes in the register; and

**Part 1** Preliminary  
**Division 2** Definitions

Section 6

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- 1 (c) the register is specified, or of a kind specified, in Schedule 1  
2 to this Act.
- 3 (2) Schedule 1 to this Act has effect subject to any modifications made  
4 by the regulations to reflect changes in the registers, or kinds of  
5 registers, maintained by the States and Territories.
- 6 (3) If a Minister of a referring/adopting State or of an affected  
7 Territory notifies the Commonwealth Minister in writing of a  
8 proposed modification to Schedule 1, the Commonwealth Minister  
9 must consult with all other referring/adopting States and affected  
10 Territories about the proposed modification.
- 11 (4) In this section:
- 12 *modifications* include additions, omissions and substitutions.  
13

**Division 3—Constitutional basis and application of this Act  
and the Transitional Act**

**7 Constitutional basis for this Act and the Transitional Act**

*Application in a referring/adopting State*

- (1) The application of this Act and the Transitional Act in a referring/adopting State is based on:
- (a) the legislative powers that the Commonwealth Parliament has under the Constitution (other than paragraph 51(xxxvii)); and
  - (b) the legislative powers that the Commonwealth Parliament has because of a reference or an adoption by the Parliament of the referring/adopting State under paragraph 51(xxxvii) of the Constitution.

*Application in a Territory*

- (2) The application of this Act and the Transitional Act in the affected Territories is based on:
- (a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of the Territory; and
  - (b) the other legislative powers that the Commonwealth Parliament has under the Constitution.

Despite the *Acts Interpretation Act 1901*, this Act and the Transitional Act as applying in the affected Territory are laws of the Commonwealth.

*Application outside Australia*

- (3) The operation of this Act and the Transitional Act outside Australia is based on:
- (a) the legislative power the Commonwealth Parliament has under paragraph 51(xxix) of the Constitution; and
  - (b) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of a Territory; and

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- 1 (c) the other legislative powers that the Commonwealth  
2 Parliament has under the Constitution.

3 **8 Meaning of *referring/adopting State***

4 *Meaning of referring/adopting State*

- 5 (1) A State is a ***referring/adopting State*** if, for the purposes of  
6 paragraph 51(xxxvii) of the Constitution, the Parliament of the  
7 State:  
8 (a) has referred the matters covered by subsections (3) and (4) to  
9 the Parliament of the Commonwealth; or  
10 (b) has:  
11 (i) adopted the initial version of this Act and the initial  
12 version of the Transitional Act; and  
13 (ii) referred the matters covered by subsection (4) to the  
14 Parliament of the Commonwealth.
- 15 (2) A State is a ***referring/adopting State*** even if a law of the State  
16 provides that:  
17 (a) the reference to the Parliament of the Commonwealth of a  
18 matter covered by subsection (3) or (4) is to terminate in  
19 particular circumstances; or  
20 (b) the adoption of the initial version of this Act or the initial  
21 version of the Transitional Act is to terminate in particular  
22 circumstances; or  
23 (c) the reference to the Parliament of the Commonwealth of a  
24 matter covered by subsection (3) or (4) has effect only:  
25 (i) if and to the extent that the matter is not included in the  
26 legislative powers of the Parliament of the  
27 Commonwealth (otherwise than by a reference under  
28 section 51(xxxvii) of the Constitution); or  
29 (ii) if and to the extent that the matter is included in the  
30 legislative powers of the Parliament of the State.

1                   *Reference covering the initial versions of this Act and the*  
2                   *Transitional Act*

- 3                   (3) This subsection covers the matters to which the referred provisions  
4                   relate to the extent of making laws with respect to those matters by  
5                   including the referred provisions in the initial version of this Act  
6                   and the initial version of the Transitional Act.

7                   *Reference covering amendments of this Act or the Transitional Act*

- 8                   (4) This subsection covers the referred business names matters to the  
9                   extent of the making of laws with respect to those matters by  
10                  making express amendments of this Act or the Transitional Act.

11                  *Effect of terminating reference or adoption of initial versions*

- 12                  (5) A State ceases to be a ***referring/adopting State*** if:  
13                   (a) in the case where the Parliament of the State has referred to  
14                   the Parliament of the Commonwealth the matters covered by  
15                   subsection (3)—that reference terminates; or  
16                   (b) in the case where the Parliament of the State has adopted the  
17                   initial version of this Act and the initial version of the  
18                   Transitional Act—the adoption of the initial version of this  
19                   Act or the initial version of the Transitional Act terminates.

20                  *Effect of terminating amendment reference*

- 21                  (6) A State ceases to be a ***referring/adopting State*** if:  
22                   (a) the State's amendment reference terminates; and  
23                   (b) subsection (7) does not apply to the termination.
- 24                  (7) A State does not cease to be a ***referring/adopting State*** because of  
25                  the termination of its amendment reference if:  
26                   (a) the termination is effected by the Governor of that State  
27                   fixing a day by Proclamation as the day on which the  
28                   reference terminates; and  
29                   (b) the day fixed is no earlier than the first day after the end of  
30                   the period of 6 months beginning on the day on which the  
31                   Proclamation is published; and

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- 1 (c) that State's amendment reference, and the amendment  
2 reference of every other State, terminates on the same day.

3 *Definitions*

- 4 (8) In this section:

5 ***amendment reference*** of a State means the reference by the  
6 Parliament of the State to the Parliament of the Commonwealth of  
7 the matters covered by subsection (4).

8 ***express amendment*** of this Act or the Transitional Act means the  
9 direct amendment of the text of this Act or the Transitional Act  
10 (whether by the insertion, omission, repeal, substitution or  
11 relocation of words or matter) by another Commonwealth Act, but  
12 does not include the enactment by a Commonwealth Act of a  
13 provision that has, or will have, substantive effect otherwise than  
14 as part of the text of this Act or the Transitional Act.

15 ***initial version of the Transitional Act*** means the Transitional Act  
16 as originally enacted.

17 ***initial version of this Act*** means this Act as originally enacted.

18 ***referred business names matter*** has the meaning given by  
19 section 9.

20 ***referred provisions*** means:

- 21 (a) the initial version of this Act; and  
22 (b) the initial version of the Transitional Act;  
23 to the extent to which they deal with matters that are included in  
24 the legislative powers of the Parliaments of the States.

25 **9 Meaning of *referred business names matter***

- 26 (1) Each of the following matters is a ***referred business names matter***:  
27 (a) the registration of business names;  
28 (b) the regulation of the use of business names to assist entities  
29 who engage with an entity carrying on a business under a  
30 business name to identify the entity;



- 1 (c) the regulation of the use of business names to assist entities  
2 who engage with an entity carrying on a business under a  
3 business name to contact the entity;
- 4 (d) the regulation of the use of business names to reduce the risks  
5 that arise from an entity carrying on a business under a name  
6 that is not the entity's own;
- 7 (e) the prohibition or restriction of the use of business names that  
8 are undesirable, offensive or confusing;
- 9 (f) the prohibition or restriction of the use of business names by  
10 an entity because:
- 11 (i) the entity has engaged in unlawful conduct; or  
12 (ii) a person involved in the management of the entity has  
13 engaged in unlawful conduct.
- 14 (2) However, none of the following matters is a *referred business*  
15 *names matter*:
- 16 (a) the imposition of a restriction on a government body  
17 affecting the ability of the body to carry on business under a  
18 name;
- 19 (b) the imposition of a restriction on an entity affecting the  
20 ability of the entity to carry on business under a name that is  
21 registered to the entity on a notified State/Territory register;
- 22 (c) the imposition of a restriction on an entity affecting the  
23 ability of the entity to carry on business under a name that is  
24 specified as the name of the entity in an Act of a State, or an  
25 instrument made under such an Act;
- 26 (d) the imposition of an obligation on a government body to  
27 include a name in a communication or to display a name;
- 28 (e) the imposition of an obligation on an entity to include in a  
29 communication, or to display, a name that is registered to the  
30 entity on a notified State/Territory register;
- 31 (f) the imposition of an obligation on an entity to include in a  
32 communication, or to display, a name that is specified as the  
33 name of the entity in an Act of a State, or an instrument made  
34 under such an Act;
- 35 (g) the omission of an exemption provision without the insertion  
36 of an equivalent provision, or the imposition of a limitation  
37 on the operation of an exemption provision;
-

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- 1 (h) any matter relating to the imposition or payment of taxes  
2 under an Act of a State, or an instrument made under such an  
3 Act.

- 4 (3) In this section:

5 ***exemption provision*** means a provision in the terms, or  
6 substantially in the terms, of subsection 19(5) or 20(3).

7 **10 General application of this Act and the Transitional Act**

8 *Application in this jurisdiction*

- 9 (1) Each provision of this Act and the Transitional Act applies in this  
10 jurisdiction.

11 *Geographical coverage of this jurisdiction*

- 12 (2) ***This jurisdiction*** means the geographical area that consists of:  
13 (a) each referring/adopting State (including its coastal sea); and  
14 (b) each affected Territory (including its coastal sea).

15 **11 Government bodies not liable to prosecution**

- 16 (1) A government body that carries on a business under a business  
17 name:  
18 (a) is not liable to be prosecuted for an offence against this Act  
19 or the Transitional Act; and  
20 (b) is not subject to proceedings for an injunction or any other  
21 remedy in relation to conduct that would constitute an  
22 offence against this Act or the Transitional Act.
- 23 (2) However, nothing in this Act or the Transitional Act prevents the  
24 registration of a business name to a government body if the  
25 provisions of this Act or the Transitional Act are otherwise  
26 satisfied.
- 27 (3) Each of the following is a ***government body***:  
28 (a) the Commonwealth;  
29 (b) a referring/adopting State;

- 1 (c) an affected Territory;
- 2 (d) an agency or authority of the Commonwealth;
- 3 (e) an agency or authority of a referring/adopting State or an
- 4 affected Territory;
- 5 (f) an agency or authority of the Commonwealth and any of the
- 6 referring/adopting States and the affected Territories, acting
- 7 jointly;
- 8 (g) an agency or authority of any 2 or more of the
- 9 referring/adopting States and affected Territories, acting
- 10 jointly;
- 11 (h) a local government body.
- 12

**Division 4—Interaction between business names legislation  
and State and Territory laws**

**12 Concurrent operation intended**

(1) This Act and the Transitional Act (the *business names legislation*) are not intended to exclude or limit the concurrent operation of any law of a referring/adopting State or an affected Territory.

(2) Without limiting subsection (1), the business names legislation is not intended to exclude or limit the concurrent operation of a law that:

- (a) requires or permits a word or expression to be used by an entity or class of entities; or
- (b) prohibits or restricts the use of a word or expression by an entity or class of entities; or
- (c) relates to the accreditation or licensing of an entity that carries on a business; or
- (d) makes provision for the conversion of one body into another or the amalgamation of bodies; or
- (e) imposes obligations on an entity or class of entities that are in addition to obligations imposed under this Act; or
- (f) makes provision in relation to a notified State/Territory register; or
- (g) specifies a name as the name of an entity.

(3) This section does not apply to a law of a referring/adopting State or an affected Territory if there is a direct inconsistency between that law and the business names legislation.

Note: Section 14 avoids direct inconsistency arising in some cases by limiting the operation of the business names legislation.

**13 When business names legislation does not apply**

(1) Subsection (2) applies if a provision of a law of a referring/adopting State or an affected Territory declares a matter to be an excluded matter for the purposes of this section in relation to:

- (a) the whole of the business names legislation; or

- 1 (b) a specified provision of the business names legislation; or  
2 (c) the business names legislation other than a specified  
3 provision; or  
4 (d) the business names legislation otherwise than to a specified  
5 extent.
- 6 (2) By force of this subsection:
- 7 (a) none of the provisions of the business names legislation  
8 (other than this section) applies in or in relation to the State  
9 or Territory with respect to the matter if the declaration is one  
10 to which paragraph (1)(a) applies; and
- 11 (b) the specified provision of the business names legislation does  
12 not apply in or in relation to the State or Territory with  
13 respect to the matter if the declaration is one to which  
14 paragraph (1)(b) applies; and
- 15 (c) the provisions of the business names legislation (other than  
16 this section and the specified provisions) do not apply in or in  
17 relation to the State or Territory with respect to the matter if  
18 the declaration is one to which paragraph (1)(c) applies; and
- 19 (d) the provisions of the business names legislation (other than  
20 this section and otherwise than to the specified extent) do not  
21 apply in or in relation to the State or Territory with respect to  
22 the matter if the declaration is one to which paragraph (1)(d)  
23 applies.
- 24 (3) Subsection (2) does not apply to the declaration to the extent to  
25 which the regulations provide that that subsection does not apply to  
26 that declaration.

27 **14 Avoiding direct inconsistency between Commonwealth and State**  
28 **and Territory laws**

29 *This section overrides other business names legislation*

- 30 (1) This section has effect despite anything else in the business names  
31 legislation.

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1                    *When this section does not apply to a referring/adopting State or*  
2                    *Territory law*

- 3                    (2) This section does not apply to a provision of a law of a  
4                    referring/adopting State or an affected Territory that is capable of  
5                    concurrent operation with the business names legislation.

6                    Note:        This kind of provision is dealt with by section 12.

7                    *When this section applies to a referring/adopting State or Territory*  
8                    *law*

- 9                    (3) This section applies to the interaction between a provision (the  
10                    ***displacement provision***) of a law of a referring/adopting State or  
11                    an affected Territory and a provision (the ***Commonwealth***  
12                    ***provision***) of the business names legislation only if the  
13                    displacement provision is declared by a law of the State or  
14                    Territory to be a business names legislation displacement provision  
15                    for the purposes of this section (either generally or specifically in  
16                    relation to the Commonwealth provision).

17                    *Effect of displacement provision*

- 18                    (4) The Commonwealth provision does not:  
19                           (a) prohibit the doing of an act; or  
20                           (b) impose a liability (whether civil or criminal) for doing an act;  
21                    if the displacement provision specifically permits, authorises or  
22                    requires the doing of that act.

- 23                    (5) The Commonwealth provision does not operate in or in relation to  
24                    the State or Territory to the extent necessary to ensure that no  
25                    inconsistency arises between:  
26                           (a) the Commonwealth provision; and  
27                           (b) the displacement provision to the extent to which the  
28                    displacement provision would, apart from this subsection, be  
29                    inconsistent with the Commonwealth provision.

30                    Note 1:        The displacement provision is not covered by this subsection if  
31                    subsection (4) applies to the displacement provision: if that subsection  
32                    applies there would be no potential inconsistency to be dealt with by  
33                    this subsection.

1                   Note 2:    The operation of the displacement provision will be supported by  
2                                   section 12 to the extent to which it can operate concurrently with the  
3                                   Commonwealth provision.

- 4                   (6) Subsections (4) and (5) do not apply in relation to the displacement  
5                                   provision to the extent to which the regulations provide that those  
6                                   subsections do not apply in relation to the displacement provision.

## 7                   **15 Regulations to deal with interaction between laws**

- 8                   (1) The regulations may modify the operation of the business names  
9                                   legislation so that:
- 10                               (a) provisions of the business names legislation do not apply to a  
11                                       matter that is dealt with by a law of a referring/adopting State  
12                                       or an affected Territory specified in the regulations; or
- 13                               (b) no inconsistency arises between the operation of a provision  
14                                       of the business names legislation and the operation of a  
15                                       provision of a law of a referring/adopting State or an affected  
16                                       Territory specified in the regulations.
- 17                   (2) Without limiting subsection (1), regulations made for the purposes  
18                                   of that subsection may provide that a provision of the business  
19                                   names legislation:
- 20                               (a) does not apply to:
- 21                                       (i) a person specified in the regulations; or
- 22                                       (ii) a body specified in the regulations; or
- 23                                       (iii) circumstances specified in the regulations; or
- 24                                       (iv) a person or body specified in the regulations in the  
25                                       circumstances specified in the regulations; or
- 26                               (b) does not prohibit an act to the extent to which the prohibition  
27                                       would otherwise give rise to an inconsistency with a law of a  
28                                       referring/adopting State or an affected Territory; or
- 29                               (c) does not require a person to do an act to the extent to which  
30                                       the requirement would otherwise give rise to an  
31                                       inconsistency with a law of a referring/adopting State or an  
32                                       affected Territory; or
- 33                               (d) does not authorise a person to do an act to the extent to which  
34                                       the conferral of that authority on the person would otherwise  
35                                       give rise to an inconsistency with a law of a  
36                                       referring/adopting State or an affected Territory; or
-

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- 1                   (e) does not impose an obligation on a person to the extent to
- 2                   which complying with that obligation would require the
- 3                   person not to comply with an obligation imposed on the
- 4                   person under a law of a referring/adopting State or an
- 5                   affected Territory; or
- 6                   (f) authorises a person to do something for the purposes of the
- 7                   business names legislation that the person:
- 8                   (i) is authorised to do under a law of a referring/adopting
- 9                   State or an affected Territory; and
- 10                  (ii) would not otherwise be authorised to do under the
- 11                  business names legislation; or
- 12                  (g) will be taken to be satisfied if a law of a referring/adopting
- 13                  State or an affected Territory is satisfied.
- 14



**Division 5—Objects of this Act and consequences of  
registration**

**16 Objects of this Act**

- (1) The objects of this Act are:
- (a) to ensure that if an entity carries on a business under a business name, those who engage or propose to engage with that business can identify the entity and how the entity may be contacted; and
  - (b) to remove the inconvenience caused by the registration of business names under the law of more than one jurisdiction within Australia.
- (2) These objects are achieved by requiring an entity that intends to carry on a business under a business name to register the business name on a nationally established and maintained register of business names.
- (3) The objects of this Act are also:
- (a) to avoid confusion by ensuring that business names that are identical or nearly identical are not registered; and
  - (b) to ensure that business names that are undesirable (for example, because they are offensive) are not registered; and
  - (c) to ensure that business names that should be restricted for any other reason (for example, because they might mislead consumers) are not registered.
- (4) The objects mentioned in subsection (3) are achieved by rules dealing with the availability of business names.

**17 Consequences of registration of a business name**

- (1) The registration of a business name does not affect the rights of any entity in relation to the business name, or a word or an expression that constitutes or is included in the business name, under the law of the Commonwealth or of a State or Territory, or under the general law.

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**Division 5** Objects of this Act and consequences of registration

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- 1                   (2) An entity does not acquire property in a business name, or in a  
2                   word or an expression that constitutes or is included in a business  
3                   name, because the name is registered to the entity under this Act or  
4                   the Transitional Act.  
5

## Part 2—Offences relating to business names

### 18 Offence—carrying on a business under an unregistered business name

- (1) An entity commits an offence if:
- (a) the entity carries on a business under a name; and
  - (b) the name is not registered to the entity as a business name on the Business Names Register.

Penalty: 30 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the entity is an individual and the name is the individual's name; or
  - (b) the entity is a corporation and the name is the corporation's name; or
  - (c) the entity is a partnership and the name consists of all of the partners' names; or
  - (d) the name is registered to the entity on a notified State/Territory register; or
  - (e) an Act of the Commonwealth, a referring/adopting State or an affected Territory, or an instrument made under such an Act, specifies the name as the name of the entity; or
  - (f) the entity is a government body; or
  - (g) the entity is a notified successor in relation to the name; or
  - (h) other circumstances prescribed by the regulations for the purposes of this paragraph apply.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### 19 Offence—must include business name in written communications

- (1) An entity commits an offence if:
- (a) the entity carries on a business under a business name; and

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- 1 (b) the entity communicates in writing with another entity; and
- 2 (c) that communication is a business document connected with
- 3 carrying on the business under the name; and
- 4 (d) the entity does not include clearly legible business names
- 5 information in the document.

6 Penalty: 5 penalty units.

- 7 (2) ***Business names information*** means the name and, if the entity has
- 8 an ABN, the entity's ABN, where the business document is of one
- 9 of the following kinds:
  - 10 (a) a document that is lodged with ASIC;
  - 11 (b) a statement of account (including an invoice);
  - 12 (c) a receipt;
  - 13 (d) an order for goods or services;
  - 14 (e) a cheque;
  - 15 (f) a promissory note or bill of exchange;
  - 16 (g) an offer to provide goods or services (rather than an
  - 17 invitation to treat).
- 18 (3) In any other case, ***business names information*** means the name.
- 19 (4) Subsection (1) does not apply if:
  - 20 (a) the entity is an individual and the name is the individual's
  - 21 name; or
  - 22 (b) the entity is a corporation and the name is the corporation's
  - 23 name; or
  - 24 (c) the entity is a partnership and the name consists of all of the
  - 25 partners' names; or
  - 26 (d) the name is registered to the entity on a notified
  - 27 State/Territory register; or
  - 28 (e) an Act of the Commonwealth, a referring/adopting State or
  - 29 an affected Territory, or an instrument made under such an
  - 30 Act, specifies the name as the name of the entity; or
  - 31 (f) the entity is a government body; or
  - 32 (g) the entity is a notified successor in relation to the name; or

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- 1 (h) the Minister has exempted the entity from the requirement in  
2 relation to the business and the business name, under  
3 subsection (5); or  
4 (i) other circumstances prescribed by the regulations for the  
5 purposes of this paragraph apply.
- 6 (5) Subsection (1) does not require an entity to include a name or the  
7 entity's ABN in a written communication in circumstances where:
  - 8 (a) it would be contrary to the law of the Commonwealth or of a  
9 referring/adopting State or an affected Territory to include  
10 the name or the entity's ABN in the communication; or  
11 (b) the inclusion of the name in the communication would  
12 directly or indirectly give rise to a representation that would  
13 be contrary to the law of the Commonwealth or of a  
14 referring/adopting State or an affected Territory; or  
15 (c) the use of the name by the entity would be contrary to the law  
16 of the Commonwealth or of a referring/adopting State or an  
17 affected Territory.
- 18 Note 1: A defendant bears an evidential burden in relation to the matters in  
19 subsections (3) and (4): see subsection 13.3(3) of the *Criminal Code*.
- 20 Note 2: As an example, the use of a name would be contrary to the law of a  
21 referring/adopting State or an affected Territory if the law of that  
22 jurisdiction provided that the name could not be used without the  
23 consent of a relevant authority and that consent was not obtained.
- 24 (6) The Minister may, by determination in writing, exempt an entity  
25 from the requirement to include a name or the entity's ABN in a  
26 written communication in connection with a specified business  
27 carried on under a specified business name, if the Minister is  
28 satisfied that the inclusion of that information in a written  
29 communication would create a serious risk to:
  - 30 (a) public safety; or  
31 (b) significant infrastructure such as:
    - 32 (i) transport infrastructure; or  
33 (ii) energy infrastructure; or  
34 (iii) communications infrastructure; or  
35 (iv) water infrastructure.
- 36 The determination is not a legislative instrument.

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1 (7) Subsection (1) is an offence of strict liability.

2 Note: For strict liability, see section 6.1 of the *Criminal Code*.

3 **20 Offence—must display business name at places open to public**

4 (1) An entity commits an offence if:

- 5 (a) the entity carries on a business under a business name; and  
6 (b) the entity does not display the name prominently at every  
7 place at which the entity carries on the business that is open  
8 to the public.

9 Penalty: 5 penalty units.

10 (2) Subsection (1) does not apply if:

- 11 (a) the entity is an individual and the name is the individual's  
12 name; or  
13 (b) the entity is a corporation and the name is the corporation's  
14 name; or  
15 (c) the entity is a partnership and the name consists of all of the  
16 partners' names; or  
17 (d) the name is registered to the entity on a notified  
18 State/Territory register; or  
19 (e) an Act of the Commonwealth, a referring/adopting State or  
20 an affected Territory, or an instrument made under such an  
21 Act, specifies the name as the name of the entity; or  
22 (f) the entity is a government body; or  
23 (g) the entity is a notified successor in relation to the name; or  
24 (h) the Minister has exempted the entity from the requirement in  
25 relation to the business name and the place, under  
26 subsection (4); or  
27 (i) other circumstances prescribed by the regulations for the  
28 purposes of this paragraph apply.

29 (3) Subsection (1) does not require an entity to display a name at a  
30 place in circumstances where:

- 31 (a) it would be contrary to the law of the Commonwealth or of a  
32 referring/adopting State or an affected Territory to display  
33 the name at that place; or

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- 1 (b) displaying the name at the place would directly or indirectly  
 2 give rise to a representation that would be contrary to the law  
 3 of the Commonwealth or of a referring/adopting State or an  
 4 affected Territory; or  
 5 (c) the use of the name by the entity would be contrary to the law  
 6 of the Commonwealth or of a referring/adopting State or an  
 7 affected Territory.

8 Note 1: A defendant bears an evidential burden in relation to the matters in  
 9 subsections (2) and (3): see subsection 13.3(3) of the *Criminal Code*.

10 Note 2: As an example, the law of a referring/adopting State or an affected  
 11 Territory may prohibit advertising in relation to gambling. A sign  
 12 relating to gambling would not therefore be required to be displayed  
 13 under this Act.

- 14 (4) The Minister may, by determination in writing, exempt an entity  
 15 from the requirement to display a specified name at a specified  
 16 place, if the Minister is satisfied that the display of that name at  
 17 that place would create a serious risk to:

- 18 (a) public safety; or  
 19 (b) significant infrastructure such as:  
 20 (i) transport infrastructure; or  
 21 (ii) energy infrastructure; or  
 22 (iii) communications infrastructure; or  
 23 (iv) water infrastructure.

24 The determination is not a legislative instrument.

- 25 (5) Subsection (1) is an offence of strict liability.

26 Note: For strict liability, see section 6.1 of the *Criminal Code*.

27 **21 Offence—carrying on a business under a business name while**  
 28 **disqualified**

- 29 (1) An entity commits an offence if it carries on a business under a  
 30 business name while disqualified.

31 Penalty: 30 penalty units.

- 32 (2) Subsection (1) does not apply if:

- 33 (a) the entity is an individual and the name is the individual's  
 34 name; or

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- 1 (b) the entity is a corporation and the name is the corporation's  
2 name; or  
3 (c) the entity is a partnership and the name consists of all of the  
4 partners' names; or  
5 (d) the name is registered to the entity on a notified  
6 State/Territory register; or  
7 (e) an Act of the Commonwealth, a referring/adopting State or  
8 an affected Territory, or an instrument made under such an  
9 Act, specifies the name as the name of the entity; or  
10 (f) the entity is a government body; or  
11 (g) the entity is a notified successor in relation to the name; or  
12 (h) other circumstances prescribed by the regulations for the  
13 purposes of this paragraph apply.

14 Note: A defendant bears an evidential burden in relation to the matters in  
15 subsection (2): see subsection 13.3(3) of the *Criminal Code*.

16 (3) Subsection (1) is an offence of strict liability.

17 Note: For strict liability, see section 6.1 of the *Criminal Code*.



## **Part 3—Registering a business name**

### **22 The Business Names Register**

- (1) ASIC must establish and maintain a Business Names Register.
- (2) The purpose of the Business Names Register is to enable those who engage or propose to engage with a business carried on under a business name to identify the entity carrying on the business and how the entity may be contacted.
- (3) The Business Names Register may be kept in any form that ASIC considers appropriate.
- (4) The Business Names Register is not a legislative instrument.

### **23 Application to register a business name**

- (1) An entity that intends to carry on a business under a name may lodge with ASIC an application for the name to be registered to the entity as a business name.

Note: Under section 18, it is an offence to carry on a business under an unregistered business name.

- (2) The application must:
  - (a) include:
    - (i) details sufficient to identify the entity; and
    - (ii) the entity's ABN or, if an application for an ABN is pending, a statement to that effect and the reference number for the ABN application; and
    - (iii) the address of the entity's principal place of business in Australia; and
    - (iv) an address in Australia for service of documents; and
    - (v) the business name to which the application relates; and
  - (b) specify the period for which registration is sought; and
  - (c) specify whether the entity is disqualified.
- (3) The application:
  - (a) must be in the prescribed form; and

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- 1 (b) must be lodged in the prescribed manner.
- 2 (4) The applicant must pay the registration fee.
- 3 (5) If an application for registration of a business name is lodged with  
4 ASIC by post, it is taken to have been lodged with ASIC  
5 immediately after the end of the period of 5 business days  
6 beginning on the day on which it is received by ASIC.
- 7 (6) The prescribed form for an application for registration of a  
8 business name must require the applicant to provide details of a  
9 person's date and place of birth if it is necessary for or directly  
10 related to the purposes of:
- 11 (a) identifying the entity to whom the business name is to be  
12 registered; or  
13 (b) determining whether the entity is disqualified.

14 **24 Decision to register a business name to an entity**

- 15 (1) ASIC must register the business name to the entity if ASIC is  
16 satisfied that:
- 17 (a) the entity has an ABN; and  
18 (b) the registration fee has been paid; and  
19 (c) the name is available to the entity; and  
20 (d) the entity is not disqualified.
- 21 (2) ASIC may request the entity in writing to give ASIC, within the  
22 period specified in the request, information or a document that is of  
23 a kind specified in the request and that ASIC needs to be satisfied  
24 of the matters mentioned in subsection (1).
- 25 (3) If the entity does not comply with the request within the time  
26 specified, ASIC may refuse the application.
- 27 (4) Subsection (3) does not limit the grounds on which ASIC may  
28 refuse an application to register a business name to an entity.

29 **25 Is a business name *available* to an entity?**

- 30 A business name is *available* to an entity if:  
31 (a) the name is not identical or nearly identical to:
-

- 1 (i) a business name registered to another entity; or  
2 (ii) a name that is reserved or registered under the  
3 *Corporations Act 2001* for another body; or  
4 (iii) a name that is registered to another entity on a notified  
5 State/Territory register; or  
6 (iv) if ASIC receives notice electronically from a  
7 referring/adopting State or an affected Territory of the  
8 name of a government body and the entity is not that  
9 body—that name; or  
10 (v) if ASIC receives notice electronically from a  
11 referring/adopting State or an affected Territory that an  
12 Act of the State or Territory, or an instrument made  
13 under such an Act, specifies a name as the name of  
14 another entity—that name; or  
15 (vi) if ASIC receives notice electronically from a  
16 Commonwealth government body of the name of that  
17 body and the entity is not that body—that name; or  
18 (vii) if ASIC receives notice electronically from a body that  
19 an Act of the Commonwealth, or an instrument made  
20 under such an Act, specifies a name as the name of that  
21 body and the entity is not that body—that name; and  
22 (b) a name that is identical or nearly identical is not held under  
23 section 54 or a provision of the Transitional Act; and  
24 (c) no other entity has priority over a name that is identical or  
25 nearly identical; and  
26 (d) either:  
27 (i) the name is not of a kind that is undesirable; or  
28 (ii) the name is of a kind that is undesirable but the Minister  
29 has determined under subsection 27(2) that the name is  
30 available to the entity; and  
31 (e) either:  
32 (i) the name is not constituted by, and does not include, a  
33 restricted word or expression; or  
34 (ii) the name is constituted by or includes a word or  
35 expression that is restricted unless a condition is  
36 satisfied, and the entity satisfies the condition.

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1       **26 Identical or nearly identical names**

2                   The Minister may, by legislative instrument, make rules for  
3                   determining whether a name is *identical* or *nearly identical* to  
4                   another name.

5       **27 Undesirable names**

- 6                   (1) The Minister may, by legislative instrument, determine the kinds of  
7                   name that are undesirable for the purposes of this Act.
- 8                   (2) The Minister may determine in writing that a business name  
9                   specified in the determination is to be available to an entity  
10                  specified in the determination, even though the name is of a kind  
11                  that is undesirable.
- 12                  (3) A determination under subsection (2) is not a legislative  
13                  instrument.
- 14                  (4) The Minister must, at least 28 days before revoking a  
15                  determination made under subsection (2), give notice in writing to  
16                  the entity specified in the determination:
- 17                      (a) informing the entity of the Minister's intention to revoke the  
18                      determination; and
- 19                      (b) setting out the Minister's reasons for revoking the  
20                      determination.

21       **28 Restricted words and expressions**

- 22                   (1) The Minister may, by legislative instrument, determine that a word  
23                   or expression specified in the determination:
- 24                      (a) is restricted; or
- 25                      (b) is restricted in relation to a specified class of entity or  
26                      business unless a condition or conditions specified in the  
27                      determination are met.
- 28                   (2) The Minister may determine in writing that a word or expression  
29                   specified in the determination is restricted in relation to a specified  
30                   entity or a specified business unless a condition or conditions  
31                   specified in the determination are met.

- 1           (3) A determination under subsection (2) is not a legislative  
2           instrument.

## 3       **29 Priority**

- 4           (1) Where:
- 5               (a) 2 or more applications are lodged with ASIC for registration  
6               of business names that are identical or nearly identical; and  
7               (b) none of the applications is a consent application;  
8           the applications take priority in the order in which they are lodged.
- 9           (2) To avoid doubt, the priority of an entity over a business name is  
10           not affected by the fact that an ABN application by the entity is  
11           pending.
- 12           (3) If an entity's application for registration of a business name to the  
13           entity is refused, the entity's priority over the business name is not  
14           affected during the review period in relation to that decision.
- 15           (4) The *review period*, in relation to a decision to refuse an application  
16           by an entity for the registration of a business name to the entity, is:  
17               (a) a period of 28 days beginning on the day on which the entity  
18               is notified of the decision; or  
19               (b) if ASIC determines a longer period under subsection (5)—  
20               that longer period.
- 21           (5) ASIC may determine in writing a longer review period. The  
22           determination is not a legislative instrument.
- 23           (6) ASIC must give a copy of the determination to the applicant.
- 24           (7) ASIC may refuse 2 or more applications for registration of  
25           business names that are identical or nearly identical if all of the  
26           applications take the same priority.

## 27       **30 Refusal for failure to pay registration fee on time**

- 28           (1) This section applies if an entity lodges with ASIC an application  
29           for the registration of a business name to the entity, but the entity  
30           does not pay the registration fee when the application is lodged.

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- 1 (2) The application is taken to have been refused if the registration fee  
2 is not paid before the end of the fee payment period.
- 3 (3) The *fee payment period* begins at the time at which the application  
4 is lodged and ends immediately before that time on the day 10  
5 business days after the day on which the application is lodged.

6 **31 Consent applications**

7 *Consent of holder of the business name to registration by another*  
8 *entity*

- 9 (1) An entity to whom a business name is registered may, by notice in  
10 accordance with subsection (2), consent to the registration of the  
11 business name to another entity.

12 Note: So if, for example, the entity to whom the business name is registered  
13 uses the business name in relation to a business that is then sold, the  
14 entity might also consent to the business name being registered to the  
15 purchaser.

16 *Prescribed manner and form*

- 17 (2) The consent notice:  
18 (a) must be in the prescribed form; and  
19 (b) must be lodged in the prescribed manner.

20 *Availability of business name*

- 21 (3) If:  
22 (a) an application under section 23 for registration of a business  
23 name to an entity (the *applicant*) is lodged with ASIC; and  
24 (b) each of the following notices is lodged with ASIC:  
25 (i) a notice under subsection (1) by the entity to whom the  
26 business name is registered consenting to the  
27 registration of the business name to the applicant;  
28 (ii) a notice under subsection 42(1) by the entity to whom  
29 the business name is registered requesting ASIC to  
30 cancel the registration of the business name to the  
31 entity;  
32 the business name is taken to be *available* to the applicant.

*Potential applicant may carry on a business*

- (4) If an entity to whom a business name is registered gives notice under subsection (1) consenting to the registration of the business name to another entity (the ***potential applicant***), the potential applicant may notify ASIC in accordance with subsection (5) that the consent has been given.
- (5) The notice:
- (a) must be in the prescribed form; and
  - (b) must be lodged in the prescribed manner.
- (6) If the potential applicant gives notice under subsection (4), the potential applicant does not commit an offence under subsection 18(1) if the potential applicant carries on a business under the business name during the period of 3 months beginning on the day on which that notice is given.

Note 1: A defendant bears an evidential burden in relation to the matters in subsection (6): see subsection 13.3(3) of the *Criminal Code*.

Note 2: Subsections (4) to (6) allow the potential applicant to trade while an application for registration of a business name is being processed.

**32 Disqualified entities**

- (1) An entity is ***disqualified*** if:
- (a) the entity is a person disqualified from managing corporations under subsection 206B(1) of the *Corporations Act 2001* because the person is convicted of an offence; or
  - (b) a person involved in the management of the entity is disqualified from managing corporations under subsection 206B(1) of the *Corporations Act 2001* because the person is convicted of an offence; or
  - (c) the entity is a person who is not disqualified under subsection 206B(1) of the *Corporations Act 2001*, but is convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country that involves dishonesty and is punishable by imprisonment for at least 3 months; or
  - (d) the entity is a person who is not disqualified under subsection 206B(1) of the *Corporations Act 2001*, but is convicted of an

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- 1 offence against the law of a foreign country that is punishable  
2 by imprisonment for a period of more than 12 months; or  
3 (e) a person involved in the management of the entity is not  
4 disqualified under subsection 206B(1) of the *Corporations*  
5 *Act 2001*, but is convicted of an offence referred to in  
6 paragraph (c) or (d) of this subsection.
- 7 (2) The entity is **disqualified**:  
8 (a) in a case mentioned in paragraph (1)(a)—during the period  
9 for which the entity is disqualified under subsection 206B(2)  
10 of the *Corporations Act 2001*; and  
11 (b) in a case mentioned in paragraph (1)(b)—during the period  
12 for which the person involved in the management of the  
13 entity is disqualified under subsection 206B(2); and  
14 (c) in a case mentioned in paragraph (1)(c) or (d):  
15 (i) if the entity does not serve a term of imprisonment—for  
16 a period of 5 years after the day on which the entity is  
17 convicted; or  
18 (ii) if the entity serves a term of imprisonment—for a  
19 period of 5 years after the day on which the entity is  
20 released from prison; and  
21 (d) in a case mentioned in paragraph (1)(e):  
22 (i) if the person involved in the management of the entity  
23 does not serve a term of imprisonment—for a period of  
24 5 years after the day on which the person is convicted;  
25 or  
26 (ii) if the person involved in the management of the entity  
27 serves a term of imprisonment—for a period of 5 years  
28 after the day on which the person is released from  
29 prison.
- 30 (3) The Minister may, on application in writing by a person, determine  
31 that:  
32 (a) where the person is the entity that would otherwise be  
33 disqualified—the entity is not disqualified despite the  
34 conviction; and  
35 (b) where the person is involved in the management of an entity  
36 that would otherwise be disqualified—the entity is not  
37 disqualified despite the conviction.
-



- 1 (4) A determination under subsection (3) must be in writing but is not  
2 a legislative instrument.

3 **33 Steps taken by ASIC to register a business name to an entity**

- 4 (1) ASIC registers a business name to an entity by entering in the  
5 Business Names Register:  
6 (a) details sufficient to identify the entity, including the entity's  
7 ABN; and  
8 (b) the business name; and  
9 (c) the address of the entity's principal place of business in  
10 Australia; and  
11 (d) an address in Australia for service of documents; and  
12 (e) the period for which the business name is registered to the  
13 entity, including the time at which, and the day on which, the  
14 period starts.
- 15 (2) The registration period for which the business name is registered to  
16 the entity must be a period of either 1 year or 3 years, unless an  
17 alternative registration period is determined by ASIC under  
18 subsection (3) or (4).
- 19 (3) ASIC may determine an alternative registration period for the  
20 registration of a business name to an entity if:  
21 (a) the entity lodges a request with ASIC, in the prescribed form  
22 and manner, to have an alternative registration period  
23 determined; and  
24 (b) the entity is a company; and  
25 (c) the alternative registration period would align the day on  
26 which the registration period for the registration of the  
27 business name to the company would expire with the  
28 company's review date, as defined for the purposes of the  
29 *Corporations Act 2001*.
- 30 (4) ASIC may determine an alternative registration period for the  
31 registration of a business name (the ***new business name***) to an  
32 entity if:

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- 1 (a) the entity lodges a request with ASIC, in the prescribed form  
2 and manner, to have an alternative registration period  
3 determined; and  
4 (b) another business name (the *other business name*) is  
5 registered to the entity; and  
6 (c) the alternative registration period would align the day on  
7 which the registration period for the registration of the new  
8 business name to the entity would expire with the day on  
9 which the registration period for the registration of the other  
10 business name to the entity would expire.
- 11 (5) However, an alternative registration period must be:  
12 (a) if the registration period would otherwise have been 1 year—  
13 of no more than 18 months; and  
14 (b) if the registration period would otherwise have been 3  
15 years—of no more than 3 years and 6 months.
- 16 (6) A determination under subsection (3) or (4) must be in writing, but  
17 is not a legislative instrument.
- 18 (7) The Business Names Register may include any other details  
19 prescribed, but no others.
- 20 (8) ASIC must give the entity notice in writing of:  
21 (a) the fact that the business name has been registered to the  
22 entity; and  
23 (b) the day and time on which the registration took effect; and  
24 (c) the other details entered in relation to the business name and  
25 the entity in the Business Names Register.

26 **34 Refusal to register**

- 27 (1) If ASIC refuses an application for registration of a business name  
28 to an entity, it must:  
29 (a) give written notice to the applicant of the refusal and the  
30 reasons for refusal; and  
31 (b) if the applicant has paid the registration fee—refund the  
32 registration fee to the applicant.

- 1           (2) If ASIC has not decided an application for registration of a  
2                 business name to an entity within 28 days after the application is  
3                 lodged, the entity may, at any time, lodge with ASIC notice that  
4                 the entity wishes to treat the application as having been refused.
- 5           (3) The notice under subsection (2):
  - 6                 (a) must be in the prescribed form; and
  - 7                 (b) must be lodged in the prescribed manner.
- 8           (4) If an entity lodges notice under subsection (2):
  - 9                 (a) for the purposes of Part 7 (Review), ASIC is taken to have  
10                 refused the entity's application for registration on the day on  
11                 which the notice is lodged; and
  - 12                 (b) if the entity has paid the registration fee—ASIC must refund  
13                 the registration fee to the applicant.
- 14           (5) For the purposes of counting the 28 days mentioned in  
15                 subsection (2), disregard each period (if any):
  - 16                 (a) starting on the day when ASIC requests the entity under  
17                 subsection 24(2) to give ASIC specified information or a  
18                 specified document; and
  - 19                 (b) ending at the end of the day the entity gives ASIC the  
20                 specified information or specified document.
- 21

**Part 4—Obligations to give information to ASIC**

**35 Notifying changes—entity that gives information to ASIC**

(1) If:

- (a) an entity gives information to ASIC; and
- (b) the information is recorded in relation to a business name in the Business Names Register; and
- (c) circumstances change so that the information is no longer correct;

the entity must lodge with ASIC notice of the change within 28 days after becoming aware of it.

(2) The notice:

- (a) must be in the prescribed form; and
- (b) must be lodged in the prescribed manner.

**36 Obligation to notify ASIC if entity becomes disqualified**

(1) If an entity becomes disqualified after registration of a business name to the entity, the entity must immediately lodge with ASIC notice of the disqualification.

(2) The notice:

- (a) must be in the prescribed form; and
- (b) must be lodged in the prescribed manner.

**37 Obligation to give ASIC information if requested**

(1) ASIC may request an entity (other than a government body) to give ASIC information relevant for the purposes of establishing or maintaining the Business Names Register.

(2) A request under subsection (1) to an entity:

- (a) is to be made by notice in writing to the entity; and
- (b) must specify:
  - (i) the information the entity is to give; and

- 1 (ii) the period within which the entity is to give the  
2 information.
- 3 The period specified under subparagraph (b)(ii) must be of at least  
4 28 days, beginning on the day on which the notice is given.
- 5 (3) If ASIC requests an entity to give information under this section,  
6 the entity must comply with the request.
- 7 Penalty: 5 penalty units.
- 8 (4) Subsection (3) is an offence of strict liability.
- 9 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 10 (5) The information must be given by lodging a response with ASIC in  
11 the prescribed form and manner.
- 12 (6) If:
- 13 (a) an entity fails to comply with a request given under this  
14 section; and
- 15 (b) ASIC reasonably believes that information on the Business  
16 Names Register to which the request relates is not correct;  
17 ASIC may delete, correct or annotate the information on the  
18 Register.
- 19 (7) If:
- 20 (a) an entity gives ASIC information in purported compliance  
21 with a request given under this section; and
- 22 (b) ASIC reasonably believes that the information is incorrect;  
23 ASIC may decide not to include the information on the register, or  
24 to include the information in a corrected or annotated form.
- 25 (8) If ASIC deletes, decides not to include, corrects or annotates  
26 information under subsection (6) or (7), ASIC must give the entity  
27 to whom the business name is registered notice in writing:
- 28 (a) setting out the action ASIC has taken; and
- 29 (b) in the case of a correction or annotation, setting out the  
30 details of that correction or annotation; and
- 31 (c) giving ASIC's reasons for its decision.
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**38 Notifying ASIC of bankruptcy, insolvency etc.**

(1) If:

- (a) a business name is registered to an entity; and
- (b) a person is appointed or authorised to act as a debtor representative of the entity;

the person must lodge with ASIC notice of that fact in accordance with subsection (2).

(2) The notice:

- (a) must be given to ASIC within 28 days after the appointment or authorisation; and
- (b) must identify who (if anyone) will carry on a business under the business name while the person is appointed or authorised; and
- (c) must be in the prescribed form; and
- (d) must be lodged in the prescribed manner.

(3) In this section:

**debtor representative** means:

- (a) a trustee in bankruptcy; or
- (b) a liquidator within the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*; or
- (c) a receiver; or
- (d) a controller (within the meaning of section 9 of the *Corporations Act 2001*); or
- (e) an administrator appointed to an entity under Division 2 of Part 5.3A of the *Corporations Act 2001*; or
- (f) a person appointed, or authorised, under a law of the Commonwealth, or of a State or Territory, to manage the affairs of an entity because it is unable to pay all its debts as and when they become due and payable; or
- (g) an administrator of a deed of company arrangement executed by the entity; or
- (h) a foreign representative in respect of a foreign proceeding that has been recognised for the purposes of the *Cross-Border Insolvency Act 2008*.

***trustee in bankruptcy*** means:

- (a) in relation to a bankruptcy—the trustee of the estate of the bankrupt; or
- (b) in relation to a composition or scheme of arrangement under Division 6 of Part IV of the *Bankruptcy Act 1966*—the trustee of the composition or scheme of arrangement; or
- (c) in relation to a debtor whose property is subject to control under Division 2 of Part X of the *Bankruptcy Act 1966*—the controlling trustee in relation to the debtor under that Part of that Act; or
- (d) in relation to a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*—the trustee of the agreement; or
- (e) in relation to the estate of a deceased person in respect of which an order has been made under Part XI of the *Bankruptcy Act 1966*—the trustee of the estate.

### **39 Notifying ASIC of appointment of a legal personal representative**

(1) If:

- (a) a business name is registered to an entity that is an individual; and
- (b) the individual dies; and
- (c) one of the following is granted to a person (the ***legal personal representative***):
  - (i) probate of the will of the deceased;
  - (ii) letters of administration of the estate of the deceased;
  - (iii) any other similar grant;

the legal personal representative must lodge with ASIC notice of the grant within 28 days after the grant is made.

(2) The notice:

- (a) must be in the prescribed form; and
- (b) must be lodged in the prescribed manner.

(3) If ASIC receives notice under this section:

- (a) ASIC must (if it has not already done so) register the Business Name to the estate of the deceased; and

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- 1 (b) enter the details of the legal personal representative on the  
2 Business Names Register.

3 **40 Notification by successor in relation to a deceased estate**

- 4 (1) If:  
5 (a) a business name is registered to an entity that is an  
6 individual; and  
7 (b) the individual dies; and  
8 (c) none of the following has been granted to a person:  
9 (i) probate of the will of the deceased;  
10 (ii) letters of administration of the estate of the deceased;  
11 (iii) any other similar grant; and  
12 (d) there are reasonable grounds for concluding that an entity  
13 will inherit assets formerly used by the deceased in carrying  
14 on a business under the business name;  
15 the entity may lodge with ASIC notice of that fact.
- 16 (2) The notice:  
17 (a) must be in the prescribed form; and  
18 (b) must be lodged in the prescribed manner.
- 19 (3) ASIC must register the Business Name to the estate of the  
20 deceased.
- 21 (4) ASIC may enter the name of an entity as a notified successor in  
22 relation to a business name, and other prescribed details, if the  
23 entity lodges notice with ASIC in accordance with subsections (1)  
24 and (2).
- 25 (5) ASIC may refuse to enter the name of an entity as a notified  
26 successor in relation to a business name if ASIC is not satisfied  
27 that there are reasonable grounds for concluding that the entity will  
28 inherit assets formerly used by the deceased in carrying on a  
29 business under the business name.
- 30 (6) ASIC must remove the entry for a notified successor in relation to  
31 a business name from the Business Names Register if ASIC  
32 receives notice in relation to the business name under section 39.



- 1           (7) If one or more entities is noted on the Business Names Register as  
2           a notified successor, ASIC is taken to satisfy an obligation under  
3           this Act or the Transitional Act to give notice to the entity to whom  
4           the business name is registered if ASIC gives notice to each  
5           notified successor.

6           **41 Federal Court may order information be given to ASIC**

- 7           (1) If an entity has failed to comply with any provision of this Act or  
8           the Transitional Act that requires the entity to lodge with ASIC any  
9           information, ASIC may give the entity a written notice requiring  
10          the entity to comply with the requirement within 10 business days  
11          after the notice is given.
- 12          (2) If the entity does not comply with the notice within that period, the  
13          Federal Court may, on an application by ASIC, make an order  
14          directing any of the following persons to comply with the  
15          requirement or request:
- 16                  (a) if the entity is a person—the entity;  
17                  (b) if the entity is a body corporate—a director, secretary or  
18                  senior manager of the body corporate;  
19                  (c) if the entity is a partnership or the trustees of a trust—a  
20                  partner or trustee;  
21                  (d) if the entity is an unincorporated association—a member of  
22                  the committee of management of the association;  
23                  (e) in the case of a joint venture, an individual who is a joint  
24                  venture entity or involved in the management of a joint  
25                  venture entity.
- 26          (3) In paragraph (2)(e), *joint venture* and *joint venture entity* have the  
27          same meaning as in Part 10.
- 28          (4) The order may provide that all costs of and incidental to the  
29          application are to be borne by the person.  
30

**Part 5—Cancelling the registration of a business name**

**42 Cancellation—request by entity to whom business name is registered**

- (1) ASIC must cancel the registration of a business name to an entity if the entity lodges a notice with ASIC requesting ASIC to do so.
- (2) The notice:
  - (a) must be in the prescribed form; and
  - (b) must be lodged in the prescribed manner.
- (3) ASIC must, at least 28 days before cancelling the registration, give notice in writing to the entity informing the entity that ASIC intends to cancel the registration.

**43 Cancellation—ASIC becomes aware of matter that would have affected registration decision**

- (1) ASIC may cancel the registration of a business name to an entity if:
  - (a) ASIC becomes aware of a matter after the business name is registered to the entity; and
  - (b) ASIC is satisfied that, had it known of the matter at the time the business name was registered to the entity, ASIC would not have registered the business name to the entity; and
  - (c) ASIC is not satisfied that there are exceptional circumstances justifying the continued registration of the business name.
- (2) ASIC must, at least 28 days before cancelling the registration, give notice in writing to the entity informing the entity:
  - (a) of the matter that has, since registration, become known to ASIC; and
  - (b) that ASIC will cancel the registration of the business name unless the entity satisfies ASIC that there are exceptional circumstances justifying the continued registration of the business name.

**44 Cancellation—entity is disqualified**

- (1) ASIC must cancel the registration of a business name to an entity if ASIC becomes aware that the entity is disqualified.
- (2) ASIC must, at least 28 days before cancelling the registration, give notice in writing to the entity informing the entity that:
  - (a) ASIC has formed the view that the entity is disqualified; and
  - (b) ASIC proposes to cancel the registration of the business name on that basis.

**45 Cancellation—Ministerial determination revoked**

- (1) ASIC must cancel the registration of a business name to an entity if a Ministerial determination in relation to the availability of the business name to the entity made under subsection 27(2) is revoked.
- (2) ASIC must, at least 28 days before cancelling the registration, give notice in writing to the entity informing the entity that:
  - (a) the determination in relation to the availability of the business name to the entity made under subsection 27(2) has been revoked; and
  - (b) ASIC proposes to cancel the registration of the business name on that basis.

**46 Cancellation—failure to satisfy a condition of registration**

- (1) ASIC must cancel the registration of a business name to an entity if:
  - (a) the name contains a word or expression that, under an instrument made under paragraph 28(1)(b) or subsection 28(2), is restricted unless a condition is satisfied; and
  - (b) the entity ceases to satisfy the condition.
- (2) ASIC must, at least 28 days before cancelling the registration, give notice in writing to the entity informing the entity that:
  - (a) ASIC has formed the view that the entity ceases to satisfy the condition; and

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- 1 (b) ASIC proposes to cancel the registration of the business  
2 name on that basis.

3 **47 Cancellation—entity not carrying on a business under the**  
4 **business name**

- 5 (1) ASIC may cancel the registration of a business name to an entity if:  
6 (a) ASIC is satisfied that:  
7 (i) the entity is not carrying on a business under the  
8 business name; and  
9 (ii) the entity has not, in the immediately preceding period  
10 of 3 months, carried on a business under the business  
11 name; and  
12 (b) the entity is not a government body; and  
13 (c) ASIC is not satisfied that there are exceptional circumstances  
14 justifying the failure to carry on a business under the business  
15 name during that 3 month period.
- 16 (2) ASIC must, at least 28 days before cancelling the registration, give  
17 notice in writing to the entity:  
18 (a) informing the entity that ASIC intends to cancel the  
19 registration; and  
20 (b) inviting the entity to give ASIC evidence that:  
21 (i) it is carrying on, or has within the immediately  
22 preceding period of 3 months carried on, a business  
23 under the business name; or  
24 (ii) there are exceptional circumstances justifying the failure  
25 to carry on a business under the business name during  
26 that period.

27 **48 Cancellation—failure to provide information**

- 28 (1) ASIC may cancel the registration of a business name to an entity if:  
29 (a) either:  
30 (i) the entity is obliged under section 35 to notify ASIC of  
31 a change to information and the entity fails to do so  
32 within the period required under that section; or

- 1 (ii) ASIC requests the entity to give ASIC information  
2 under section 37 and the entity fails to do so within the  
3 period specified in the request; and  
4 (b) ASIC is satisfied that the failure to provide the information  
5 affects the integrity of the Business Names Register; and  
6 (c) ASIC is not satisfied that there are exceptional circumstances  
7 justifying the failure to give the information.
- 8 (2) ASIC must, at least 28 days before cancelling the registration, give  
9 notice in writing to the entity informing the entity that ASIC will  
10 cancel the registration unless:  
11 (a) the information is given to ASIC within that 28 day period;  
12 or  
13 (b) the entity satisfies ASIC that there are exceptional  
14 circumstances justifying the failure to give the information.

#### 15 **49 Cancellation—registration has expired**

- 16 (1) ASIC must, at least 28 days before the registration period for the  
17 registration of a business name to an entity expires, remind the  
18 entity in writing of the time and day on which the registration  
19 period will expire.
- 20 (2) Failure to give a reminder in accordance with subsection (1) does  
21 not affect ASIC's power to cancel the registration if not renewed.
- 22 (3) If the registration period for the registration of a business name to  
23 an entity expires, ASIC may give notice in writing to the entity that  
24 ASIC will cancel the registration unless it is renewed.
- 25 (4) ASIC may cancel the registration of a business name to an entity  
26 under this section with effect on the later of:  
27 (a) the end of a period of 3 months beginning when the  
28 registration expires; and  
29 (b) the end of a period of 6 weeks beginning on the day on which  
30 notice is given in accordance with subsection (3).
- 31 (5) To avoid doubt, a business name continues to be registered to an  
32 entity after the expiry of the registration period for the registration  
33 unless the registration is cancelled.

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**50 Cancellation—entity to whom business name registered ceases to exist**

ASIC must cancel the registration of a business name to an entity (other than an individual) if ASIC is reasonably satisfied that the entity no longer exists.

**51 Cancellation—business name used in infringement of trade mark**

(1) To avoid doubt, the relief that a court may grant in an action for an infringement of a registered trade mark includes an order that the registration of a business name to an entity must be cancelled.

(2) ASIC must cancel the registration of the business name to the entity if:

- (a) a copy of the court's order is lodged with ASIC; and
- (b) ASIC is satisfied, within a reasonable period after the order is lodged, that:
  - (i) no application for the stay of the order is pending; and
  - (ii) no appeal of the order is pending; and
  - (iii) the order is not stayed; and
  - (iv) the order has not been overturned on appeal.

(3) Nothing in this section limits any orders that a court may make (in an action for an infringement of trade mark or otherwise) in relation to the registration of a business name, or ASIC's obligations under such orders.

**52 Notification of cancellation of business name**

If ASIC cancels the registration of a business name to an entity, ASIC must give written notice of the decision to the entity and ASIC's reasons for the decision.

**53 Notice requirements in relation to partnerships, unincorporated associations, trusts and joint ventures**

(1) Where ASIC is required under a provision of this Part to give notice to a partnership, ASIC must also give copy of the notice to

1 each partner within the partnership in relation to whom ASIC has  
2 details.

3 (2) Where ASIC is required under a provision of this Part to give  
4 notice to an unincorporated association or body, ASIC must also  
5 give a copy of the notice to each member of the committee of  
6 management of the association or body in relation to whom ASIC  
7 has details.

8 (3) Where ASIC is required under a provision of this Part to give  
9 notice to a trust and there are 2 or more trustees of the trust, ASIC  
10 must also give a copy of the notice to each trustee in relation to  
11 whom ASIC has details.

12 (4) Where ASIC is required under a provision of this Part to give  
13 notice to a joint venture, ASIC must also give a copy of the notice  
14 to each joint venture entity in relation to whom ASIC has details.

15 (5) In subsection (4), *joint venture* and *joint venture entity* have the  
16 same meaning as in Part 10.

#### 17 **54 Business name held during review period for cancellation** 18 **decision**

- 19 (1) If ASIC cancels the registration of a business name to an entity:  
20 (a) the business name is held during the review period in relation  
21 to that decision; and  
22 (b) the entity does not commit an offence under subsection 18(1)  
23 if the entity carries on a business under the business name  
24 during the review period in relation to that decision.

25 Note: A defendant bears an evidential burden in relation to the matters in  
26 paragraph (1)(b): see subsection 13.3(3) of the *Criminal Code*.

- 27 (2) The *review period*, in relation to a decision to cancel the  
28 registration of a business name to an entity, is:  
29 (a) a period of 4 months beginning on the day on which the  
30 entity is notified of the decision under section 52; or  
31 (b) if ASIC determines a longer period under subsection (3)—  
32 that longer period.

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- 1                   (3) ASIC may determine in writing a longer review period. The  
2                   determination is not a legislative instrument.
- 3                   (4) ASIC must give a copy of the determination to the entity.  
4



## **Part 6—Renewing the registration of a business name**

### **55 Application to renew registration**

- (1) An entity may renew the registration of a business name to the entity for a period of 1 year or 3 years by lodging the renewal fee appropriate to that period with ASIC.
- (2) An entity may lodge an application with ASIC to have the registration of a business name to the entity renewed for an alternative registration period.
- (3) The application:
  - (a) must be in the prescribed form; and
  - (b) must be lodged in the prescribed manner; and
  - (c) must specify the period for which renewal is sought; and
  - (d) must be accompanied by the renewal fee appropriate to the period sought.
- (4) ASIC may determine an alternative registration period for the renewal of the registration of a business name to an entity if:
  - (a) the entity is a company; and
  - (b) the alternative registration period would align the day on which the registration period for the registration of the business name to the company would expire with the company's review date, as defined for the purposes of the *Corporations Act 2001*.
- (5) ASIC may determine an alternative registration period for the renewal of the registration of a business name (the ***renewed business name***) to an entity if:
  - (a) another business name (the ***other business name***) is registered to the entity; and
  - (b) the alternative registration period would align the day on which the registration period for the registration of the renewed business name to the entity would expire with the

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- 1                                day on which the registration period for the registration of the  
2                                other business name to the entity would expire.
- 3                    (6) A determination under subsection (4) or (5) must be in writing, but  
4                    is not a legislative instrument.
- 5                    (7) However, an alternative registration period must be:  
6                    (a) if the registration period would otherwise have been 1 year—  
7                    of no more than 18 months; and  
8                    (b) if the registration period would otherwise have been 3  
9                    years—of no more than 3 years and 6 months.
- 10                  (8) An entity may:  
11                  (a) renew the registration of a business name to the entity under  
12                  subsection (1); or  
13                  (b) make an application under subsection (2);  
14                  no earlier than 2 months before the expiry of the registration period  
15                  for the business name.
- 16                  (9) The period of registration on renewal begins immediately after the  
17                  end of the immediately preceding registration period.  
18

## Part 7—Review

### 56 Reviewable decisions

A decision specified in an item in column 1 of the table, made under a provision specified in that item in column 2 of the table, is **reviewable** on the application of an entity specified in that item in column 3 of the table.

Reviewable decisions			
Item	Column 1 Decision	Column 2 Provision	Column 3 Who may seek review
1	Registration of a business name to an entity	Section 24	an entity in relation to whom there is a real risk of substantial detriment because of the registration of the business name
2	Refusal to register a business name to an entity	Section 24	the entity
3	Refusal to determine that a business name of a kind that is undesirable is available to an entity	Subsection 27(2)	the entity
4	Revocation of determination that a business name of a kind that is undesirable is available to an entity	Subsection 27(2)	the entity
5	Determination that a word or expression specified in the determination is restricted in relation to a specified entity or specified business unless a condition or conditions specified in the determination are met	Subsection 28(2)	(a) where an entity is specified—that entity; and (b) where a business is specified—the entity carrying on that business
6	Determination of a longer review period (priority of an	Subsection 29(5)	any entity that, but for the determination,

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<b>Reviewable decisions</b>			
<b>Item</b>	<b>Column 1 Decision</b>	<b>Column 2 Provision</b>	<b>Column 3 Who may seek review</b>
	entity's application for registration)		would have priority over a name that is identical, or nearly identical to the name to which the determination relates
7	Refusal to determine a longer review period (priority of an entity's application for registration)	Subsection 29(5)	the entity
8	Refusal to determine that an entity that would otherwise be disqualified is not to be disqualified	Subsection 32(3)	the entity
9	Refusal to determine an alternative registration period in relation to the registration of a business name to an entity	Subsection 33(3) or (4)	the entity
10	Revocation of a determination of an alternative registration period in relation to the registration of a business name to an entity	Subsection 33(3) or (4)	the entity
11	Deletion, refusal to include, correction or annotation of information in relation to a business name on the Business Names Register	Subsection 37(6) or (7)	the entity to whom the business name is registered
12	Refusal to enter an entity's name on the Business Names Register as a notified successor in relation to a business name	Subsection 40(5)	the entity
13	Cancellation of the	Section 43, 47 or 48	the entity

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<b>Reviewable decisions</b>			
<b>Item</b>	<b>Column 1 Decision</b>	<b>Column 2 Provision</b>	<b>Column 3 Who may seek review</b>
	registration of a business name to an entity		
14	Refusal to determine a longer review period (holding business name after registration to an entity cancelled)	Subsection 54(3)	the entity
15	Revocation of a determination of an alternative registration period in relation to the renewal of the registration of a business name to an entity	Subsection 55(4) or (5)	the entity
16	Refusal to decide that it is appropriate to excise details in relation to an entity from disclosure	Subsection 60(6)	the entity
17	Refusal to receive a document submitted by an entity	Subsection 69(1) or (5)	the entity

**57 Internal review of certain decisions**

- (1) If a reviewable decision is made by ASIC other than as a delegate of the Minister, an entity on whose application the decision is reviewable may lodge an application with ASIC (the *review body*) for review of the decision.
- (2) If a reviewable decision is made by an ASIC member or staff member as a delegate of the Minister, an entity on whose application the decision is reviewable may lodge an application with the Minister (the *review body*) for review of the decision.
- (3) An application for review of a decision:
  - (a) must set out the reasons for making the application; and
  - (b) must be in the prescribed form; and

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- 1 (c) must be lodged in the prescribed manner.
- 2 (4) An application for review of a decision must be lodged:
- 3 (a) in the case of a decision of the kind specified in item 1 of the
- 4 table in section 56—within 15 months after the day on which
- 5 the business name is registered to the entity; or
- 6 (b) in any other case—within 28 days after the entity is notified
- 7 of the decision.
- 8 (5) Despite subsection (4), an application for review of a decision may
- 9 be lodged within such longer period as the review body allows.
- 10 (6) After an application for review of a decision is lodged with a
- 11 review body, the review body must review the decision and:
- 12 (a) affirm the decision under review; or
- 13 (b) vary the decision under review; or
- 14 (c) set aside the decision under review and make a decision in
- 15 substitution for it.
- 16 (7) A decision of the review body under subsection (6) takes effect:
- 17 (a) on a day, provided in the decision, that is after the decision is
- 18 made; or
- 19 (b) if a day is not so provided—on the day on which the decision
- 20 is made.
- 21 (8) If the review body has not decided an application by an entity for
- 22 review of a decision:
- 23 (a) where the review body is ASIC—within 28 days after the
- 24 application is lodged; and
- 25 (b) where the review body is the Minister—within 60 days after
- 26 the application is lodged;
- 27 the entity may, at any time, give the review body written notice
- 28 that the entity wishes to treat the decision as having been affirmed.
- 29 (9) For the purposes of section 58, if an entity gives notice under
- 30 subsection (8), the review body is taken to have refused the entity's
- 31 application on the day on which the notice is given.

**58 Administrative review of certain decisions**

- (1) An application may be made to the Administrative Appeals Tribunal for review of a decision made or taken to have been made by ASIC or the Minister under section 57.
- (2) The application may be made by any entity that could have lodged an application under subsection 57(1) in relation to the decision in relation to which the decision under section 57 was made or taken to have been made.
- (3) An application may be made to the Administrative Appeals Tribunal for review of one of the following decisions made personally by the Minister:
  - (a) a refusal to determine under subsection 27(2) that a business name of a kind that is undesirable is available to an entity;
  - (b) the revocation of a determination made under subsection 27(2) that a business name of a kind that is undesirable is available to an entity;
  - (c) a determination made under subsection 28(2) that a word or expression specified in the determination is restricted in relation to a specified entity or specified business unless a condition or conditions specified in the determination are met.
- (4) The application may be made by:
  - (a) in the case of a decision mentioned in paragraph (3)(a) or (b)—the entity referred to in that paragraph; and
  - (b) in the case of a determination mentioned in paragraph (3)(c) in relation to a specified entity—that entity; and
  - (c) in the case of a determination mentioned in paragraph (3)(c) in relation to a specified business—the entity carrying on the business specified.

**59 Payment of registration fee if business name to be registered as result of review**

- (1) This section applies if, as a result of a review of a decision carried out under section 57 or 58 or by a court, a decision is made (the

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- 1                    ***review decision***) that a business name is to be registered to an  
2                    entity.
- 3                    (2) The entity must pay the registration fee.
- 4                    (3) The registration fee is payable at the end of a period of 5 business  
5                    days beginning on the day on which the entity is notified of the  
6                    review decision.  
7



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**Part 8—Accessing the Business Names Register****60 Access to certain information in the Business Names Register by request**

- (1) A person may lodge an application with ASIC for a copy of:
  - (a) the entry in the Business Names Register relating to a particular business name; or
  - (b) the entries in the Business Names Register relating to a particular entity.
- (2) The application:
  - (a) must be in the prescribed form; and
  - (b) must be lodged in the prescribed manner; and
  - (c) must be accompanied by the application fee.
- (3) If a person lodges an application under subsection (1), ASIC must give the person a copy of the entry or entries sought.
- (4) However, before a copy of an entry is given to a person, ASIC must excise from it:
  - (a) any detail which under the regulations made under subsection (5) is to be excised; and
  - (b) any detail that ASIC is prohibited from disclosing under subsection (6).
- (5) The regulations may provide that details of a kind specified in the regulations are to be excised from a copy of an entry before it is given to any person, or any person of a prescribed class.
- (6) If:
  - (a) a person lodges with ASIC an application for a detail in relation to a business name or the person not to be disclosed; and
  - (b) ASIC is satisfied that it is not appropriate to disclose the detail;ASIC must not disclose the detail under this section.
- (7) An application mentioned in paragraph (6)(a):

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- 1 (a) must be in the prescribed form; and  
2 (b) must be lodged in the prescribed manner.

3 **61 Certain information to be publicly available**

4 In addition to providing copies under section 60, ASIC must make  
5 publicly available on the internet or otherwise free of charge any  
6 details of a kind prescribed by the regulations.

7 **62 Certain information to be made available to government bodies**

- 8 (1) In addition to providing copies under section 60 and making details  
9 publicly available under section 61, ASIC must make available  
10 details of a kind prescribed by the regulations:  
11 (a) to a government body, if the body has requested ASIC to  
12 make the information available for one or more of the  
13 following the purposes:  
14 (i) the enforcement of the criminal law;  
15 (ii) the enforcement of a law imposing a pecuniary penalty;  
16 (iii) the protection of the public revenue;  
17 (iv) the exercise of the powers or the performance of the  
18 functions of that body in relation to consumer  
19 protection;  
20 (v) the exercise of the powers or the performance of the  
21 functions of that body in relation to anti-discrimination;  
22 (vi) the exercise of the powers or the performance of the  
23 functions of that body in relation to workers'  
24 compensation;  
25 (vii) the exercise of the powers or the performance of the  
26 functions of that body in relation to insolvency or  
27 bankruptcy;  
28 (viii) the exercise of the powers or the performance of the  
29 functions of that body in relation to licences;  
30 (ix) maintaining a notified State/Territory register; and  
31 (b) to an intelligence or security agency, if the agency has  
32 requested ASIC to provide the information for the purposes  
33 of the exercise of the powers or the performance of the  
34 functions of the agency in relation to intelligence or security.

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- 1 (2) The details must be made available electronically and without  
2 charge.  
3

**Part 9—Administration**

**63 ASIC's functions and powers**

- (1) ASIC has the functions and powers conferred on it by or under this Act and the Transitional Act.
- (2) ASIC has power to do whatever is necessary for or in connection with, or reasonably incidental to, the performance of its functions under this Act and the Transitional Act.
- (3) Subject to the ASIC Act, ASIC has the general administration of this Act and the Transitional Act.

**64 Directions by Minister**

- (1) The Minister may give ASIC a written direction about policies it should pursue, or priorities it should follow, in performing or exercising any of its functions or powers under this Act or the Transitional Act. The direction is not a legislative instrument.
- (2) The Minister must not give a direction under subsection (1) unless he or she has:
  - (a) notified ASIC in writing that he or she is considering giving the direction; and
  - (b) given the Chairperson of ASIC an adequate opportunity to discuss with the Minister the need for the proposed direction.
- (3) The Minister must not give a direction under subsection (1) about a particular case.
- (4) ASIC must comply with a direction under subsection (1).
- (5) The Minister must cause a copy of an instrument under subsection (1):
  - (a) to be published in the *Gazette* within 21 days after the instrument is made; and
  - (b) to be laid before each House of the Parliament within 15 sitting days of that House after the publication;

1 but failure of the Minister to do so does not affect the instrument's  
2 validity.

### 3 **65 Arrangements with States and Territories**

- 4 (1) ASIC may, with the consent of the Minister, enter into an  
5 agreement or arrangement with a State or Territory for the  
6 performance of functions or the exercise of powers by ASIC as an  
7 agent of the State or Territory.
- 8 (2) ASIC has such functions and powers as are referred to it in such an  
9 agreement or arrangement. However, ASIC is not under a duty to  
10 perform such functions or exercise such powers.
- 11 (3) ASIC is not subject to any directions of the Minister in relation to:  
12 (a) entering into an agreement or arrangement under  
13 subsection (1); or  
14 (b) performing functions or exercising powers referred to in  
15 subsection (2).

### 16 **66 ASIC may arrange for use of computer programs to make** 17 **decisions**

- 18 (1) ASIC may arrange for the use, under ASIC's control, of computer  
19 programs for any purposes for which ASIC may make decisions  
20 under this Act or the Transitional Act, other than a decision under  
21 subsection 57(6) of this Act or subitem 28(6) of Schedule 1 to the  
22 Transitional Act.
- 23 (2) A decision made by the operation of a computer program under an  
24 arrangement made under subsection (1) is taken to be a decision  
25 made by ASIC.

### 26 **67 Forms for documents to be lodged with ASIC**

- 27 (1) A document that this Act or the Transitional Act requires to be  
28 lodged with ASIC in a prescribed form must:  
29 (a) if a form for the document is prescribed in the regulations  
30 made under that Act:  
31 (i) be in the prescribed form; and

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- 1 (ii) include the information, statements, explanations or  
2 other matters required by the form; and  
3 (iii) be accompanied by any other material required by the  
4 form; or  
5 (b) if a form for the document is not prescribed in the regulations  
6 made under that Act but ASIC has approved a form for the  
7 document:  
8 (i) be in the approved form; and  
9 (ii) include the information, statements, explanations or  
10 other matters required by the form; and  
11 (iii) be accompanied by any other material required by the  
12 form.
- 13 (2) A reference in this Act or the Transitional Act to a document that  
14 has been lodged (being a document to which subsection (1)  
15 applies), includes, unless a contrary intention appears, a reference  
16 to any other material lodged with the document as required by the  
17 relevant form.
- 18 (3) If:  
19 (a) this Act or the Transitional Act requires a document to be  
20 lodged with ASIC in a prescribed form; and  
21 (b) a provision of this Act or the Transitional Act either  
22 specifies, or provides for regulations to specify, information,  
23 statements, explanations or other matters that must be  
24 included in the document, or other material that must  
25 accompany the document;  
26 that provision is not taken to exclude or limit the operation of  
27 subsection (1) in relation to the prescribed form (and so the  
28 prescribed form may also require information etc. to be included in  
29 the form or material to accompany the form).

30 **68 Manner in which documents to be lodged with ASIC**

- 31 A document that this Act or the Transitional Act requires to be  
32 lodged with ASIC in a prescribed manner must:  
33 (a) if a manner in which the document is to be lodged is  
34 prescribed in the regulations made under that Act—be lodged  
35 in the prescribed manner; and
-

- 1 (b) if a manner in which the document is to be lodged is not  
 2 prescribed in the regulations under that Act but ASIC has  
 3 approved a manner for lodging the document—be lodged in  
 4 the approved manner.

5 **69 ASIC may refuse to receive document etc.**

6 *ASIC may refuse to receive document etc.*

- 7 (1) If ASIC considers that a document submitted to ASIC under this  
 8 Act or the Transitional Act:  
 9 (a) contains matter that, in a material particular, is false or  
 10 misleading in the form or context in which it is included; or  
 11 (b) is incomplete; or  
 12 (c) is to be lodged in a prescribed form or in a prescribed manner  
 13 under this Act or the Transitional Act and is not submitted in  
 14 that form or manner; or  
 15 (d) otherwise contravenes this Act or the Transitional Act; or  
 16 (e) contains an error, alteration or erasure;  
 17 ASIC may refuse to receive the document and may make a request  
 18 under subsection (2).

19 Note: The effect of ASIC refusing to receive the document is that the  
 20 document is not lodged with ASIC (see subsection (6)).

- 21 (2) For the purposes of subsection (1), ASIC may request:  
 22 (a) that the document be appropriately amended or completed  
 23 and resubmitted; or  
 24 (b) that a fresh document be submitted in its place; or  
 25 (c) if the document is incomplete—that a supplementary  
 26 document in the prescribed form be lodged.

27 *Notice to provide further document or information*

- 28 (3) ASIC may give a written notice to an entity that submits a  
 29 document (the ***first document***) under this Act or the Transitional  
 30 Act, requiring the entity to:  
 31 (a) give to ASIC any other document; or  
 32 (b) give to ASIC any information;

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1                   that ASIC considers necessary in order to form an opinion as to  
2                   whether it may refuse to receive the first document.

3                   *Notice must specify day by which entity must comply*

4                   (4) The notice must specify the day by which the entity must comply  
5                   with the notice (which must be a reasonable period after the notice  
6                   is given). ASIC may specify a later day by giving a written notice  
7                   to the entity.

8                   *Requirement to comply with notice*

9                   (5) If the entity does not comply with the notice within the time  
10                  specified in the notice, ASIC may refuse the first document.

11                  *Consequences of refusal to receive*

12                  (6) If ASIC refuses to receive a document, it is taken never to have  
13                  been lodged with ASIC.

14                  **70 Fees are payable to ASIC on behalf of the Commonwealth**

15                         Fees are payable to ASIC on behalf of the Commonwealth.

16                  **71 When is an application fee fully paid?**

17                         ASIC may, by legislative instrument, determine the circumstances  
18                         in which fees are taken to be fully paid.

19                  **72 Waiver and refund of fees**

20                         Nothing in this Act, the Transitional Act or the *Business Names*  
21                         *Registration (Fees) Act 2011* prevents ASIC, on behalf of the  
22                         Commonwealth, from:

- 23                         (a) waiving or reducing, in a particular case or in particular  
24                         classes of cases, fees that would otherwise be payable; or  
25                         (b) refunding, in whole or in part, in a particular case or in  
26                         particular classes of cases, fees.



**73 Address for receipt of notices**

If a business name is registered to an entity, a notice under this Act and the Transitional Act may be given to the entity by:

- (a) leaving it at, or sending it by pre-paid post to, the address shown in the Business Names Register as the address for service; or
- (b) if there is an email address on the Business Names Register for the entity, and the entity has given its consent to the use of that address in receipt of notices—sending it to that email address.

**74 ASIC may destroy or dispose of certain documents**

ASIC may destroy or otherwise dispose of any document that is lodged with ASIC under this Act or the Transitional Act, or otherwise given to ASIC under this Act or the Transitional Act, if:

- (a) ASIC considers that it is no longer necessary or desirable to retain it; and
- (b) either of the following apply:
  - (i) it has been in ASIC's possession for the period prescribed by the regulations;
  - (ii) an electronic copy of the document is retained by ASIC.

**75 ASIC may issue formal warning**

If ASIC has reasonable grounds to believe that an entity has contravened a provision of this Act, ASIC may, by written notice given to the entity:

- (a) inform the entity of that fact; and
- (b) warn the entity of the action that may be taken by ASIC under this Act in response to the contravention.

**76 Interaction with Australian Business Register**

- (1) ASIC may disclose information to the Registrar of the Australian Business Register for the purposes of:
  - (a) identifying business names registered to an entity on the Business Names Register; and

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- 1 (b) ensuring consistency between that Australian Business  
2 Register and the Business Names Register in details  
3 registered on those registers.
- 4 (2) ASIC may record and use information disclosed to ASIC by the  
5 Registrar of the Australian Business Register for the purposes of  
6 ensuring consistency between the Australian Business Register and  
7 the Business Names Register in details registered on those  
8 registers.

9 **77 Protection of confidentiality of information**

- 10 (1) A person who obtains information in the course of performing  
11 functions or exercising powers under this Act or the Transitional  
12 Act must not:  
13 (a) make a record of the information; or  
14 (b) use the information; or  
15 (c) disclose the information.
- 16 Penalty: Imprisonment for 1 year.
- 17 (2) Subsection (1) does not apply if:  
18 (a) the information is recorded, used or disclosed for the  
19 purposes of performing functions or exercising powers under  
20 this Act or the Transitional Act; or  
21 (b) the information is recorded, used or disclosed in accordance  
22 with a provision of this Act or the Transitional Act; or  
23 (c) the information is recorded, used or disclosed with the  
24 consent of the entity that provided the information; or  
25 (d) the information is given to a court or tribunal.
- 26 Note: A defendant bears an evidential burden in relation to the matters in  
27 subsection (2): see subsection 13.3(3) of the *Criminal Code*.
- 28 (3) A person commits an offence if:  
29 (a) information is made available to a government body or to an  
30 intelligence or security agency under section 62; and  
31 (b) a person obtains the information in the course of performing  
32 functions or exercising powers for the body or agency; and

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- (c) the person would not have had access to the information if it had not been made available to the body or agency under section 62; and
- (d) the person records, uses or discloses the information for a purpose other than that for which it was made available; and
- (e) the person is reckless as to whether the purpose for which the information is recorded, used or disclosed is that for which it was made available.

Penalty: Imprisonment for 6 months.

Note: Where a fault element for a physical element of an offence is not stated, see section 5.6 of the *Criminal Code* for the appropriate fault element.

(4) Subsection (3) does not apply if:

- (a) the person discloses the information to another person; and
- (b) the disclosure is reasonably necessary for:
  - (i) the enforcement of the criminal law; or
  - (ii) the enforcement of a law imposing a pecuniary penalty; or
  - (iii) the protection of the public revenue.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

(5) Subsections (1) and (3) are not intended to have an operation that would infringe an implied constitutional immunity of a referring/adopting State.

## **78 Liability for damages**

None of the following:

- (a) the Minister;
- (b) ASIC;
- (c) a member of ASIC;
- (d) a staff member or a person who is, or is a member of, an ASIC delegate or is authorised to perform or exercise a function or power of, or on behalf of, ASIC;
- (e) an APS employee or an officer or employee of an authority of the Commonwealth, whose services are made available to

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1 ASIC in connection with the performance or exercise of any  
2 of its functions or powers;  
3 is liable to an action or other proceeding for damages for or in  
4 relation to an act done or omitted to be done in good faith in  
5 performance or purported performance of any function, or in  
6 exercise or purported exercise of any power, conferred or  
7 expressed to be conferred by or under this Act or the Transitional  
8 Act.

9 **79 Delegation**

- 10 (1) ASIC may, by writing under its common seal, delegate all or any  
11 of its functions and powers under the following provisions to an  
12 ASIC member or a staff member who is an SES employee or an  
13 acting SES employee:  
14 (a) section 37 (requesting information and correcting the  
15 register);  
16 (b) subsection 41(1) (giving notice requiring entity to lodge  
17 information);  
18 (c) subsection 47(1) (cancellation for not carrying on a business).
- 19 (2) ASIC may, by writing under its common seal, delegate any or all  
20 of its functions and powers under this Act or the Transitional Act,  
21 other than the functions and powers under the following  
22 provisions, to a staff member who has the expertise appropriate to  
23 the function or power delegated:  
24 (a) the provisions mentioned in subsection (1);  
25 (b) subsection 41(2) (application to Federal Court to obtain  
26 information);  
27 (c) subsection 65(1) (arrangements with States and Territories).
- 28 (3) In the performance of a function, or the exercise of a power,  
29 delegated under this section, the delegate must comply with any  
30 directions by ASIC.

31 **80 Minister may delegate prescribed functions and powers under**  
32 **this Act**

- 33 (1) The Minister may, by signed instrument, delegate to:
-

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- 1                   (a) an ASIC member; or  
2                   (b) a staff member who is an SES employee or an acting SES  
3                   employee;  
4                   such of the Minister's functions and powers under this Act or the  
5                   Transitional Act as are prescribed.
- 6           (2) In performing functions or exercising powers under a delegation,  
7           the delegate must comply with any directions of the Minister.  
8

## Part 10—General

### 81 Application of this Act to partnerships

- (1) An obligation that would otherwise be imposed on a partnership under this Act or the Transitional Act is imposed on each partner, but may be discharged by any of the partners.
- (2) If this Act or the Transitional Act would otherwise require or permit something to be done by a partnership, the thing may be done by one or more of the partners on behalf of the partnership.
- (3) An offence against this Act or the Transitional Act that would otherwise be committed by the partnership is taken to have been committed by each partner.
- (4) A partner does not commit an offence because of subsection (3) if the partner:
  - (a) does not know of the circumstances that constitute the contravention of the provision concerned; or
  - (b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the partner becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

### 82 Principal contact of a partnership

- (1) A notice, signed by all the partners in a partnership, may be lodged with ASIC, nominating a person as the principal contact for the partnership for the purposes of this Act and the Transitional Act.
- (2) If a person is nominated as the principal contact for a partnership for the purposes of this Act or the Transitional Act, that person is taken to be the agent of the partnership for the purposes of that Act, until the nomination is withdrawn.
- (3) Subsection (2) is not affected by a change in the composition of the partnership.

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- (4) A notice, signed by all the partners in a partnership, may be lodged with ASIC, withdrawing the nomination of a person as principal contact for the partnership for the purposes of this Act or the Transitional Act.
- (5) A notice under this section:
- (a) must be in the prescribed form; and
  - (b) must be lodged in the prescribed manner.

### **83 Application of this Act to unincorporated associations and bodies**

- (1) An obligation that would otherwise be imposed on an unincorporated association or body under this Act or the Transitional Act is imposed on each member of the committee of management of the association or body, but may be discharged by any of the members of the committee.
- (2) If this Act or the Transitional Act would otherwise require or permit something to be done by an unincorporated association or body, the thing may be done by one or more of the members of the committee of management of the association or body on behalf of the association or body.
- (3) An offence against this Act or the Transitional Act that would otherwise be committed by the association or body is taken to have been committed by each member of the committee of management of the association or body.
- (4) A member of the committee of management of the association or body does not commit an offence because of subsection (3) if the member:
- (a) does not know of the circumstances that constitute the contravention of the provision concerned; or
  - (b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

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**84 Principal contact of an unincorporated association or body**

- (1) A notice, signed by all the members of the committee of management of an unincorporated association or body, may be lodged with ASIC, nominating a person as the principal contact for the association or body for the purposes of this Act or the Transitional Act.
- (2) If a person is nominated as principal contact for an unincorporated association or body for the purposes of this Act or the Transitional Act, that person is taken to be the agent of the association or body for the purposes of that Act, until the nomination is withdrawn.
- (3) Subsection (2) is not affected by:
  - (a) a change in the membership of the association or body; or
  - (b) a change in the membership of the committee of management of the association or body.
- (4) A notice, signed by all the members of the committee of management of an unincorporated association or body, may be lodged with ASIC, withdrawing the nomination of a person as the principal contact for the association or body for the purposes of this Act or the Transitional Act.
- (5) A notice under this section:
  - (a) must be in the prescribed form; and
  - (b) must be lodged in the prescribed manner.

**85 Application of this Act to a trust with 2 or more trustees**

- (1) This section applies where a trust has 2 or more trustees.
- (2) An obligation that would otherwise be imposed on the trust by this Act or the Transitional Act is imposed on each trustee instead, but may be discharged by any of the trustees.
- (3) If this Act or the Transitional Act would otherwise require or permit something to be done by the trust, the thing may be done by one or more of the trustees on behalf of the trust.



- 
- 1 (4) An offence against this Act or the Transitional Act that would  
 2 otherwise be committed by the trust is taken to have been  
 3 committed by each trustee.
- 4 (5) A trustee does not commit an offence because of subsection (4) if  
 5 the trustee:
- 6 (a) does not know of the circumstances that constitute the  
 7 contravention of the provision concerned; or
- 8 (b) knows of those circumstances but takes all reasonable steps  
 9 to correct the contravention as soon as possible after the  
 10 trustee becomes aware of those circumstances.
- 11 Note: A defendant bears an evidential burden in relation to the matters in  
 12 subsection (5): see subsection 13.3(3) of the *Criminal Code*.

## 13 **86 Principal contact of a trust**

- 14 (1) This section applies where a trust has 2 or more trustees.
- 15 (2) A notice, signed by all the trustees of a trust, may be lodged with  
 16 ASIC, nominating a person as the principal contact for the trustees  
 17 for the purposes of this Act or the Transitional Act.
- 18 (3) If a person is nominated as the principal contact for the trustees of  
 19 a trust for the purposes of this Act or the Transitional Act, that  
 20 person is taken to be the agent of the trustees in relation to the trust  
 21 for the purposes of that Act, until the nomination is withdrawn.
- 22 (4) Subsection (3) is not affected by a change in the trustees of the  
 23 trust.
- 24 (5) A notice, signed by all the trustees of a trust, may be lodged with  
 25 ASIC, withdrawing the nomination of a person as principal contact  
 26 for the trustees in relation to the trust, for the purposes of this Act  
 27 or the Transitional Act.
- 28 (6) A notice under this section:
- 29 (a) must be in the prescribed form; and
- 30 (b) must be lodged in the prescribed manner.

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**87 Joint ventures**

*Application*

(1) This section applies if:

(a) 2 or more entities (the **joint venture entities**) have entered into a contractual arrangement under which they carry on, or intend to carry on, a business jointly under a business name; and

(b) the entities do not form another entity to do so.

Subject to this section, the joint venture entities are together treated as a single entity (the **joint venture**) for the purposes of this Act and the Transitional Act.

*Treat joint venture in the same way as an entity*

(2) An obligation that would otherwise be imposed on the joint venture under this Act or the Transitional Act is imposed on each joint venture entity, but may be discharged by any of the joint venture entities.

(3) If this Act or the Transitional Act would otherwise require or permit something to be done by the joint venture, the thing may be done by one or more of the joint venture entities on behalf of all of the joint venture entities.

(4) An offence against this Act or the Transitional Act that would otherwise be committed by the joint venture is taken to have been committed by each joint venture entity.

(5) A joint venture entity does not commit an offence because of subsection (4) if the joint venture entity:

(a) does not know of the circumstances that constitute the contravention of the provision concerned; or

(b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the joint venture entity becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5): see subsection 13.3(3) of the *Criminal Code*.

*Principal contact of joint venture*

- (6) A notice, signed by all the joint venture entities, may be lodged with ASIC, nominating a person as the principal contact for the joint venture for the purposes of this Act or the Transitional Act.
- (7) If a person is nominated as the principal contact for the joint venture for the purposes of this Act or the Transitional Act, that person is taken to be the agent of the joint venture entities for the purposes of this Act and the Transitional Act, until the nomination is withdrawn.
- (8) A notice, signed by all the joint venture entities, may be lodged with ASIC, withdrawing the nomination of a person as principal contact for the joint venture for the purposes of this Act or the Transitional Act.
- (9) A notice under subsection (6) or (8):
- (a) must be in the prescribed form; and
  - (b) must be lodged in the prescribed manner.

*ABN numbers*

- (10) An application for registration of a business name to the joint venture must include the ABNs of each of the joint venture entities, or, if an application for an ABN for a joint venture entity is pending, a statement to that effect and the reference number for the ABN application.
- (11) ASIC must not register the business name to the joint venture unless each of the joint venture entities has an ABN.
- (12) To avoid doubt, the priority of a joint venture over a business name is not affected by the fact that an ABN application by any joint venture entity is pending.
- (13) Otherwise, a reference in this Act to the ABN of an entity means, in the case of a joint venture, the ABN of each of the joint venture entities.

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*Death of a joint venture entity*

- (14) If a joint venture entity who is an individual dies:
- (a) the business name continues to be registered to the joint venture; and
  - (b) sections 39 and 40 otherwise apply in relation to the joint venture entity in the same way as they apply in relation to an individual to whom a business name is registered.

**88 Application in the Territories of Christmas Island and Cocos (Keeling) Islands**

- (1) This section applies if, because Australia is not defined to include the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands in the *A New Tax System (Australian Business Number) Act 1999* (the **ABN Act**), an entity is not entitled to have an ABN.
- (2) If an activity, or a series of activities, done by the entity would be a business (as defined in section 4) if Australia were defined for the purposes of the ABN Act as including the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands, the activity or series of activities is a business for the purposes of this Act.
- (3) An application for registration of a business name to the entity need not include an ABN for the entity or a statement that an application for an ABN is pending.
- (4) ASIC may register the business name to the entity even though the entity does not have an ABN, and ASIC need not include details of an ABN for the entity on the Business Names Register.

**89 Entities that have ceased to exist**

If, under this Act, notice must or may be given to an entity that no longer exists, notice is taken to be given to the entity if it is given to a person, or a person of a class, prescribed by the regulations for the purposes of this section, to be the relevant person, or class of persons, for an entity of that kind.

1     **90 Regulations**

2             The Governor-General may make regulations prescribing matters:

3                 (a) required or permitted by this Act to be prescribed; or

4                 (b) necessary or convenient to be prescribed for carrying out or  
5                     giving effect to this Act.

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**Schedule 1—Notified State/Territory registers**

Note: See section 6.

**1 New South Wales**

Each of the following registers of New South Wales is specified:

- (a) the Register of Co-operatives established under the *Co-operatives Act 1992* of New South Wales;
- (b) the Register of Incorporated Associations established under the *Associations Incorporation Act 2009* of New South Wales;
- (c) the Register of Limited and Incorporated Limited Partnerships established under the *Partnership Act 1892* of New South Wales;
- (d) the register of co-operative housing societies and Starr-Bowkett societies established under the *Co-operative Housing and Starr-Bowkett Societies Act 1998* of New South Wales;
- (e) any register of the same kind as a register mentioned in paragraphs (a) to (d), established in substitution for a register mentioned in one of those paragraphs.

**2 Victoria**

Each of the following registers of Victoria is specified:

- (a) the Register of Co-operatives established under the *Co-operatives Act 1996* of Victoria;
- (b) the register of incorporated associations established under the *Associations Incorporation Act 1981* of Victoria;
- (c) the Register of Incorporated Limited Partnerships established under the *Partnership Act 1958* of Victoria;
- (d) the Register of Limited Partnerships established under the *Partnership Act 1958* of Victoria;
- (e) any register of the same kind as a register mentioned in paragraphs (a) to (d), established in substitution for a register mentioned in one of those paragraphs.

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**3 Queensland**

Each of the following registers of Queensland is specified:

- (a) the register of incorporated associations established under the *Associations Incorporation Act 1981* of Queensland;
- (b) the register of cooperatives, foreign cooperatives and cooperative charges established under the *Cooperatives Act 1997* of Queensland;
- (c) the register of incorporated limited partnerships established under the *Partnership Act 1891* of Queensland;
- (d) the register of the current addresses of incorporated church entities (other than the Corporation of the Bishops) that the Corporation of the Bishops is obliged to keep under the *Roman Catholic Church (Incorporation of Church Entities) Act 1994* of Queensland;
- (e) any register of the same kind as a register mentioned in paragraphs (a) to (d), established in substitution for a register mentioned in one of those paragraphs.

**4 Western Australia**

Each of the following registers of Western Australia is specified:

- (a) the register of co-operatives established under the *Co-operatives Act 2009* of Western Australia;
- (b) the register of foreign co-operatives established under the *Co-operatives Act 2009* of Western Australia;
- (c) the register of associations incorporated by the issue of a certificate of incorporation under the *Associations Incorporation Act 1987* of Western Australia;
- (d) any register of the same kind as a register mentioned in paragraphs (a) to (c), established in substitution for a register mentioned in one of those paragraphs.

**5 South Australia**

Each of the following registers of South Australia is specified:

- (a) the register of incorporated co-operatives continued in existence under the *Co-operatives Act 1997* of South Australia;

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- 1 (b) the register of incorporated associations established under the  
2 *Associations Incorporation Act 1985* of South Australia;  
3 (c) the Register of Limited Partnerships and Incorporated  
4 Limited Partnerships established under the *Partnership Act*  
5 *1891* of South Australia;  
6 (d) any register of the same kind as a register mentioned in  
7 paragraphs (a) to (c), established in substitution for a register  
8 mentioned in one of those paragraphs.

### 9 **6 Tasmania**

10 Each of the following registers of Tasmania is specified:

- 11 (a) the Register of Cooperatives established under the  
12 *Cooperatives Act 1999* of Tasmania;  
13 (b) the register of associations incorporated by the issue of a  
14 certificate of incorporation under the *Associations*  
15 *Incorporation Act 1964* of Tasmania;  
16 (c) the Register of Limited Partnerships and Incorporated  
17 Limited Partnerships established under *Partnership Act 1891*  
18 of Tasmania;  
19 (d) any register of the same kind as a register mentioned in  
20 paragraphs (a) to (c), established in substitution for a register  
21 mentioned in one of those paragraphs.

### 22 **7 Australian Capital Territory**

23 Each of the following registers of the Australian Capital Territory  
24 is specified:

- 25 (a) the cooperatives register established under the *Cooperatives*  
26 *Act 2002* of the Australian Capital Territory;  
27 (b) the register of associations incorporated by the issue of a  
28 certificate of incorporation under the *Associations*  
29 *Incorporation Act 1991* of the Australian Capital Territory;  
30 (c) the register of incorporated limited partnerships established  
31 under the *Partnership Act 1963* of the Australian Capital  
32 Territory;



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- 1 (d) any register of the same kind as a register mentioned in  
2 paragraphs (a) to (c), established in substitution for a register  
3 mentioned in one of those paragraphs.

4 **8 Northern Territory**

5 Each of the following registers of the Northern Territory is  
6 specified:

- 7 (a) the Register of Co-operatives established under the  
8 *Co-operatives Act* of the Northern Territory;  
9 (b) the register of associations incorporated by the issue of a  
10 certificate of incorporation under the *Associations Act* of the  
11 Northern Territory;  
12 (c) any register of the same kind as a register mentioned in  
13 paragraphs (a) and (b), established in substitution for a  
14 register mentioned in one of those paragraphs.

2010-2011

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Business Names Registration  
(Transitional and Consequential  
Provisions) Bill 2011**

**No.     , 2011**

*(Innovation, Industry, Science and Research)*

**A Bill for an Act to deal with transitional and  
consequential matters in connection with the  
*Business Names Registration Act 2011*, and for  
related purposes**



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1     **A Bill for an Act to deal with transitional and**  
2     **consequential matters in connection with the**  
3     ***Business Names Registration Act 2011*, and for**  
4     **related purposes**

5     The Parliament of Australia enacts:

6     **1 Short title**

7                     This Act may be cited as the *Business Names Registration*  
8                     *(Transitional and Consequential Provisions) Act 2011*.

9     **2 Commencement**

10                    (1) Each provision of this Act specified in column 1 of the table  
11                    commences, or is taken to have commenced, in accordance with

1 column 2 of the table. Any other statement in column 2 has effect  
2 according to its terms.  
3

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Section 4	At the same time as section 3 of the <i>Business Names Registration Act 2011</i> commences.	
3. Schedule 1	At the same time as section 3 of the <i>Business Names Registration Act 2011</i> commences.	
4. Schedule 2, Part 1	At the same time as section 3 of the <i>Business Names Registration Act 2011</i> commences.	
5. Schedule 2, Part 2	On the first anniversary of the commencement of Part 2 of the <i>Business Names Registration Act 2011</i> .	

4 Note: This table relates only to the provisions of this Act as originally  
5 enacted. It will not be amended to deal with any later amendments of  
6 this Act.

7 (2) Any information in column 3 of the table is not part of this Act.  
8 Information may be inserted in this column, or information in it  
9 may be edited, in any published version of this Act.

### 10 3 Schedule(s)

11 Each Act that is specified in a Schedule to this Act is amended or  
12 repealed as set out in the applicable items in the Schedule  
13 concerned, and any other item in a Schedule to this Act has effect  
14 according to its terms.

### 15 4 Dictionary

16 (1) In this Act:

***Business Names Registration Act*** means the *Business Names Registration Act 2011*, and includes instruments made under that Act.

***change-over day*** means the day on which Part 2 of the Business Names Registration Act commences.

*person responsible for registration in a State or Territory* means:

- (a) in the case of New South Wales—the Director-General as defined for the purposes of the *Business Names Act 2002* of New South Wales; and
- (b) in the case of Victoria—the Director within the meaning of the *Fair Trading Act 1999* of Victoria; and
- (c) in the case of Queensland—a registrar of business names under the *Business Names Act 1962* of Queensland; and
- (d) in the case of Western Australia—the person for the time being designated as the Commissioner under section 4AA of the *Business Names Act 1962* of Western Australia; and
- (e) in the case of South Australia—the Corporate Affairs Commission of South Australia established by Part 13 of the *Companies Act 1962* of South Australia; and
- (f) in the case of Tasmania—the Commissioner for Corporate Affairs holding office under section 4 of the *Commissioner for Corporate Affairs Act 1980* of Tasmania, and includes any person holding that office in an acting capacity; and
- (g) in the case of the Australian Capital Territory—the Registrar-General under the *Registrar-General Act 1993* of the Australian Capital Territory; and
- (h) in the case of the Northern Territory—the person holding or occupying the office of Commissioner of Consumer Affairs under the *Consumer Affairs and Fair Trading Act* of the Northern Territory.

**registration law**, in relation to a State or Territory, means:

- (a) in the case of New South Wales—the *Business Names Act 2002* of New South Wales; and
- (b) in the case of Victoria—the *Business Names Act 1962* of Victoria; and
- (c) in the case of Queensland—the *Business Names Act 1962* of Queensland; and



- 
- 1 (d) in the case of Western Australia—the *Business Names Act*  
2 1962 of Western Australia; and  
3 (e) in the case of South Australia—the *Business Names Act 1996*  
4 of South Australia; and  
5 (f) in the case of Tasmania—the *Business Names Act 1962* of  
6 Tasmania; and  
7 (g) in the case of the Australian Capital Territory—the *Business*  
8 *Names Act 1963* of the Australian Capital Territory; and  
9 (h) in the case of the Northern Territory—the *Business Names*  
10 *Act 2007* of the Northern Territory.

11 ***this Act*** includes instruments made under this Act.

- 12 (2) An expression, other than ***this Act***, that is defined in the Business  
13 Names Registration Act has the same meaning in this Act as in  
14 that.  
15

## **Schedule 1—Transitional provisions**

### **Part 1—Business names registered on change-over day**

#### **1 Application of this Part**

- (1) This Part applies if a referring/adopting State or an affected Territory notifies ASIC in accordance with subitems (2) and (3) that:
- (a) a business name is registered under the registration law of the State or Territory in relation to a person; and
  - (b) the business name is to be registered on the Business Names Register.
- (2) The notification must be given:
- (a) in electronic form, or any other form agreed on by the State or Territory and ASIC; and
  - (b) before the change-over day.
- (3) The notification must:
- (a) include details of the person; and
  - (b) state the period for which the business name is registered in relation to the person under the registration law of the State or Territory; and
  - (c) if the business name is also registered by the State or Territory in relation to other persons:
    - (i) include details of those other persons; and
    - (ii) state the period for which the business name is registered in relation to each of those persons under the registration law of the State or Territory.
- (4) A State or Territory satisfies the requirement in subitem (3) if the State or Territory gives ASIC an electronic copy of the register of business names maintained by the State or Territory under the registration law of the State or Territory.

#### **2 Business names registered in relation to a person trading alone before the change-over day**

- (1) This item applies if:

**Schedule 1** Transitional provisions

**Part 1** Business names registered on change-over day

---

- 1 (a) ASIC is given notification in relation to a business name and  
2 a person under item 1; and  
3 (b) the person carries on, or intends to carry on, a business alone  
4 under the business name (rather than in association with other  
5 persons).
- 6 (2) On the change-over day, ASIC must register the business name to the  
7 person by entering in the Business Names Register:  
8 (a) details sufficient to identify the person including the person's  
9 ABN (if ASIC has that information); and  
10 (b) the business name; and  
11 (c) the address of each principal place of business of which  
12 ASIC is aware; and  
13 (d) each address for service of documents of which ASIC is  
14 aware; and  
15 (e) the period for which the business name is registered.
- 16 (3) The period for which the business name is registered is the period:  
17 (a) beginning at the start of the change-over day; and  
18 (b) ending on the last day on which registration of the business  
19 name in relation to the person would have expired under the  
20 registration law of a referring/adopting State or an affected  
21 Territory in which the business name was registered in  
22 relation to the person immediately before the change-over  
23 day.
- 24 (4) The Business Names Register may include any other details prescribed  
25 in relation to registrations under this item.

26 **3 Business names registered in relation to a group of**  
27 **persons before the change-over day**

- 28 (1) This item applies if:  
29 (a) ASIC is given notification in relation to a business name and  
30 a person under item 1; and  
31 (b) the person carries on a business, or intends to carry on a  
32 business, under the name in association with one or more  
33 other persons.
- 34 (2) On the change-over day, ASIC must register the business name to:
-

- (a) if the group of persons carrying on the business, or intending to carry on the business, has formed an entity to do so—the entity; or
    - (b) if the group of persons carrying on the business, or intending to carry on the business, has not formed an entity to do so—the group of persons.
  - (3) If the business name is registered to a group of persons under paragraph (2)(b):
    - (a) each of those persons is a **joint venture entity** for the purposes of section 87 of the Business Names Registration Act; and
    - (b) the group is a **joint venture** for the purposes of section 87 of the Business Names Registration Act.
- Note: Section 87 of the Business Names Registration Act sets out rules for treating joint ventures in the same way as entities.
- (4) ASIC registers the business name by entering in the Business Names Register:
    - (a) details sufficient to identify the entity or group of persons, including (if ASIC has the information):
      - (i) in a case where the business name is registered under paragraph (2)(a)—the entity’s ABN; and
      - (ii) in a case where the business name is registered under paragraph (2)(b)—the ABN of each person within the group; and
    - (b) the business name; and
    - (c) the address of each principal place of business of which ASIC is aware; and
    - (d) each address for service of documents of which ASIC is aware; and
    - (e) the period for which the business name is registered.
  - (5) The period for which the business name is registered is the period:
    - (a) beginning at the start of the change-over day; and
    - (b) ending on the last day on which registration of the business name to any member of the entity or group would have expired under the registration law of a referring/adopting State or an affected Territory in which the business name was

**Schedule 1** Transitional provisions

**Part 1** Business names registered on change-over day

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1 registered in relation to the member immediately before the  
2 change-over day.

3 (6) The Business Names Register may include any other details prescribed  
4 in relation to registrations under this item.  
5

**Part 2—Business names held on change-over day to  
resolve outstanding matters**

**4 Application**

- (1) This Part applies if:
- (a) a referring/adopting State or an affected Territory notifies ASIC in accordance with subitem (2) that a business name is to be held; and
  - (b) the notification that the name is to be held is given for the purposes of resolving outstanding matters under the law of the State or Territory.
- (2) The notification must be given:
- (a) in electronic form; and
  - (b) before the change-over day.

**5 Business name held during grace period for renewal**

- (1) ASIC must hold the business name until the business name is registered under item 7 or ASIC ceases to hold the business name under item 8 or 9.
- (2) An entity does not commit an offence under Part 2 of the Business Names Registration Act while the business name is held under subitem (1).

**6 State or Territory may notify ASIC that registration required**

- (1) Item 7 applies if a State or Territory that has given ASIC notification under item 4 notifies ASIC in accordance with subitems (2) and (3) that the business name is to be registered on the Business Names Register.
- (2) The notification must be given in electronic form.
- (3) The notification must:
- (a) either:
    - (i) where a business is carried on, or is intended to be carried on, under the business name by a person alone—give details of that person; or

- (ii) where a business is carried on, or is intended to be carried on, under the business name by a group of persons—give details of each of those persons; and
- (b) nominate the period for which the business name is to be registered.

## 7 Registration

- (1) ASIC must register the business name:
- (a) in a case where a business is carried on, or is intended to be carried on, under the business name by a person alone—to the person; or
  - (b) in a case where a business is carried on, or is intended to be carried on, under the business name by a group of persons:
    - (i) if the group of persons has formed an entity to do so—to the entity; or
    - (ii) if the group of persons has not formed an entity to do so—to the group of persons.
- (2) If the business name is registered to a group of persons under subparagraph (1)(b)(ii):
- (a) each of those persons is a *joint venture entity* for the purposes of section 87 of the Business Names Registration Act; and
  - (b) the group is a *joint venture* for the purposes of section 87 of the Business Names Registration Act.
- Note: Section 87 of the Business Names Registration Act sets out rules for treating joint ventures in the same way as entities.
- (3) ASIC registers the business name by entering in the Business Names Register:
- (a) details sufficient to identify the entity or group of persons to whom the business name is registered, including (if ASIC has the information):
    - (i) in a case where the business name is registered under paragraph (1)(a)—the person's ABN; and
    - (ii) in a case where the business name is registered under subparagraph (1)(b)(i)—the entity's ABN; and
    - (iii) in a case where the business name is registered under subparagraph (1)(b)(ii)—the ABN of each person within the group; and

- 1 (b) the business name; and  
2 (c) the address of each principal place of business of which  
3 ASIC is aware; and  
4 (d) each address for service of documents of which ASIC is  
5 aware; and  
6 (e) the period for which the business name is registered.
- 7 (4) The period for which the business name is registered is the period  
8 nominated by the State or Territory under paragraph 6(3)(b).
- 9 (5) If a business name is registered as a result of a notice given under  
10 item 6 after the period of 4 months beginning on the change-over day  
11 has elapsed, ASIC must notify the entity to whom the business name is  
12 registered (including a group of persons that is treated as an entity  
13 because it is a joint venture for the purposes of section 87 of the  
14 Business Names Registration Act) in writing of the registration.
- 15 (6) This item does not apply if, because of:  
16 (a) a previous application of this item; or  
17 (b) another provision of this Act; or  
18 (c) a provision of the Business Names Registration Act;  
19 the business name is already registered to the entity to whom it would  
20 be registered under this item (including a group of persons that is  
21 treated as an entity because it is a joint venture for the purposes of  
22 section 87 of the Business Names Registration Act).

## 23 **8 ASIC must cease to hold name if given notice by all** 24 **relevant States and Territories**

- 25 (1) If all of the States and Territories who have given ASIC notification  
26 under item 4 to hold a business name give ASIC notification in  
27 accordance with subitem (2) that ASIC is to cease to hold the business  
28 name, ASIC must cease to hold the business name.
- 29 (2) The notification must be given in electronic form.

## 30 **9 ASIC may request update on names held**

- 31 (1) ASIC may, by notice in accordance with subitem (2), request each State  
32 or Territory that has given ASIC notification under item 4 in relation to  
33 a business name to inform ASIC whether the business name should  
34 continue to be held for the purposes of resolving outstanding matters.



**Schedule 1** Transitional provisions

**Part 2** Business names held on change-over day to resolve outstanding matters

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- 1 (2) A notice under subitem (1):  
2 (a) must be given in electronic form; and  
3 (b) may be given no earlier than 3 months after the change-over  
4 day.
- 5 (3) The notice may nominate a period of no less than 28 days (beginning on  
6 the day on which the notice is given) within which the State or Territory  
7 should give the information to ASIC.
- 8 (4) ASIC may cease to hold the business name if none of the States or  
9 Territories to whom notice is given under subitem (1) inform ASIC  
10 electronically within the nominated period for that State or Territory  
11 that ASIC is to continue to hold the business name.
- 12 (5) To avoid doubt, ASIC may exercise its powers in relation to a business  
13 name under this item more than once.
- 14 (6) If ASIC ceases to hold a business name, it must notify the State or  
15 Territory of that fact.

16 **10 Regulations for the purposes of resolving outstanding**  
17 **matters**

- 18 (1) The Governor-General may make regulations to deal with business  
19 names in relation to which outstanding matters under the law of a State  
20 or Territory are to be resolved.
- 21 (2) To avoid doubt, regulations made under subitem (1) must not direct a  
22 State or Territory on how outstanding matters are to be resolved.
- 23 (3) Without limiting subitem (1), this Act and the Business Names  
24 Registration Act have effect subject to any modifications made by the  
25 regulations to deal with business names in relation to which outstanding  
26 matters under the law of a State or Territory are to be resolved.
- 27 (4) In this item:  
28 ***modifications*** include additions, omissions and substitutions.

**Part 3—Entities disqualified on registration under  
this Act**

**11 Entities disqualified on registration under this Act**

- (1) An entity to whom a business name is registered under this Act must notify ASIC if the entity is disqualified on the day on which it is registered (the *registration day*).
- (2) The notice:
- (a) must be in the prescribed form; and
  - (b) must be lodged in the prescribed manner; and
  - (c) must be lodged within a period of 28 days beginning on:
    - (i) where the business name is registered under item 2 or 3—the change-over day; or
    - (ii) where the business name is registered under another item—on the day on which notice of the registration is given to the entity by ASIC under that item.
- (3) If a business name is registered to an entity under this Act, but the entity is disqualified on the registration day:
- (a) section 21 of the Business Names Registration Act does not apply in relation to that disqualification; and
  - (b) section 44 of the Business Names Registration Act does not apply in relation to that disqualification.
- (4) The Minister may determine in writing that the registration of the business name to the entity is to be cancelled, if the Minister is satisfied that, because of:
- (a) the seriousness of an offence on the basis of which the entity is disqualified; or
  - (b) the number of offences on the basis of which the entity is disqualified;
- allowing the entity to carry on a business under a business name poses a serious risk to consumers.
- (5) The Minister must not make a determination under subitem (4) if:
- (a) in a case where the business name was registered under a registration law of a referring/adopting State or an affected Territory in relation to a person who carried on a business alone under the name (rather than in association with other

**Schedule 1** Transitional provisions

**Part 3** Entities disqualified on registration under this Act

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- 1 persons)—that person was registered under that law because  
2 leave was granted by a relevant court; or  
3 (b) in a case where the business name was registered under a  
4 registration law of a referring/adopting State or an affected  
5 Territory in relation to a person who carried on a business  
6 under the name in association with one or more other  
7 persons—each person who was registered under that law was  
8 registered either because leave was granted by a relevant  
9 court or because such leave was not necessary.

10 Note: Section 53 of the Business Names Registration Bill provides that a business name is  
11 held, and the entity does not commit an offence if the entity carries on a business under  
12 it, during the review period in relation to the cancellation.

- 13 (6) For the purposes of subitem (5), ***leave is granted by a relevant court*** if:  
14 (a) where the business name was registered under the *Business*  
15 *Names Act 2002* of New South Wales—leave to do so was  
16 granted by the District Court as mentioned in section 8 of that  
17 Act; or  
18 (b) where the business name was registered under the *Business*  
19 *Names Act 1962* of Victoria—leave to carry on business  
20 under a business name was granted by the County Court as  
21 mentioned in section 5A of that Act, or by another court on  
22 appeal; or  
23 (c) where the business name was registered under the *Business*  
24 *Names Act 1962* of Western Australia—leave to carry on a  
25 business under a business name was granted by The District  
26 Court of Western Australia as mentioned in section 5A of  
27 that Act, or by another court on appeal; or  
28 (d) where the business name was registered under the *Business*  
29 *Names Act 1996* of South Australia—permission to carry on  
30 business under a business name was obtained from the  
31 District Court as mentioned in section 17 of that Act, or from  
32 another court on appeal; or  
33 (e) where the business name was registered under the *Business*  
34 *Names Act 1962* of Tasmania—leave to carry on a business  
35 under a business name was granted by a magistrate as  
36 mentioned in section 5A of that Act, or by a court on appeal.  
37 (7) A determination under subitem (4) is not a legislative instrument.

## **Part 4—Information-gathering for transitional purposes**

### **12 Interaction with the Australian Business Register**

- (1) ASIC may disclose information to the Registrar of the Australian Business Register for the purposes of obtaining the assistance of the Registrar:
- (a) to establish whether a person, or a group of persons, to whom a business name is registered under the registration law of a referring/adopting State or an affected Territory is an entity and, if so, that entity's ABN; and
  - (b) to obtain details of the business names that are listed on the Australian Business Register as registered for an entity under the law of a referring/adopting State or an affected Territory; and
  - (c) to obtain details of the business names that are listed on the Australian Business Register as not registered for an entity under the law of a referring/adopting State or an affected Territory but used for business purposes by the entity.
- (2) ASIC may record and use information disclosed to ASIC by the Registrar of the Australian Business Register for the purposes of making a decision under any of the following provisions:
- (a) paragraph 2(1)(b);
  - (b) paragraph 3(1)(b);
  - (c) paragraph 7(1)(a);
  - (d) paragraph 7(1)(b);
  - (e) paragraph 16(1)(b).

Note: ASIC may also use its power under section 37 of the Business Names Registration Act to request a person to give ASIC information.

### **13 ASIC may disclose information to States and Territories for transitional purposes**

ASIC may disclose information to a referring/adopting State or an affected Territory for the purposes of obtaining assistance from the State or Territory:

- (a) to ensure that a business name is registered to the correct entity under this Act; and

- (b) to ensure that details entered on the Business Names Register in relation to a registration under this Act are correct.

**14 ASIC may use information disclosed to it by States and Territories in making decisions**

ASIC may record and use information disclosed to ASIC by a referring/adopting State or an affected Territory (whether under item 13 or otherwise) for the purposes of making a decision under any of the following provisions:

- (a) paragraph 2(1)(b);
- (b) paragraph 3(1)(b);
- (c) paragraph 7(1)(a);
- (d) paragraph 7(1)(b);
- (e) paragraph 16(1)(b).

**Note:** ASIC may also use its power under section 37 of the Business Names Registration Act to request a person to give ASIC information.

**15 ASIC may rely on information disclosed by States and Territories and by the Registrar of the Australian Business Register**

In exercising powers or performing functions or duties under this Act, ASIC may rely on information disclosed to it by:

- (a) a State or Territory; or
- (b) the Registrar of Australian Business Register.

**16 Correcting the Business Names Register where information available on transition deficient**

(1) This item applies if:

- (a) a business name is registered under this Act to an entity or entities; and
- (b) ASIC is satisfied that, because of a deficiency in the information available to ASIC before registration:
  - (i) the business name has not been registered to the correct entity or entities; or
  - (ii) a detail entered on the Business Names Register in relation to the registration under this Act is incorrect.

(2) ASIC must correct the Business Names Register.

- 1 (3) Without limiting subitem (2), ASIC may, for the purposes of correcting  
2 the Business Names Register under that subitem:
- 3 (a) add one or more registrations; or  
4 (b) remove one or more registrations; or  
5 (c) change the details entered on the Business Names Register in  
6 relation to one or more registrations.
- 7 (4) If ASIC corrects the Business Names Register, it must give notice of the  
8 correction made to:
- 9 (a) each entity to whom the business name was registered before  
10 the correction; and  
11 (b) each entity to whom the business name is registered after the  
12 correction; and  
13 (c) if a detail in relation to a person is changed and that person  
14 would not receive notice under paragraph (a) or (b)—that  
15 person.

## 16 **17 Nominating a principal place of business and address for** 17 **service**

- 18 (1) If a business name is registered to an entity under this Act:
- 19 (a) in a case where more than one principal place of business is  
20 entered on the Business Names Register in relation to the  
21 registration—ASIC may request the entity to nominate a  
22 single principal place of business to be entered on the  
23 Business Names Register; and  
24 (b) in a case where more than one address for service is entered  
25 on the Business Names Register in relation to the  
26 registration—ASIC may request the entity to nominate a  
27 single address for service to be entered on the Business  
28 Names Register.
- 29 (2) ASIC's request must:
- 30 (a) be in writing; and  
31 (b) specify the period, of no less than 28 days beginning on the  
32 day on which the notice is given, within which the  
33 nomination is to be lodged with ASIC (the ***nomination***  
34 ***period***).
- 35 The request is not a legislative instrument.
- 36 (3) The nomination:
-

**Schedule 1** Transitional provisions

**Part 4** Information-gathering for transitional purposes

---

- 1                   (a) must be in the prescribed form; and  
2                   (b) must be lodged with ASIC in the prescribed manner.
- 3   (4)   If the nomination is not lodged with ASIC within the nomination  
4       period:  
5           (a) where more than one principal place of business is entered on  
6           the Business Names Register in relation to the registration—  
7           ASIC may select from those a place to be entered on the  
8           Business Names Register as the principal place of business;  
9           and  
10          (b) where more than one address for service is entered on the  
11          Business Names Register in relation to the registration—  
12          ASIC may select from those an address to be entered on the  
13          Business Names Register as the address for service.  
14

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## **Part 5—Distinguishing grandfathered business names that are identical or nearly identical**

### **18 Distinguishing words and expressions**

- (1) This item applies if 2 or more business names that are identical or nearly identical are registered under this Act.
- (2) This item also applies if one or more of the business names is subsequently registered under the Business Names Registration Act under an application to which an entity to whom the business name was previously registered has consented by notice under section 30 of that Act.
- (3) ASIC may, by notice in writing given to each entity to whom one of the business names is registered, nominate a word or expression to be entered on the Business Names Register for the business name registered to that entity.
- (4) ASIC may only nominate a word or expression to an entity if the inclusion of the word or expression on the Business Names Register would assist in distinguishing a business or businesses carried on by the entity from a business or businesses carried on by another entity.
- (5) Without limiting subitem (4), a word or expression nominated by ASIC may be a word or expression identifying the location at which a business is or businesses are carried on by the entity under one or more of the business names.
- (6) If ASIC gives an entity a notice under subitem (3), the entity must, within 28 days after that notice is given:
  - (a) lodge a notice with ASIC accepting ASIC's nomination; or
  - (b) lodge a notice with ASIC objecting to ASIC's nomination and nominating an alternative word or expression.
- (7) A notice under paragraph (6)(a) or (b):
  - (a) must be in the prescribed form; and
  - (b) must be lodged in the prescribed manner.
- (8) If an entity fails to comply with subitem (6), the entity is taken to have lodged notice with ASIC accepting ASIC's nomination.



**Schedule 1** Transitional provisions

**Part 5** Distinguishing grandfathered business names that are identical or nearly identical

- 
- (9) ASIC must accept the alternative word or expression nominated by the entity unless ASIC is reasonably satisfied that, if:
- (a) the word or expression were added to the business name; and
  - (b) the entity made application to register the business name as altered;
- the business name as altered would not be available to the entity under section 24 of the Business Names Registration Bill.
- (10) ASIC must:
- (a) notify the entity in writing whether it accepts or rejects the alternative word or expression; and
  - (b) if ASIC rejects the alternative, specify in the notice the word or expression that is to be entered on the Business Names Register under item 20.

**19 Meaning of distinguishing word or expression**

A word or expression is the *distinguishing word or expression* that relates to a business carried on by an entity under a business name, if:

- (a) the word or expression is nominated by ASIC in relation to the business name by notice to the entity under subitem 18(3) and accepted by the entity under paragraph 18(6)(a); or
- (b) the word or expression is nominated by ASIC in relation to the business name by notice to the entity under subitem 18(3) and taken to have been accepted by the entity under subitem 18(8); or
- (c) the word or expression is nominated by the entity in relation to the business name by notice under paragraph 18(6)(b) and accepted by ASIC under subitem 18(9); or
- (d) in a case where an alternative word or expression is nominated in relation to the business name by the entity under paragraph 18(6)(b) and rejected by ASIC under subitem 18(9)—the word or expression is specified in the notice given by ASIC under subitem 18(10).

**20 ASIC must enter distinguishing word or expression on the Business Names Register**

- (1) ASIC must enter the distinguishing word or expression that relates to a business or businesses carried on by an entity under a business name on the Business Names Register.
-

- 
- 1 (2) However, the distinguishing word or expression does not form part of  
2 the business name.
- 3 (3) ASIC may remove the entry from the register if ASIC is satisfied that  
4 the removal of the distinguishing word or expression would not lead to  
5 confusion about who is carrying on a business or businesses under the  
6 business name.
- 7 (4) If ASIC removes the entry from the register, ASIC must notify the  
8 following entities of the removal:  
9 (a) the entity to whom the business name is registered;  
10 (b) each entity for whom ASIC has contact details to whom the  
11 business name, or a nearly identical business name, was  
12 formerly registered.
- 13 (5) ASIC may also notify any other entity of the removal of the  
14 distinguishing word or expression if ASIC is satisfied that the entity's  
15 interests might be affected by the removal.

16 **21 Name not available if identical or nearly identical to**  
17 **existing name accompanied by distinguishing word or**  
18 **expression**

19 If a distinguishing word or expression is entered on the Business Names  
20 Register in relation to a business name registered to an entity, a name  
21 that is identical or nearly identical to any combination of the  
22 distinguishing word or expression and that business name is not  
23 *available* to any other entity.  
24

**Part 6—Aligning registration periods**

**22 Aligning registration periods**

- (1) This item applies in relation to the first renewal after the day on which the business name is first registered to an entity under this Act.
- (2) ASIC must determine an alternative registration period for the renewal of the registration of the business name to the entity if:
- (a) the entity lodges a request with ASIC, in the prescribed form and manner, to have the alternative registration period determined; and
  - (b) the alternative registration period requested is:
    - (i) if the registration period on renewal would otherwise have been 1 year—of not more than 18 months; and
    - (ii) if the registration period on renewal would otherwise have been 3 years—of not more than 3 years and 6 months.
- (3) A determination under subitem (2) must be in writing, but is not a legislative instrument.

## **Part 7—Other obligations to give information to ASIC**

### **23 Notifying ASIC of bankruptcy, insolvency etc.**

- (1) A person who is a debtor representative of an entity immediately before the day on which a business name is first registered to the entity under this Act (the **registration day**) is taken to satisfy section 38 of the Business Names Registration Act if:
- (a) the person has, before the registration day, given a person responsible for registration in a referring/adopting State or an affected Territory notice:
    - (i) that the person is appointed or authorised to act as a debtor representative of the entity; and
    - (ii) identifying who (if anyone) will carry on a business under the business name while that person is appointed or authorised; or
  - (b) the person lodges with ASIC notice of the person's appointment or authorisation in accordance with paragraphs 38(2)(b) to (d) of that Act within the period of 28 days beginning on the registration day.
- (2) In this item:
- debtor representative** has the same meaning as in section 38 of the Business Names Registration Act.

### **24 Notifying ASIC of death of an entity that is an individual**

- A person who is the legal personal representative in relation to a deceased estate of an individual immediately before the day on which a business name is first registered to the individual under this Act (the **registration day**) is taken to satisfy subsection 39(1) of the Business Names Registration Act if:
- (a) the person has, before the registration day, given a person responsible for registration in a referring/adopting State or an affected Territory notice that one of the following is granted to the person:
    - (i) probate of the will of the deceased;
    - (ii) letters of administration of the estate of the deceased;
    - (iii) any other similar grant; or

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- 1 (b) the person lodges with ASIC notice of the relevant grant in  
2 accordance with subsection 39(2) of that Act within the  
3 period of 28 days beginning on the registration day.  
4

**Part 8—Preserving exemptions and protecting  
information**

**25 Exemptions**

(1) An entity is exempt from the requirement under section 19 of the Business Names Registration Act to include a name or the entity's ABN in a written communication in connection with a business carried on under a business name, if the entity is, immediately before the change-over day, subject to an exemption under the registration law of a State or Territory to include that information in such a communication.

(2) Subsection 19(1) of the Business Names Registration Act does not apply to the entity in relation to the communication.

Note: A defendant bears an evidential burden in relation to the matters in subitem (2): see subsection 13.3(3) of the *Criminal Code*.

(3) An entity is exempt from the requirement under section 20 of the Business Names Registration Act to display a name at a place, if the entity is, immediately before the change-over day, subject to an exemption from a requirement under the registration law of a State or Territory to display the name at the place.

(4) Subsection 20(1) of the Business Names Registration Act does not apply to the entity in relation to the display of the name at the place.

Note: A defendant bears an evidential burden in relation to the matters in subitem (4): see subsection 13.3(3) of the *Criminal Code*.

**26 Protecting information**

(1) Despite section 60 of the Business Names Registration Act, a person may not obtain information from ASIC by application under that section if, immediately before the change-over day and under the registration law of a State or Territory, that information would not have been available to that person.

(2) Despite section 61 of the Business Names Registration Act, ASIC must not make information publicly available if, immediately before the change-over day and under the registration law of a State or Territory, the information could not have been made publicly available.

## Part 9—Review

### 27 Reviewable decisions

A decision specified in an item in column 1 of the table, made under a provision specified for that item in column 2 of the table, is *reviewable* on the application of an entity specified for that item in column 3 of the table.

Reviewable decisions			
Item	Column 1 Decision	Column 2 Provision	Column 3 Who may seek review
1	That a person carries on, or intends to carry on, a business alone under a business name (rather than in association with other persons)	Paragraph 2(1)(b) or 7(1)(a) of this Schedule	A person to whom the business name was registered under the law of a State or Territory immediately before the change-over day
2	That a person carries on, or intends to carry on, a business under a business name in association with one or more other persons	Paragraph 3(1)(b) or 7(1)(b) of this Schedule	A person to whom the business name was registered under the law of a State or Territory immediately before the change-over day
3	Rejection of an alternative word or expression to distinguish an entity	Subitem 18(9) of this Schedule	The entity
4	Specifying a word or expression to distinguish an entity	Paragraph 18(10)(b) of this Schedule	The entity
5	Removing a word or expression to distinguish an entity on the Business Names Register	Subitem 20(3) of this Schedule	The entity

### 28 Internal review of certain decisions

- (1) If a reviewable decision is made by ASIC other than as a delegate of the Minister, an entity on whose application the decision is reviewable may

- 1 lodge an application with ASIC (the **review body**) for review of the  
2 decision.
- 3 (2) If a reviewable decision is made by an ASIC member or staff member  
4 as a delegate of the Minister, an entity on whose application the  
5 decision is reviewable may lodge an application with the Minister (the  
6 **review body**) for review of the decision.
- 7 (3) The application:  
8 (a) must set out the reasons for making the application; and  
9 (b) must be in the prescribed form; and  
10 (c) must be lodged in the prescribed manner.
- 11 (4) An application for review of a decision must be lodged within 28 days  
12 after the entity is notified of the decision.
- 13 (5) Despite subitem (4), an application for review may be lodged within  
14 such longer period as the review body allows.
- 15 (6) After an application for review of a decision is lodged with a review  
16 body, the review body must review the decision and:  
17 (a) affirm the decision under review; or  
18 (b) vary the decision under review; or  
19 (c) set aside the decision under review and make a decision in  
20 substitution for it.
- 21 (7) A decision of the review body under subitem (6) takes effect:  
22 (a) on a day, provided in the decision, that is after the decision is  
23 made; or  
24 (b) if a day is not so provided—on the day on which the decision  
25 is made.
- 26 (8) If the review body has not decided an application by an entity for  
27 review of a decision:  
28 (a) where the review body is ASIC—within 28 days after the  
29 application is lodged; and  
30 (b) where the review body is the Minister—within 60 days after  
31 the application is lodged;  
32 the entity may, at any time, give the review body written notice that the  
33 entity wishes to treat the decision as having been affirmed.
-



- 1 (9) For the purposes of item 29, if an entity gives notice under subitem (8)  
2 of this item, the review body is taken to have refused the entity's  
3 application on the day on which the notice is given.

4 **29 Administrative review of certain decisions**

- 5 (1) An application may be made to the Administrative Appeals Tribunal for  
6 review of a decision made or taken to have been made by ASIC or the  
7 Minister under item 28.
- 8 (2) The application may be made by any entity who could have lodged an  
9 application under subitem 28(1) in relation to the decision in relation to  
10 which the decision under item 28 was made or taken to have been made.
- 11 (3) An application may be made to the Administrative Appeals Tribunal for  
12 review of a decision made personally by the Minister to cancel the  
13 registration of a business name to an entity under subitem 11(4).
- 14 (4) The application may be made by the entity.  
15

**Part 10—Miscellaneous**

**30 Restricted words and expressions**

Section 46 of the Business Names Registration Act does not apply in relation to a business name that includes a restricted word or expression, if the business name is registered under this Act.

**31 Limit on exercise of powers to require information**

- (1) This item applies if a business name is registered to an entity under this Act and no other business name is registered to the entity under the Business Names Registration Act.
- (2) ASIC must not exercise its powers under this Act or the Business Names Registration Act to require the entity to give ASIC any of the following information:
  - (a) the entity's ABN;
  - (b) if the entity is an individual—the entity's date or place of birth.

**32 Availability test does not apply to registrations under this Act**

To avoid doubt, ASIC may not exercise its power under section 43 of the Business Names Registration Act to cancel the registration of a business name that is registered to an entity under this Act on the basis that the business name was not available to the entity at the time of registration.

**33 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subitem (1), regulations may provide for information of a prescribed kind to be entered on the Business Names Register if:
  - (a) the information is obtained by a referring/adopting State or an affected Territory under the registration law of that State or Territory before the change-over day; and

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- 1 (b) the information is not otherwise entered, or would not  
2 otherwise be entered, on the Business Names Register under  
3 a provision of this Act or the Business Names Registration  
4 Act.  
5

## **Schedule 2—Consequential amendments**

### **Part 1—Amendments commencing on change-over day**

#### ***A New Tax System (Australian Business Number) Act 1999***

##### **1 Paragraph 26(3)(d)**

Repeal the paragraph, substitute:

(d) either:

- (i) any business name registered to the entity on the Business Names Register established and maintained under section 22 of the *Business Names Registration Act 2011*; or
- (ii) if a business name is not registered to the entity—a name used for business purposes by the entity that appeared in the entry relating to the entity in the \*Australian Business Register immediately before Part 2 of the *Business Names Registration Act 2011* commences;

#### ***ANL Act 1956***

##### **2 Section 51**

Repeal the section.

##### **3 Section 55**

Repeal the section, substitute:

##### **55 Registration on Business Names Register**

This Part does not prevent a protected body from registering a name on the Business Names Register established and maintained under section 22 of the *Business Names Registration Act 2011*.

#### ***Australian Securities and Investments Commission Act 2001***

##### **4 At the end of subsection 12A(1)**

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- 1                   Add:  
2                   ; (k) the *Business Names Registration Act 2011*;  
3                   (l) the *Business Names Registration (Transitional and*  
4                   *Consequential Provisions) Act 2011*.

5                   **5 After subsection 127(3)**

- 6                   Insert:  
7                   (3A) Using or disclosing information in accordance with the consent of  
8                   the person who provided the information is authorised use and  
9                   disclosure of the information.

10                  **6 At the end of subsection 136(2)**

- 11                  Add:  
12                  ; (j) information about the operation of the *Business Names*  
13                  *Registration Act 2011* including:  
14                  (i) details of the level of access to the Business Names  
15                  Register using the internet and other facilities; and  
16                  (ii) the timeliness with which ASIC carries out its duties,  
17                  functions and powers under the Act; and  
18                  (iii) the cost of registration of a business name under the  
19                  Act.

20                  **7 At the end of section 136**

- 21                  Add:  
22                  *Annual report to be sent to the Attorney-General of each State and*  
23                  *Territory*  
24                  (4) The Minister must cause a copy of each annual report to be sent to  
25                  the Attorney-General of each State and Territory as soon as  
26                  practical after the Minister receives the report.

27                  ***Bank Integration Act 1991***

28                  **8 Paragraph 18(2)(b)**

- 29                  Omit “under a law or a State or Territory”, substitute “on the Business  
30                  Names Register established and maintained under section 22 of the  
31                  *Business Names Registration Act 2011*”.



1 Omit “included on the national business names register”, substitute  
2 “held or registered on the Business Names Register”.

3 **17 Subsection 147(5)**

4 Repeal the subsection.

5 **18 Paragraph 324BB(6)(a)**

6 Omit “under a law of a State or Territory relating to the registration of  
7 business names”, substitute “on the Business Names Register”.

8 **19 Paragraph 601DC(1)(b)**

9 Omit “included on the national business names register”, substitute  
10 “held or registered on the Business Names Register”.

11 **20 Subsection 601DD(3)**

12 Omit “the use of that name is authorised by a law of that State or  
13 Territory that deals with business names”, substitute “the name is  
14 registered to the body on the Business Names Register”.

15 ***Defence Service Homes Act 1918***

16 **21 Paragraph 50A(2)(d)**

17 Repeal the paragraph, substitute:

18 (d) uses as a business name (within the meaning of the *Business*  
19 *Names Registration Act 2011*) or part of a business name;

20 ***Financial Transaction Reports Act 1988***

21 **22 Subsection 3(1) (subparagraph (c)(iv) of the definition of**  
22 ***account information*)**

23 Repeal the subparagraph, substitute:

24 (iv) if the account is held in a business name registered on the  
25 Business Names Register—that fact and a copy of the entry  
26 in the Business Names Register obtained under section 60 of  
27 the *Business Names Registration Act 2011* relating to the  
28 business name and containing the details referred to in  
29 paragraphs 33(1)(a), (b), (d) and (e) of that Act (identification  
30 details, business name, address for service and period of  
31 registration);

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(iva) if the account is held in a business name of which registration on the Business Names Register has been applied for but not yet obtained—that fact and a copy of the application;

### **23 Subsection 3(1)**

Insert:

*Business Names Register* means the Register established and maintained under section 22 of the *Business Names Registration Act 2011*.

### ***Olympic Insignia Protection Act 1987***

### **24 Subsection 71(5)**

Repeal the subsection, substitute:

- (5) This Chapter does not apply to the use of a business name in connection with a business if:
- (a) the name was registered under a law of a State or Territory relating to business names immediately before 20 September 2001 in relation to the business; and
  - (b) the name is registered in relation to the business under a law of the Commonwealth or a State or Territory relating to business names.

### ***Qantas Sale Act 1992***

### **25 Subsection 7(7) (definition of *registered business name*)**

After “under a law of a State or Territory that relates to the registration of business names”, substitute “on the Business Names Register established and maintained under section 22 of the *Business Names Registration Act 2011*”.

### ***Wine Australia Corporation Act 1980***

### **26 Paragraphs 40DB(4)(c) and 40FB(3)(c)**

After “Territory”, insert “or on the Business Names Register established and maintained under section 22 of the *Business Names Registration Act 2011*”.



1       **Part 2—Amendment commencing on first**  
2                       **anniversary of change-over day**

3       *A New Tax System (Australian Business Number) Act 1999*

4       **27 Paragraph 26(3)(d)**

5               Repeal the paragraph, substitute:

6                       (d) any business name registered to the entity on the Business  
7                       Names Register established and maintained under section 22  
8                       of the *Business Names Registration Act 2011*;