

TASMANIA

BUSINESS NAMES REGISTRATION (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 2011

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**BUSINESS NAMES REGISTRATION
(TRANSITIONAL AND CONSEQUENTIAL
PROVISIONS) BILL 2011**

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

A BILL FOR

**An Act to enact transitional provisions and amend certain
Acts, and to repeal, rescind and revoke superseded
legislation, consequent on the enactment of the *Business
Names (Commonwealth Powers) Act 2011***

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
Registration (Transitional and Consequential
Provisions) Act 2011*.*

2. Commencement

- (1) Sections 1, 3, 6 and 10, and Schedule 1 and this section commence on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act commence on a day or days to be proclaimed.

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3. Interpretation

(1) In this Act –

“**change-over day**” has the same meaning as it has in the Commonwealth Act in the terms, or substantially in the terms, of the proposed *Business Names Registration (Transitional and Consequential Provisions) Bill 2011* referred to in paragraph (b) of the definition of “**tabled text**” in the Tasmanian Referral Act, as in force from time to time;

“**Commissioner**” has the same meaning as it has in the existing Act;

“**existing Act**” means the *Business Names Act 1962*;

“**Tasmanian Referral Act**” means the *Business Names (Commonwealth Powers) Act 2011*.

(2) Unless a contrary intention appears, an expression used in this Act has the same meaning as it has in the Tasmanian Referral Act.

4. Renewal applications for registrations that expire on or after change-over day

(1) In this section –

“**renewal application**” means a statement that complies with section 11(1) of the

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existing Act that has been lodged with
the Commissioner under that section.

- (2) A renewal application may not be made, after the commencement of this section, under the existing Act for the renewal of the registration of a business name under the existing Act if that registration is due to expire on or after the change-over day.
- (3) Subject to subsection (2), the Commissioner may accept a renewal application after the change-over day and the provisions of the existing Act continue to apply for the purposes of such an application.
- (4) Despite section 11(2) of the existing Act, the Commissioner is not required to give a person in whose name a business name is registered under the existing Act any notice concerning the renewal date for the registration if the registration expires on or after the change-over day.

5. Applications and notifications not resolved on or before change-over day

- (1) In this section –

“pending application” means an application for registration of a business name under section 7(1) of the existing Act if, before the change-over day, the Commissioner has not –

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- (a) registered the business name in the application under section 7(3) of the existing Act; or
- (b) refused to register the business name in the application under section 7(7) of the existing Act;

“pending notification” means a notification made under section 10(1) of the existing Act before the change-over day, if the period specified in the notice has not expired on the change-over day.

- (2) On the change-over day, a pending application lapses.
- (3) On the change-over day –
 - (a) a pending notification lapses; and
 - (b) the registration of the business name that was the subject of the pending notification is cancelled and the provisions of the existing Act continue to apply in respect of the cancellation.

6. Information

- (1) The Commissioner may disclose information to ASIC for the following purposes:
 - (a) to ensure a business name registered under the existing Act is correctly registered under the national business

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names legislation after the change-over day;

- (b) to ensure that details, entered in the register that is maintained under the national business names legislation, in relation to a registration under the existing Act are correct;
- (c) to enable the transition from the existing Act to the national business names legislation.

(2) Information disclosed in accordance with this section –

- (a) may be disclosed electronically or in any other form the Commissioner thinks fit; and
- (b) may be disclosed under this Act before the change-over day in anticipation of the commencement of the national business names legislation; and
- (c) does not breach the *Personal Information Protection Act 2004*.

(3) Nothing in this section removes an obligation set out in the *Archives Act 1983* in respect of information or records, made under the existing Act, that are under the control of the Commissioner immediately before the change-over day.

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7. References to existing Act

In any other Act –

- (a) a reference to the *Business Names Act 1962* is taken to be a reference to the national business names legislation; and
- (b) a reference to a provision of the *Business Names Act 1962* is taken to be a reference to a provision of the national business names legislation that is in the terms, or substantially the same terms, as the provision of the *Business Names Act 1962*.

8. Savings and transitional regulations

- (1) The Governor may make regulations of a savings and transitional nature consequent on the enactment of this Act or the *Business Names (Commonwealth Powers) Act 2011*.
- (2) Without limiting the generality of subsection (1), regulations made under that subsection may –
 - (a) be made so as to have effect in respect of either or both of the Acts specified in that subsection; and
 - (b) provide for the continuation, variation or revocation of any matter under the existing Act for the purpose of transitioning to the national business names legislation; and

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- (c) deal with any incidental or ancillary matters.
- (3) Regulations made under subsection (1) may –
- (a) specify that they take effect on –
 - (i) the day on which any part of this Act commences; or
 - (ii) the day on which the *Business Names (Commonwealth Powers) Act 2011* commences; or
 - (iii) a day after the day on which any part of this Act commences, whether the day so specified is before, on or after the day on which the regulations under this section are made; and
 - (b) be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstances or otherwise, specified in the regulations; and
 - (c) authorise any matter to be from time to time determined, applied or regulated by the Secretary or other person as specified in the regulations; and
 - (d) prevail over an inconsistent provision of any regulations made under the existing Act.

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9. 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.

10. Consequential amendments

The legislation specified in Schedule 1 is amended as specified in that Schedule.

11. Legislation repealed

The legislation specified in Schedule 2 is repealed.

12. Legislation rescinded

The legislation specified in Schedule 3 is rescinded.

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13. Legislation revoked

The legislation specified in Schedule 4 is
revoked.

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SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Section 10

Business Names Act 1962

1. Section 11 is amended as follows:

- (a) by omitting from subsection (1)
“Commissioner, at any time within the
period of one month before or after the
expiry of the registration or within such
further time as the Commissioner
allows,” and substituting
“Commissioner”;

- (b) by inserting the following subsections
after subsection (1A):

(1B) The Commissioner may, by
written notice, extend the
registration of a business name
past the 3-year period specified in
subsection (1) if he or she thinks
it expedient to do so.

(1C) A written notice under
subsection (1B) is to –

- (a) be sent, before the
registration of the
business name is to
expire, to the person or
persons in relation to

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whom the business name
is registered; and

- (b) specify a new expiry date
for the registration.
- (c) by omitting from subsection (2) “shall,
before or after the expiration of the
registration of a business name but not
earlier than one month before the
expiration thereof,” and substituting “is
to, before the expiration of the
registration of the business name,”;
- (d) by omitting from subsection (2) “at the
place shown in the register as the place
where business is carried on under that
name”;
- (e) by omitting from subsection (2) “expire,
or has expired, as the case may be.” and
substituting “expire.”;
- (f) by omitting subsections (3) and (4).

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SCHEDULE 2 – LEGISLATION REPEALED

Section 11

Business Names Act 1962 (No. 44 of 1962)

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SCHEDULE 3 – LEGISLATION RESCINDED

Section 12

Business Names Regulations 2007 (No. 108 of 2007)

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SCHEDULE 4 – LEGISLATION REVOKED

Section 13

Proclamation under the Business Names Act 1962 (No. 243 of
1962)

*Business Names (Sydney 2000 Olympic and Paralympic
Games) Direction 1994* (No. 50 of 1994)

Business Names Direction 1999 (No. 116 of 1999)