

**COMPANIES AND BUSINESS NAMES
(AMENDMENT) ACT.**

New South Wales



ANNO OCTAVO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 12, 1969.

An Act to empower the Registrar of Companies to destroy certain documents within the registers kept by him; to extend the period within which proceedings may be instituted in respect of certain offences; to restrict the class of business name under which certain persons may carry on business in certain circumstances; for these and other purposes to amend the Companies Act, 1961, the Business Names Act, 1962, and certain other Acts; and for purposes connected therewith. [Assented to, 26th March, 1969.]

BE

Companies and Business Names (Amendment).

No. 12, 1969 **BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.**PRELIMINARY.**

Short title,
division into
Parts and
citation.

1. (1) This Act may be cited as the "Companies and Business Names (Amendment) Act, 1969".

(2) This Act is divided into Parts, as follows :—

PART I.—PRELIMINARY—ss. 1–2.

**PART II.—AMENDMENT OF COMPANIES ACT, 1961,
AS SUBSEQUENTLY AMENDED—ss. 3–4.**

**PART III.—AMENDMENT OF BUSINESS NAMES ACT,
1962, AS SUBSEQUENTLY AMENDED—ss. 5–8.**

(3) The Companies Act, 1961, as subsequently amended and as amended by this Act, may be cited as the Companies Act, 1961–1969.

(4) The Business Names Act, 1962, as subsequently amended and as amended by this Act, may be cited as the Business Names Act, 1962–1969.

Commence-
ment.

2. (1) This Part of this Act shall commence on the day upon which this Act receives the Royal assent.

(2) Subject to subsection one of this section, the several provisions of this Act shall commence upon such day or days as may be appointed and notified under subsection three of this section.

(3) The Governor may, from time to time, appoint and notify by proclamation published in the Gazette the day upon which any Part or provision of this Act specified in the proclamation shall commence and may appoint different days for different Parts or provisions and the Part or provision so specified shall commence accordingly.

PART

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PART II.

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AMENDMENT OF COMPANIES ACT, 1961, AS SUBSEQUENTLY
AMENDED.

3. The Companies Act, 1961, as subsequently amended, is amended—

Amendment
of Act No.
71, 1961.

- (a) (i) by inserting in subsection one of section five next after the definition of "Lodged" the following new definition :—

Sec. 5.
(Interpreta-
tion.)

"Machine copy" has the meaning ascribed to that expression in the Evidence (Reproductions) Act, 1967.

- (ii) by inserting in the same subsection next after the definition of "Repealed Act" the following new definition :—

"Reproduction" has the meaning ascribed to that expression in the Evidence (Reproductions) Act, 1967.

- (iii) by inserting in the same subsection next after the definition of "This Act" the following new definition :—

"Transparency" has the meaning ascribed to that expression in the Evidence (Reproductions) Act, 1967.

- (b) (i) by inserting in paragraph (a) of subsection two of section twelve after the word "Registrar" the words " , unless the Registrar directs that a transparency or reproduction of the document be made available for inspection";

Sec. 12.
(Registers.)

- (ii) by inserting next after the same paragraph the following new paragraph :—

(a1) a transparency or reproduction of a document, where the Registrar has directed that the transparency or reproduction be made available for inspection; or;

(iii)

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(iii) by inserting in subsection five of the same section after the word "place" the words "or, where the document has not been duly completed, he may require that a supplementary document in the prescribed form be lodged";

(iv) by omitting from paragraph (b) of subsection seven of the same section the word "registered" and by inserting in lieu thereof the following words and new paragraph :—

registered; or

(c) any document a transparency of which has been incorporated with a register kept by the Registrar.

Sec. 13.
(Re-lodging
of lost
registered
documents.)

(c) (i) by omitting from subsection one of section thirteen the words "or destroyed" and by inserting in lieu thereof the words ", or has been destroyed otherwise than pursuant to paragraph (c) of subsection (7) of section twelve of this Act";

(ii) by inserting at the end of the same section the following new subsection :—

(7) Where a transparency of a document referred to in subsection (1) of this section has been incorporated with a register kept by the Registrar and is lost or destroyed as referred to in that subsection, the foregoing provisions of this section shall have effect as if the document of which it is a transparency had been so lost or destroyed.

Sec. 313.
(Accounts
and audit.)

(d) by omitting from paragraph (a) of subsection one of section three hundred and thirteen the words "in the register of companies".

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4. The Companies Act, 1961, as subsequently amended, No. 12, 1969 is further amended by inserting in subsection one of section five next after the definition of "Principal register" the following new definition :—

"Printed" includes typewritten or lithographed or reproduced by any mechanical means.

Further amendment of Act No. 71, 1961.
Sec. 5.
(Interpretation.)

PART III.

AMENDMENT OF BUSINESS NAMES ACT, 1962, AS
SUBSEQUENTLY AMENDED.

5. The Business Names Act, 1962, as subsequently amended, is amended—

(a) (i) by inserting in subsection one of section four next after the definition of "Initial" the following new definition :—

"Machine copy" has the meaning ascribed to that expression in the Evidence (Reproductions) Act, 1967.

(ii) by inserting in the same subsection next after the definition of "Repealed Act" the following new definition :—

"Reproduction" has the meaning ascribed to that expression in the Evidence (Reproductions) Act, 1967.

(iii) by inserting in the same subsection next after the definition of "State" the following new definition :—

"Transparency" has the meaning ascribed to that expression in the Evidence (Reproductions) Act, 1967.

(iv)

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(iv) by inserting at the end of the same section the following new subsection :—

(4) In this Act, a reference to an Act includes all amendments of that Act and any Act passed in substitution for the Act referred to or incorporating any of its provisions.

Sec. 22.
(Inspection
of
statements.)

(b) by omitting from subsection one of section twenty-two the words “and may make a copy thereof or take extracts therefrom” and by inserting in lieu thereof the words “unless the Registrar directs that a transparency or reproduction of the statement be made available for inspection, or, where the Registrar has directed that a transparency or reproduction of such a statement be made available for inspection, a person may, on payment of the prescribed fee, inspect the transparency or reproduction, and any such person may make a copy of or take extracts from a statement, transparency or reproduction inspected”;

Sec. 23.
(Certificates
of registra-
tion or non-
registration.)

(c) (i) by inserting in paragraph (a) of subsection one of section twenty-three after the word “document” the words “or transparency”;

(ii) by inserting in paragraph (a) of subsection two of the same section after the word “document” wherever occurring the words “or transparency”;

(iii) by inserting in the same paragraph after the word “to” the words “subsection one of”;

Sec. 24.
(Evidence of
registration
or non-
registration.)

(d) by inserting in paragraph (b) of section twenty-four after the word “document” the words “or transparency”;

(e)

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- (e) by inserting at the end of section twenty-five the No. 12, 1969 following new subsection :—

(2) Subject to the Archives Act, 1960, the Registrar may destroy or dispose of any statement or notice lodged, furnished or registered under this Act or under any corresponding previous enactment, where a transparency of the statement or notice has been incorporated with the register.

Sec. 25.

(Authority of Registrar to destroy documents.)

6. The Business Names Act, 1962, as subsequently amended, is further amended—

Further amendment of Act No. 11, 1962.

- (a) by inserting in subsection two of section five after the word "section" the words ", and of subsection two of section 5A.";
- (b) by inserting in subsection three of the same section after the word "section" the words ", and of subsection two of section 5A";
- (c) by inserting next after the same section the following new section :—

Sec. 5.

(Certain business names to be registered.)

New sec. 5A.

5A. (1) This section applies—

- (a) to a person convicted after the commencement of section six of the Companies and Business Names (Amendment) Act, 1969, whether within or without the State—

Leave of District Court required in certain cases before using business name.

- (i) on indictment of an offence in connection with the promotion, formation or management of a corporation;
- (ii) of an offence involving fraud or dishonesty punishable on conviction with imprisonment for three months or more; or
- (iii) of an offence against section forty-seven, one hundred and twenty-four or three hundred and three of the Companies Act, 1961, or any corresponding

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corresponding law of another State, or of a Territory, of the Commonwealth of Australia; and

- (b) to a person so convicted before that commencement, where—
- (i) he was not, immediately before that commencement, carrying on business in the State under a business name; or
 - (ii) being a person who was, immediately before that commencement, carrying on business in the State under a business name, he ceases so to carry on business under that business name.

(2) A person to whom this section applies shall not, within the period of five years next succeeding any occasion on which he is convicted as referred to in subsection one of this section or, where he has served a term of imprisonment imposed pursuant to any such conviction, within the period of five years next succeeding his release from that imprisonment, carry on business in the State under a business name unless—

- (a) the business name under which he so carries on business—
 - (i) consists of his name; or
 - (ii) where he carries on business in association with another person or other persons, consists of his name and the name or names of the person or persons in association with whom he carries on business,

without any addition; or

- (b) he has obtained the leave of a District Court, upon application made as provided by subsection three of this section, so to carry on business.

Penalty : Four hundred dollars or imprisonment for six months or both. Default penalty.

(3)

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(3) An application for the leave of a District Court, as referred to in paragraph (b) of subsection two of this section—

- (a) shall not be made unless the Minister has been given not less than twenty-eight days' notice of the proposed application; and
- (b) shall be made, in accordance with rules of court, to the District Court for the district where the applicant proposes to carry on business or, where he proposes to carry on business in more than one district, to the District Court for the district in which he resides.

(4) On the hearing of an application made under subsection three of this section, the Minister may be represented at the hearing of, and may oppose, the application.

(5) Nothing in this section shall be construed as affecting the operation of section five of this Act.

- (d) by inserting in subsection one of section fourteen after the word "five" wherever occurring the words "or 5A".

Sec. 14.
(Disability of persons in default.)

7. The Business Names Act, 1962, as subsequently amended, is further amended—

Further amendment of Act No. 11, 1962.

- (a) (i) by omitting from section twelve the words "fourteen days" wherever occurring and by inserting in lieu thereof the words "one month";
- (ii) by omitting from the same section the words "or within such further time as the Registrar may, before the expiration of that period, allow" wherever occurring;

Sec. 12.
(Notification of changes in particulars relating to registered business names, cessation of business, etc.)

(iii)

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(iii) by omitting from subsection five of the same section the words “, or within such further time as the Registrar may, before the expiration of that period allow”;

(iv) by omitting from subsection eight of the same section the word and symbol “addresses,” and by inserting in lieu thereof the word “addressee”;

New sec.
12A.

(b) by inserting next after the same section the following new section :—

Registrar
may allow
further time.

12A. (1) Where, pursuant to this Act, a statement, notice or other document, being a statement, notice or other document relating to a business name, is required to be lodged within a specified period, the Registrar may, whether or not that period has expired, authorise an extended period for the lodging thereof, and the statement, notice or other document shall be deemed to have been duly lodged if it is lodged within the extended period authorised by the Registrar.

(2) If default has been made in lodging a statement, notice or other document under this Act within a time specified by this Act for the lodging thereof, as extended by any authority of the Registrar given under subsection one of this section, the statement, notice or other document may, subject to subsection three of this section, be lodged notwithstanding that default.

(3) Subsection two of this section shall not affect any liability of any person in respect of a default referred to in that subsection.

Sec. 28.
(Recovery
of
penalties.)

(c) by inserting next after subsection three of section twenty-eight the following new subsection :—

(4) Notwithstanding anything contained in any Act, proceedings for any offence against this Act may be brought within the period of three years after the commission of the alleged offence.

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8. The Business Names Act, 1962, as subsequently No. 12, 1969 amended, is further amended—

Further amendment of Act No. 11, 1962.

- (a) by omitting subsection one of section twenty-six and by inserting in lieu thereof the following sub-section :—

Sec. 26.
(Invitations to the public to make deposits or loans.)

(1) A person shall not, in connection with an invitation to lend or deposit money, being an invitation made, by advertisement or otherwise, to the public, or to any person as a member of the public, use or refer to a business name that—

- (a) is, or is deemed to be, registered under this Act;
- (b) is required to be registered under this Act; or
- (c) would, if business were carried on in the State thereunder, be required to be registered under this Act.

Penalty : One thousand dollars.

- (b) by inserting in subsection two of the same section after the figures "1961" the words ", or to an invitation made to a person whose ordinary business it is to lend money".