

BUSINESS NAMES (AMENDMENT) ACT 1989 No. 53

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Business Names Act 1962 No. 11
4. Amendment of Justices Act 1902 No. 27, s. 100r

SCHEDULE 1—AMENDMENTS

BUSINESS NAMES (AMENDMENT) ACT 1989 No. 53

NEW SOUTH WALES



Act No. 53, 1989

An Act to amend the Business Names Act 1962 to make further provision with respect to the registration and use of business names; and for other purposes. [Assented to 19 May 1989]

*Business Names (Amendment) 1989***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Business Names (Amendment) Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Business Names Act 1962 No. 11

3. The Business Names Act 1962 is amended as set out in Schedule 1.

Amendment of Justices Act 1902 No. 27, s. 100i

4. The Justices Act 1902 is amended by inserting (in alphabetical order) in the statutory provisions listed in paragraph (a) of the definition of "penalty notice" in section 100i (1) the following matter:

Business Names Act 1962, section 28A;

SCHEDULE 1—AMENDMENTS

(Sec. 3)

- (1) Section 3 (**Repeal, and savings and transitional provisions**)—
 - (a) Section 3 (1)—

Omit "the Schedule to this Act", insert instead "Schedule 1".
 - (b) After section 3 (5), insert:
 - (6) Schedule 2 has effect.
- (2) Section 4 (**Interpretation**)—
 - (a) Section 4 (1)—

Omit the definition of "Christian name", insert instead:

"Christian or given name" means the first name or any other name given to a person.
 - (b) Section 4 (1)—

After the definition of "Director", insert:

"Family name" means the surname or other part of a name which is not a Christian or given name.
 - (c) Section 4 (1), definition of "Initial"—

After "Christian", insert "or given".
- (3) Section 5 (**Certain business names to be registered**)—
 - (a) Section 5 (1)—

Omit "Penalty: Two hundred dollars.", insert instead "Maximum penalty: 50 penalty units."

*Business Names (Amendment) 1989*SCHEDULE 1—AMENDMENTS—*continued*

- (b) Section 5 (2) (a)—
Omit “surname”, insert instead “family name”.
- (c) Section 5 (2)—
Omit “Christian name or names” wherever occurring, insert instead “Christian or given name or names”.
- (d) Section 5 (2) (a) (iii)—
Omit “Christian names”, insert instead “Christian or given names”.
- (4) Section 5A (**Leave of District Court required in certain cases before using business name**)—
Section 5A (2)—
Omit “Penalty: Four hundred dollars or imprisonment for six months or both.”, insert instead “Maximum penalty: 50 penalty units.”.
- (5) Section 5B—
After section 5A, insert:
Business names must use English alphabet etc.
5B. (1) A business name shall not be registered under this Act unless it is comprised solely of any or all of the following: letters, numerals (which may include Roman numerals) and punctuation that are part of the English language.
(2) Nothing in this Act prevents a person from carrying on business under a business name not in the English language if the person also carries on the business under a business name registered under this Act that is an English language translation of that name.
- (6) Section 7 (**Registration of business names**)—
(a) Section 7 (1) (d)—
Omit “the Christian names and surname and any former Christian names or surname”, insert instead “the Christian or given names and family name (and any former Christian or given names or family name), the date and place of birth”.
- (b) After section 7 (1), insert:
(1A) If the place where a business is carried on or proposed to be carried on is determined by the Commission to be a remote place, the statement may also set out the address of some other place in the State as the preferred address for postal service under this Act in respect of that place of business.

Business Names (Amendment) 1989

SCHEDULE 1—AMENDMENTS—*continued*

(1B) The preferred address for postal service may be the address of a post office box and it does not matter that the address is also in a remote place.

(7) Section 7A—

After section 7, insert:

Notice to be given of registration of certain names

7A. (1) When the Commission registers a business name that is identical to or that, in the Commission's opinion, closely resembles a business name already registered, the Commission may give notice in writing of that fact to the person or persons in respect of whom it registers the business name.

(2) The notice may specify each business name already registered that is identical to or that, in the Commission's opinion, closely resembles the business name concerned.

(3) When the Commission gives a notice under this section, it shall make an entry in the register noting the fact and giving details of the notice given.

(4) Evidence (including evidence under section 24) that a person was given a notice under this section is prima facie evidence in any proceedings that the person was aware, when the notice was given, that a person was carrying on business in the State under a business name specified in the notice.

(8) Section 8 (**Resident agent**)—

After section 8 (1), insert:

(1A) A corporation may be appointed as a resident agent for the purposes of this Act but only if—

(a) it has a registered office or a principal office for the purposes of section 528, 529 or 530 of the Companies (New South Wales) Code (in which case its address for the purposes of this Act shall be the address of that office); or

(b) it is a corporation of a class prescribed for the purposes of this section (in which case its address for the purposes of this Act shall be determined in accordance with the regulations).

(9) Section 11 (**Duration of registration and renewal of registration**)—

Section 11 (5)—

Omit "one month", insert instead "2 months".

*Business Names (Amendment) 1989*SCHEDULE 1—AMENDMENTS—*continued*

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

(a) After section 12 (1), insert:

(1A) If a place shown in the register as a place where business is carried on is determined by the Commission to be a remote place, a person in respect of whom the business name concerned is registered—

(a) may lodge with the Commission a notification in the prescribed form specifying the address of some other place in the State as the preferred address for postal service under this Act in respect of the place shown in the register; and

(b) may lodge a further notification or further notifications under this subsection in substitution for any previous notification.

(1B) The preferred address for postal service may be the address of a post office box and it does not matter that the address is also in a remote place.

(b) Section 12 (2)—

Omit “Christian names or surname”, insert instead “Christian or given names or family name”.

(c) Section 12 (4) (a)—

Omit the paragraph, insert instead:

(a) who is an individual—the Christian or given names and family name (and any former Christian or given names or family name), the date and place of birth and the usual place of residence of the individual; or

(d) Section 12 (9)—

Omit “Penalty: Two hundred dollars.”, insert instead “Maximum penalty: 10 penalty units.”.

(11) Section 13—

Omit the section, insert instead:

Power to require information etc.

13. (1) An officer of the Public Service authorised by the Commission for the purposes of this section (referred to in this section as an “authorised officer”) may, for the purpose of ascertaining whether this Act has been or is being complied with—

Business Names (Amendment) 1989

SCHEDULE 1—AMENDMENTS—*continued*

- (a) at any reasonable time, enter any premises (other than any part of premises used for residential purposes) that the officer believes on reasonable grounds to be premises where business is carried on under a business name; and
 - (b) inspect and make copies of or take extracts from any documents that are on the premises and that relate to the carrying on of business there; and
 - (c) require any person apparently employed or engaged on the premises to furnish information concerning the carrying on of business there.
- (2) The Commission may, by notice in writing served on a person believed by the Commission to be capable of giving information or producing documents in relation to a possible contravention of this Act—
- (a) require the person to give the Commission within the time and in the manner specified in the notice any such information; or
 - (b) require the person to produce to the Commission, in accordance with the notice, any such documents.
- (3) A person shall not—
- (a) fail to comply with a requirement under this section to the extent that the person is capable of complying with it; or
 - (b) in purported compliance with such a requirement, give information or produce a document knowing that it is false or misleading in a material particular; or
 - (c) hinder or obstruct an authorised officer in the exercise of the officer's powers under this section.
- Maximum penalty: 20 penalty units.
- (4) A person is not excused from giving information or producing a document as required under this section on the ground that it may tend to incriminate the person but any information so given or document so produced is not admissible against the person in any criminal proceedings except proceedings under subsection (3).

*Business Names (Amendment) 1989*SCHEDULE 1—AMENDMENTS—*continued*

(5) An authorised officer exercising or proposing to exercise a power under this section to enter premises must, on request, produce the officer's certificate of authority to a person apparently in charge there.

(12) Section 17 (**Penalty for false statement**)—

Omit "Penalty: Two hundred dollars or imprisonment for three months or both.", insert instead "Maximum penalty: 50 penalty units."

(13) Section 20 (**Use and exhibition of business name**)—

Omit "Penalty: One hundred dollars.", insert instead "Maximum penalty: 20 penalty units."

(14) Section 22 (**Inspection of statements**)—

(a) Section 22 (1)—

Omit "transparency or reproduction" wherever occurring, insert instead "transparency, reproduction or computerised record".

(b) Section 22 (3)—

After "register", insert ", or a copy of or extract from a computerised record forming part of the register".

(c) Section 22 (4)—

After section 22 (3), insert:

(4) For the purposes of this section and sections 23 and 24, a document in writing embodying the contents of a computerised record (or of an extract from such a record) shall be regarded as a copy of the computerised record (or as an extract from it).

(15) Section 23 (**Certificates of registration or non-registration**)—

Omit "document or transparency" wherever occurring, insert instead "document, transparency or computerised record".

(16) Section 24 (**Evidence of registration or non-registration**)—

Section 24 (b)—

Omit "document or transparency", insert instead "document, transparency or computerised record".

*Business Names (Amendment) 1989*SCHEDULE 1—AMENDMENTS—*continued*(17) Section 25 (**Authority of Commission to destroy documents**)—

(a) Section 25 (1)—

After “enactment,”, insert “or any transparency of any such statement or notice.”.

(b) Section 25 (2)—

After “transparency”, insert “or computerised record”.

(18) Section 26 (**Invitations to the public to make deposits or loans**)—

Section 26 (1)—

Omit “Penalty: One thousand dollars.”, insert instead “Maximum penalty: 20 penalty units.”.

(19) Section 28 (**Default penalty**)—

Section 28 (1)—

Omit “twenty dollars”, insert instead “\$50”.

(20) Section 28A—

After section 28, insert:

Penalty notices for certain offences

28A. (1) The Commission or an authorised officer may serve a penalty notice on a person if it appears to the Commission or officer that the person has committed an offence under this Act, being an offence prescribed by the regulations.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.

(3) A penalty notice may be served personally or by post.

(4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5) Payment under this section shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceedings arising out of the same occurrence.

(6) The regulations may—

(a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and

(b) prescribe the amount of penalty payable for the offence if dealt with under this section; and

*Business Names (Amendment) 1989***SCHEDULE 1—AMENDMENTS—***continued*

(c) prescribe different amounts of penalties for different offences or classes of offences.

(7) The amount of a penalty prescribed under this section for an offence shall not exceed the maximum amount of penalty which could be imposed for the offence by a court.

(8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

(9) In this section—

“authorised officer” means an officer of the Public Service authorised by the Commission for the purposes of this section.

(21) Section 31 (**Service of notices**)—

After section 31 (3), insert:

(4) If this section permits a document to be sent to a person at the address of a place of business that is determined by the Commission to be a remote place—

(a) the notice may instead be sent to the address (if any) last notified to the Commission under this Act as the preferred address for postal service in respect of that place; and

(b) if it is sent to the address so notified, shall for the purposes of this Act be regarded as having been sent to the address of that place of business.

(22) Schedule, heading—

Omit the heading, insert instead:

SCHEDULE 1—REPEALS

(Sec. 3 (1))

Business Names (Amendment) 1989

SCHEDULE 1—AMENDMENTS—*continued*

(23) Schedule 2—

After the Schedule, insert:

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 3 (6))

Business Names (Amendment) Act 1989

Business names not using English alphabet etc.

1. Section 5B does not apply to a business name registered under this Act before the commencement of that section and that section does not prevent any renewal of the registration of such a business name.

[*Minister's second reading speech made in—
Legislative Assembly on 19 April 1989
Legislative Council on 10 May 1989*]