



New South Wales

# Business Names (Commonwealth Powers) Act 2011 No 44

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New South Wales

## **Business Names (Commonwealth Powers) Act 2011 No 44**

Act No 44, 2011

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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 for other purposes. [Assented to 20 September 2011]

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**The Legislature of New South Wales enacts:****1 Name of Act**

- (1) This Act is the *Business Names (Commonwealth Powers) Act 2011*.
- (2) The purpose of this Act is 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.

**2 Commencement**

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

**3 Definitions**

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 or 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 clause 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 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 local council or county council established under the *Local Government Act 1993*.

**initial business names matters** has the meaning given by section 4.

**initial reference** means the reference under section 6 (1).

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***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 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 the *Business Names (Commonwealth Powers) Act 2011* of that State in that House.

***taxes*** means taxes, duties, charges or other imposts, however described.

#### **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 business names 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.
- (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 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.

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- (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:
    - (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 on the NSW legislation website, 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 on the NSW legislation website, 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).

**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.

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- (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:
- (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.



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## Schedule 1 Savings, transitional and other provisions

### Part 1 Preliminary

#### 1 Definitions

(1) In this Schedule:

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

**change-over day** has the same meaning as it has in the Commonwealth Transitional Act.

**Commonwealth Business Names Act** means a Commonwealth Act in the terms, or substantially in the terms, of the proposed *Business Names Registration Bill 2011* referred to in paragraph (a) of the definition of **tabled text** in section 3, as in force from time to time.

**Commonwealth Register** means the Business Names Register established under the Commonwealth Business Names Act.

**Commonwealth Transitional Act** means a 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 section 3, as in force from time to time.

**Director-General** means:

- (a) the Commissioner for Fair Trading, Department of Finance and Services, or
- (b) if no such position exists—the Director-General of the Department of Finance and Services.

**existing business names legislation** means:

- (a) the *Business Names Act 2002* and any regulation made under that Act, and
- (b) the *Licensing and Registration (Uniform Procedures) Act 2002* as applied by section 5 of the *Business Names Act 2002* to and in respect of registration of a business name.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**matter** includes an act, omission, body, person and thing.

**new business names legislation** means:

- (a) the Commonwealth Business Names Act and any instrument made under that Act, and

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- (b) the Commonwealth Transitional Act and any instrument made under that Act.

***pre-transfer transitional period*** means the period:

- (a) commencing on the day that is 28 days before the change-over day (or such other day as may be prescribed by the regulations), and
- (b) ending on the change-over day.

***previous State Business Names Act*** means any of the following:

- (a) the *Business Names Act 1934*,
- (b) the *Business Names Act 1962*,
- (c) the *Business Names Act 2002*.

***State Minister*** means the Minister administering this Act.

***State Register*** means the register of business names referred to in section 20 of the *Business Names Act 2002*.

- (2) A reference in this Schedule to an Act or statutory rule that is repealed by Schedule 2 is, on and from the day on which the Act or statutory rule is repealed, a reference to the Act or statutory rule as in force immediately before that day.
- (3) If a provision of this Schedule provides for an event or other thing to commence, end or occur on the change-over day or any other day, that event or thing is taken to commence, end or occur at the beginning of that day.
- (4) Notes included in this Schedule do not form part of this Act.

## **Part 2 Transfer of functions to Commonwealth**

### **Division 1 Information transfer**

#### **2 Provision of information and notices to the Commonwealth**

- (1) The Director-General is specifically authorised:
- (a) to provide the Commonwealth, ASIC or any officer of the Commonwealth or ASIC with such information recorded in, or concerning the use of, the State Register as the Director-General considers appropriate in order to assist the Commonwealth and ASIC to establish and maintain the Commonwealth Register, and
- (b) to act on behalf of the State in connection with the giving of notices to ASIC by the State for the purposes of the provisions of Schedule 1 to the Commonwealth Transitional Act.

**Note.** Schedule 1 to the Commonwealth Transitional Act provides for notices to be given by the State to ASIC for the registration of existing business names in

the Commonwealth Register. The Schedule also enables the State to notify ASIC that a business name is to be held while outstanding matters in relation to the name are resolved under State law.

- (2) Without limiting subclause (1), the Director-General is also specifically authorised to provide any of the following persons with such information recorded in the State Register as the Director-General considers appropriate in order to assist in verifying the accuracy of information recorded in the State Register for the purposes of data migration to the Commonwealth Register:
  - (a) any person in whose name a business name is (or was) registered in the State Register,
  - (b) any other person engaged by the Director-General to assist, or who is otherwise involved in assisting, in the migration of data from the State Register to the Commonwealth Register.
- (3) The Director-General may charge fees with respect to the provision of information under subclause (2).
- (4) The Director-General may provide the information that the Director-General is authorised to provide under this clause in whatever form (including by means of electronic data or in a form approved for the purposes of the new business names legislation) as the Director-General considers appropriate.
- (5) Subject to subclause (6), the provisions of this clause prevail to the extent of any inconsistency with the provisions of any other Act or statutory rule.
- (6) The provisions of this clause are in addition to, and do not derogate from, the provisions of section 9A of the *Fair Trading Act 1987*.

## **Division 2      Application of existing business names legislation generally**

### **3 Existing business names legislation ceases to have effect on change-over day**

- (1) The existing business names legislation ceases to have effect in relation to business names (within the meaning of the *Business Names Act 2002*) on the change-over day, except as provided otherwise by this Part.
- (2) If a provision of the existing business names legislation (the ***primary provision***) is continued in effect by this Part:
  - (a) any other provision of the existing business names legislation (a ***related provision***) that is referred to in the primary provision is also continued in effect to the extent necessary for the purposes of the continued application of the primary provision, and

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- (b) any power to make regulations in respect of a matter that is conferred by the primary provision or a related provision is taken on and after the change-over day to include a power for the matter to be prescribed by regulations made under this Act.
  - (3) The regulations under the *Business Names Act 2002* as in force immediately before the change-over day continue to apply for the purposes of a primary provision or related provision that confers a regulation-making power for a matter under the *Business Names Act 2002* until regulations are made under this Act for that matter.
  - (4) This Part has effect:
    - (a) despite anything to the contrary in the existing business names legislation, and
    - (b) in relation to provisions of the existing business names legislation that this Part continues in effect on or after the change-over day even after the legislation is repealed by Schedule 2.

**Note.** Schedule 2, when read with section 2, provides for the repeal of the *Business Names Act 2002* and regulations made under that Act on a day or days appointed by proclamation.

#### **4 Offences under existing business names legislation**

The provisions of the existing business names legislation and the *Fines Act 1996* continue to apply on and after the change-over day in relation to offences committed, or alleged to have been committed, before that day.

#### **5 Fees and charges payable under existing business names legislation**

- (1) Any fees and charges that were payable under the existing business names legislation immediately before the change-over day remain recoverable by the Director-General in a court of competent jurisdiction on and after that day.
- (2) Without limiting clause 3, fees and charges that would have been payable under the existing business names legislation had it continued in effect continue to be payable in relation to matters being dealt with in accordance with the provisions of Division 4.

### **Division 3 Exercise of registration functions under existing business names legislation**

#### **6 Director-General may refuse to exercise registration functions**

- (1) Subject to clause 7, the Director-General may refuse to exercise a registration function during the pre-transfer transitional period.

- (2) Without limiting subclause (1), the Director-General may refuse:
- (a) to exercise a registration function during the pre-transfer transitional period in relation to a matter that was not finally determined or concluded immediately before the commencement of that period, and
  - (b) to give access (whether temporarily or permanently) to the State Register at any time during the pre-transfer transitional period.
- (3) In this clause:  
**registration function** means any function conferred or imposed on the Director-General by or under the existing business names legislation in relation to the registration of business names (including, without limitation, the renewal and cancellation of registration and the maintenance of the State Register).

#### **7 Renewal applications relating to registrations that expire on or after change-over day**

- (1) An application may not be made under the existing business names legislation for the renewal of the registration of a business name if that registration is due to expire on or after the change-over day.  
**Note.** An application for the renewal of the registration of a business name that expires on or after the change-over day will need to be made in accordance with the requirements of the new business names legislation on and from that day.
- (2) The Director-General is not required to give a person in whose name a business name is registered under the *Business Names Act 2002* any notice concerning the renewal date for the registration if the registration expires on or after the change-over day.

#### **8 Certificates concerning business names**

- (1) The following provisions continue to apply on and after the change-over day in relation to any certificate issued under the provisions before that day:
- (a) section 26 of the *Business Names Act 2002*,
  - (b) section 55 of the *Licensing and Registration (Uniform Procedures) Act 2002* (as applied by section 5 of the *Business Names Act 2002*).
- (2) A copy of an entry in the Commonwealth Register in relation to a business name that was originally registered under a previous State Business Names Act that is provided by ASIC under section 60 of the Commonwealth Business Names Act is admissible in proceedings concerning a matter before the change-over day and is evidence of the matters stated in the entry.

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- (3) The regulations may make provision for or with respect to the issue of certificates during the pre-transfer transitional period under the provisions referred to in subclause (1) and any such regulations prevail to the extent of any inconsistency with the provisions of the existing business names legislation.

#### **Division 4 Resolution of outstanding matters under existing business names legislation**

**Note.** The object of this Division is to enable certain matters under the existing business names legislation that have not been finally resolved by the change-over day to be resolved for the purpose of providing accurate and complete information to ASIC for inclusion in the Commonwealth Register.

This Division enables these matters to be resolved as if the existing business names legislation had continued in effect. As a result, the relevant decision-maker will be able to make a decision indicating what would have been the result had that legislation continued in effect.

Once an outstanding matter is resolved, ASIC will be provided with information concerning the resolution of the matter. The Commonwealth Transitional Act provides for ASIC to hold a business name if it is notified by a State that there are outstanding matters to be resolved before the name can be migrated to the new business names legislation.

#### **9 Pending registration, renewal and restoration applications**

- (1) This clause applies to the following kinds of applications:
- (a) an application for the registration of a business name under the *Business Names Act 2002* that is received by the Director-General before the change-over day (but not finally determined before that day),
  - (b) an application for the renewal of the registration of a business name under the *Business Names Act 2002* if:
    - (i) the registration of the business name is due to expire before the change-over day, and
    - (ii) the application is received by the Director-General before the change-over day (but not finally determined before that day),
  - (c) an application for the restoration of the registration of a business name under the *Business Names Act 2002* if:
    - (i) the registration of the business name expired before the change-over day, and
    - (ii) the application is received by the Director-General before the change-over day (but not finally determined before that day),

- (d) an application for the restoration of the registration of a business name under the *Business Names Act 2002* if:
  - (i) the registration of the business name expired before the change-over day and was not renewed by the expiry date, and
  - (ii) the application is made to the Director-General on or after the change-over day, and
  - (iii) the application is made within the period that would have applied to the making of such an application had the existing business names legislation continued in effect.
- (2) An application to which this clause applies may, on or after the change-over day, be dealt with under the existing business names legislation as if the power of the Director-General under that legislation to decide whether to grant the application were a power to decide whether the application should have been granted had the legislation continued in effect.
- (3) This clause does not limit the power conferred on the Director-General by clause 6.

**10 Pending notices concerning changes of particulars**

- (1) This clause applies to a notice under Division 2 of Part 2 of the *Business Names Act 2002* that is received by the Director-General before the change-over day (but not dealt with before that day).
- (2) A notice to which this clause applies may, on or after the change-over day, be dealt with under the existing business names legislation as if the power of the Director-General under that legislation to alter the particulars of the registration to which the notice relates were a power to alter the particulars of that registration had the legislation continued in effect.
- (3) This clause does not limit the power conferred on the Director-General by clause 6.

**11 Reviewable application and cancellation decisions**

- (1) This clause applies to the following kinds of decisions:
  - (a) a decision of the Director-General to refuse to grant an application under the existing business names legislation if a person has a right to apply to the Administrative Decisions Tribunal for a review of the decision immediately before the change-over day (an *existing reviewable application decision*),
  - (b) a decision of the Director-General to cancel the registration of a business name under the existing business names legislation if a

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- person has a right to apply to the Administrative Decisions Tribunal for a review of the decision immediately before the change-over day (an *existing reviewable cancellation decision*),
- (c) a decision of the Director-General made on or after the change-over day in relation to an application to which clause 9 applies (a *transitional application decision*).
- (2) Subject to subclause (3), an existing reviewable application decision may be the subject of an application for review to the Administrative Decisions Tribunal, and may be dealt with by the Tribunal, under the existing business names legislation as if the right to seek the review of the decision of the Director-General to refuse to grant the application concerned were a right to seek a review of a decision of the Director-General that the application should have been refused had the legislation continued in effect.
- (3) Subclause (2) does not apply in relation to an existing reviewable application decision by the Director-General made during the pre-transfer transitional period in reliance on the power conferred on the Director-General by clause 6.
- (4) An existing reviewable cancellation decision may be the subject of an application for review to the Administrative Decisions Tribunal, and may be dealt with by the Tribunal, under the existing business names legislation as if the right to seek the review of the decision of the Director-General to cancel the registration of the business name concerned were a right to seek a review of a decision of the Director-General that the registration should have been cancelled had the legislation continued in effect.
- (5) A transitional application decision may be the subject of an application for review to the Administrative Decisions Tribunal if a decision to refuse to grant the application concerned could have been subject to an application for review to the Tribunal had the decision been made before the change-over day.
- (6) The Administrative Decisions Tribunal may deal with an application for review made under subclause (5) as if the jurisdiction conferred on the Tribunal were jurisdiction to review the decision of the Director-General that the application should have been refused had the existing business names legislation continued in effect.
- (7) For the avoidance of doubt, Chapter 7 (Appeals) of the *Administrative Decisions Tribunal Act 1997* extends to any decision of the Administrative Decisions Tribunal made on an application for review as provided by this clause.
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## 12 Pending proceedings

- (1) This clause applies to the following kinds of applications:
  - (a) an application for leave made to the District Court under section 8 of the *Business Names Act 2002* if the application is pending, but not finally determined, immediately before the change-over day (an **existing leave application**),
  - (b) an application to the Administrative Decisions Tribunal under section 52 of the *Licensing and Registration (Uniform Procedures) Act 2002* (as applied by section 5 of the *Business Names Act 2002*) for the review of a decision of the Director-General to refuse an application if the application to the Tribunal is pending, but not finally determined, immediately before the change-over day (an **existing decision review application**),
  - (c) an application to the Administrative Decisions Tribunal under section 19 of the *Business Names Act 2002* for the review of a decision of the Director-General to cancel the registration of a business name if the application is pending, but not finally determined, immediately before the change-over day (an **existing cancellation review application**).
- (2) An existing leave application may be determined by the District Court under section 8 of the *Business Names Act 2002* as if the jurisdiction of the Court to grant leave for a business name to be registered in the name of the person concerned were jurisdiction to grant leave for the business name to be registered in the name of the person had the Act continued in effect.
- (3) An existing decision review application may be determined by the Administrative Decisions Tribunal under the existing business names legislation as if the jurisdiction of the Tribunal to review the decision of the Director-General to refuse the application concerned were jurisdiction to review a decision of the Director-General that the application should have been refused had the legislation continued in effect.
- (4) An existing cancellation review application may be determined by the Administrative Decisions Tribunal under the existing business names legislation as if the jurisdiction of the Tribunal to review the decision of the Director-General to cancel the registration were jurisdiction to review a decision of the Director-General that the registration should have been cancelled had the legislation continued in effect.

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- (5) For the avoidance of doubt, Chapter 7 (Appeals) of the *Administrative Decisions Tribunal Act 1997* extends to any decision of the Administrative Decisions Tribunal made on an application for review as provided by this clause.

**13 Dealings of Director-General with ASIC concerning unresolved matters**

- (1) The Director-General may give notice to ASIC in accordance with the new business names legislation that a business name is to be held for the purposes of that legislation in order for outstanding matters to be resolved under the existing business names legislation.
- (2) The Director-General may, if satisfied that a matter to which a provision of this Division applies has been finalised, give ASIC notice in accordance with the new business names legislation stating (as the case requires) that a business name that has been held under that legislation:
- (a) is to be registered on the Commonwealth Register, or
  - (b) is to cease to be held by ASIC.
- (3) This clause does not limit the generality of clause 2.

**14 Application of existing offence provisions in relation to held business names**

- (1) This clause applies in relation to a business name (a *held business name*) if the Director-General has given ASIC a notice in accordance with the new business names legislation that the business name is to be held for the purposes of that legislation in order for outstanding matters to be resolved under the existing business names legislation.
- (2) Subject to subclause (3), section 4 (Business names to be registered) of the *Business Names Act 2002* continues to apply in relation to the use of a held business name as if business names could still be registered under that Act until such time as:
- (a) the held business name is registered by ASIC under the new business names legislation, or
  - (b) ASIC ceases to hold the held business name under the new business names legislation.
- Note.** Item 5 (2) of Schedule 1 to the Commonwealth Transitional Act provides that an entity does not commit an offence under Part 2 of the Commonwealth Business Names Act while the business name is held by ASIC under the Commonwealth Transitional Act.
- (3) Subclause (2) does not apply in relation to the use of a held business name if the business name would have been treated as having been registered under the *Business Names Act 2002* (had that Act continued in effect) while the outstanding matter concerned was resolved.

## Part 3 Miscellaneous

### 15 Compensation not payable in respect of business names transitional matters

- (1) Compensation is not payable by or on behalf of:
  - (a) the State or an authority of the State, or
  - (b) an officer, employee or agent of the State,for an act or omission that is a business names transitional matter or an act or omission that arises (directly or indirectly) from a business names transitional matter.
- (2) Subclause (1) applies only in respect of acts done or omitted to be done in good faith.
- (3) In this clause:

*business names transitional matter* means any of the following:

  - (a) the provision of information to the Commonwealth, ASIC, any officer of the Commonwealth or ASIC or any other person for the purpose of assisting the Commonwealth and ASIC in establishing or maintaining the Commonwealth Register or of verifying the accuracy of information recorded in the State Register,
  - (b) the giving of notices by or on behalf of the State for the purposes of the provisions of Schedule 1 to the Commonwealth Transitional Act,
  - (c) a refusal by the Director-General to exercise a registration function as provided by clause 6,
  - (d) the administration of this Act or the regulations,
  - (e) the exercise of functions under this Act or the regulations.

*compensation* includes damages and any other form of monetary compensation.

### 16 Delegations by Director-General

- (1) The Director-General may delegate the following functions of the Director-General to appropriate persons:
  - (a) a function under this Schedule (apart from this power of delegation),
  - (b) a function under any provision of the existing business names legislation that continues to have effect on and after the change-over day by operation of Part 2.

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- (2) The following are *appropriate persons* for the purposes of subclause (1):
- (a) a person engaged in the administration of the existing business names legislation,
  - (b) a person engaged in the administration of any other Act administered by the State Minister.
- (3) A delegation that is in force immediately before the change-over day in relation to a provision of the existing business names legislation that continues to have effect on and after that day by operation of Part 2 has effect as a delegation under this clause until it is revoked by the Director-General.

#### **17 Construction of references to previous State Business Names Acts**

- (1) Subject to the regulations, on and from the change-over day:
- (a) a reference in any document to any previous State Business Names Act extends to the Commonwealth Business Names Act, and
  - (b) a reference in any document to a provision of any previous State Business Names Act extends to the corresponding provision (if any) of the Commonwealth Business Names Act.
- (2) Without limiting section 31 of the *Interpretation Act 1987*, subclause (1) does not operate to update a reference in a provision of a law of the State if the updating of the reference would result in the provision being inoperative because of an inconsistency with the new business names legislation.
- (3) The regulations may make provision for or with respect to the updating of references in documents to any previous State Business Names Act consequent on the enactment of the new business names legislation.
- (4) In this clause:  
**document** means:
- (a) any Act or statutory instrument other than:
    - (i) this Act or an instrument made under this Act, or
    - (ii) the *Business Names Act 2002*, or an instrument made under that Act, to the extent that it is continued in effect by Part 2 of this Schedule, or
  - (b) any other instrument or any contract or other agreement.

#### **18 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to

- be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subclause (1), the regulations may declare a matter to be an excluded matter for the purposes of section 13 of the Commonwealth Business Names Act in relation to:
- (a) the whole of the new business names legislation, or
  - (b) a specified provision of the new business names legislation, or
  - (c) the new business names legislation other than a specified provision, or
  - (d) the new business names legislation otherwise than to a specified extent.
- (3) Without limiting subclause (1), the regulations may declare a specified provision of an Act or statutory rule to be a business names legislation displacement provision for the purposes of section 14 of the Commonwealth Business Names Act (either generally or specifically in relation to a provision of the new business names legislation).
- (4) Without limiting subclauses (1)–(3), the regulations may contain provisions of a savings or transitional nature consequent on the enactment or making of the following Acts and instruments:
- (a) this Act,
  - (b) any other Act or instrument to the extent that it amends this Act,
  - (c) the new business names legislation or any Act or instrument of the Commonwealth that amends the new business names legislation.
- (5) If the regulations so provide, any provision referred to in subclause (4) may:
- (a) have effect despite any specified provision of this Schedule or another Act or statutory rule, and
  - (b) take effect from the date of assent to the Act or the making of the instrument concerned or a later date.
- (6) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

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- (7) Any matter for which a regulation made under this Act makes provision is taken to be a matter for which a regulatory impact statement is not required for the purposes of the *Subordinate Legislation Act 1989*.

## **Schedule 2 Repeal of existing business names legislation**

Each of the following is repealed:

- (a) the *Business Names Act 2002* No 97,
- (b) the *Business Names Regulation 2004*,
- (c) any other regulation made under the *Business Names Act 2002*.

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## **Schedule 3 Consequential amendment of other legislation**

### **Incorporation instruction**

- 1 This incorporation instruction applies if, on or before the day on which this instruction commences, the Parliament of the Commonwealth enacts a Commonwealth Business Names Act (within the meaning of Schedule 1) with a short title (***the new title***) that is different from the *Business Names Registration Act 2011* referred to in this Schedule (***the former title***).
- 2 If this incorporation instruction applies, each reference in this Schedule (other than in this instruction) to the former title is to be read as being a reference to the new title and, accordingly, the amendments made by this Schedule are to be made by reference to the new title instead of the former title.

### **3.1 Associations Incorporation Act 2009 No 7**

#### **Section 41 Where name must appear**

Omit section 41 (2).

### **3.2 Associations Incorporation Regulation 2010**

#### **Schedule 2 Unacceptable names**

Omit “*Business Names Act 2002*” from item 1.

Insert instead “*Business Names Registration Act 2011* of the Commonwealth”.

### **3.3 Commercial Agents and Private Inquiry Agents Regulation 2006**

#### **[1] Clause 6 Applications for master licences: individuals**

Omit “*Business Names Act 2002*” from clause 6 (d).

Insert instead “*Business Names Registration Act 2011* of the Commonwealth”.

#### **[2] Clause 7 Applications for master licences: corporations**

Omit “*Business Names Act 2002*” from clause 7 (d).

Insert instead “*Business Names Registration Act 2011* of the Commonwealth”.



### 3.4 Conveyancers Licensing Act 2003 No 3

#### Section 19 Business names

Omit section 19 (4). Insert instead:

- (4) The provisions of this section are intended to operate as referred to in sections 12 (2) (e), 19 (5) and 20 (3) of the *Business Names Registration Act 2011* of the Commonwealth.

**Note.** Section 12 (2) (e) of the *Business Names Registration Act 2011* of the Commonwealth (the **Commonwealth Act**) provides that the business names legislation referred to in that section is not intended to exclude or limit the concurrent operation of a law of a State that imposes obligations on an entity or class of entities that are in addition to obligations imposed under that Act.

Sections 19 (5) and 20 (3) of the Commonwealth Act also provide that an entity does not commit an offence under those sections concerning the inclusion or display of registered business names in written communications and at places of business if the inclusion, use or display of a business name in such a communication or at such a place would be contrary to a law of a State.

### 3.5 Fines Act 1996 No 99

#### Schedule 1 Statutory provisions under which penalty notices issued

Omit the matter relating to section 32 of the *Business Names Act 2002*.

### 3.6 Gaming Machines Act 2001 No 127

#### [1] Section 43 Prohibition on publishing gaming machine advertising

Omit section 43 (7). Insert instead:

- (7) The provisions of this section are intended to operate as referred to in sections 12 (2) (e), 19 (5) and 20 (3) of the *Business Names Registration Act 2011* of the Commonwealth.

**Note.** Section 12 (2) (e) of the *Business Names Registration Act 2011* of the Commonwealth (the **Commonwealth Act**) provides that the business names legislation referred to in that section is not intended to exclude or limit the concurrent operation of a law of a State that imposes obligations on an entity or class of entities that are in addition to obligations imposed under that Act.

Sections 19 (5) and 20 (3) of the Commonwealth Act also provide that an entity does not commit an offence under those sections concerning the inclusion or display of registered business names in written communications and at places of business if the inclusion, use or display of a business name in such a communication or at such a place would be contrary to a law of a State.

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**[2] Section 44 Prohibition on displaying gambling-related signs**

Omit section 44 (7). Insert instead:

- (7) The provisions of this section are intended to operate as referred to in sections 12 (2) (e), 19 (5) and 20 (3) of the *Business Names Registration Act 2011* of the Commonwealth.

**Note.** Section 12 (2) (e) of the *Business Names Registration Act 2011* of the Commonwealth (the **Commonwealth Act**) provides that the business names legislation referred to in that section is not intended to exclude or limit the concurrent operation of a law of a State that imposes obligations on an entity or class of entities that are in addition to obligations imposed under that Act.

Sections 19 (5) and 20 (3) of the Commonwealth Act also provide that an entity does not commit an offence under those sections concerning the inclusion or display of registered business names in written communications and at places of business if the inclusion, use or display of a business name in such a communication or at such a place would be contrary to a law of a State.

**3.7 Home Building Act 1989 No 147**

**[1] Section 7 Form of contracts**

Omit “*Business Names Act 2002*” from section 7 (7).

Insert instead “*Business Names Registration Act 2011* of the Commonwealth”.

**[2] Section 18 Representations, generally**

Omit “*Business Names Act 2002*” from section 18 (2).

Insert instead “*Business Names Registration Act 2011* of the Commonwealth”.

**3.8 Home Building Regulation 2004**

**Clause 85 Advertising**

Omit “*Business Names Act 2002*” wherever occurring.

Insert instead “*Business Names Registration Act 2011* of the Commonwealth”.

**3.9 Housing Act 2001 No 52**

**Section 69B Access to information for preventing, investigating or prosecuting fraud**

Omit section 69B (1) (c).

### **3.10 Licensing and Registration (Uniform Procedures) Act 2002 No 28**

#### **Schedule 2 Registration to which Part 3 of Act applies**

Omit the matter relating to the *Business Names Act 2002*.

### **3.11 Motor Dealers Act 1974 No 52**

#### **Section 15 Name under which holder of licence may operate**

Omit “*Business Names Act 2002*” from section 15 (1).

Insert instead “*Business Names Registration Act 2011* of the Commonwealth”.

### **3.12 Motor Vehicle Repairs Act 1980 No 71**

#### **Section 18B Name under which holder of licence may operate**

Omit “*Business Names Act 2002*” from section 18B (3).

Insert instead “*Business Names Registration Act 2011* of the Commonwealth”.

### **3.13 Motor Vehicle Repairs Regulation 2011**

#### **Clause 12 Amendment of licences**

Omit “*Business Names Act 2002*” wherever occurring.

Insert instead “*Business Names Registration Act 2011* of the Commonwealth”.

### **3.14 Partnership Act 1892 No 12**

#### **[1] Section 49 Definitions**

Omit the definition of *Registrar*. Insert instead:

*Registrar* means:

- (a) the Commissioner for Fair Trading, Department of Finance and Services, or
- (b) if no such position exists—the Director-General of the Department of Finance and Services.

#### **[2] Section 55 Registration of limited partnership**

Omit “*Business Names Act 2002*” from section 55 (2).

Insert instead “*Business Names Registration Act 2011* of the Commonwealth”.

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**[3] Section 59**

Omit the section. Insert instead:

**59 Application of Business Names Registration Act 2011 of Commonwealth**

The *Business Names Registration Act 2011* of the Commonwealth does not require the registration of a business name under that Act if the name is registered in a notified State/Territory register. The Register is a notified State/Territory register for the purposes of the Commonwealth Act.

**3.15 Police Act 1990 No 47**

**[1] Section 204A Use of “police” in operating name**

Omit section 204A (3). Insert instead:

- (3) This section does not prevent a person or body of persons from doing anything in accordance with:
- (a) the terms of a consent in force under section 204B, or
  - (b) in relation to an operating name that is registered, or required to be registered, under the *Business Names Registration Act 2011* of the Commonwealth—any consent or other authorisation (if any) to use “police” in that name given by or under that Act.

**[2] Section 204A (5)**

Omit “*Business Names Act 2002*”.

Insert instead “*Business Names Registration Act 2011* of the Commonwealth”.

**[3] Section 204A (6)**

Insert after section 204A (5):

- (6) The provisions of this section and section 204B are intended to operate as referred to in sections 12 (2) (b) and (e), 19 (5) and 20 (3) of the *Business Names Registration Act 2011* of the Commonwealth.

**Note.** Section 12 (2) (b) and (e) of the *Business Names Registration Act 2011* of the Commonwealth (the **Commonwealth Act**) provide that the business names legislation referred to in that section is not intended to exclude or limit the concurrent operation of a law of a State that:

- (a) prohibits or restricts the use of a word or expression by an entity or class of entities, or
- (b) imposes obligations on an entity or class of entities that are in addition to obligations imposed under that Act.

Sections 19 (5) and 20 (3) of the Commonwealth Act also provide that an entity does not commit an offence under those sections concerning the inclusion or display of registered business names in written communications and at places of business if the inclusion, use or display of a business name in such a communication or at such a place would be contrary to a law of a State.

**[4] Section 204B Consents for the purposes of section 204A**

Omit section 204B (5) (b) and the note to the subsection. Insert instead:

- (b) if the consent relates to the name under which an association is incorporated under the *Associations Incorporation Act 2009*—to the Commissioner for Fair Trading, Department of Finance and Services, and
- (c) if the consent relates to a business name registered under the *Business Names Registration Act 2011* of the Commonwealth—the Australian Securities and Investments Commission.

**Note.** In the case of the name under which an association is incorporated under the *Associations Incorporation Act 2009*, notification of the Commissioner for Fair Trading, Department of Finance and Services will prompt the Commissioner for Fair Trading to exercise his or her powers under that Act to direct the association to change its name.

**[5] Schedule 4 Savings, transitional and other provisions**

Insert at the end of Schedule 4 (with appropriate Part and clause numbering):

**Part Provision consequent on enactment of  
Business Names (Commonwealth Powers)  
Act 2011**

**Continuation of existing consents under section 204B**

Any consent in force under section 204B immediately before the commencement of Schedule 3.15 to the *Business Names (Commonwealth Powers) Act 2011* continues in force until such time as it is revoked under that section (as amended).

**3.16 Printing and Newspapers Act 1973 No 46**

**[1] Section 3 Provisions in respect of certain printed documents**

Omit “*Business Names Act 2002*” from section 3 (1) (d).

Insert instead “*Business Names Registration Act 2011* of the Commonwealth”.

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**[2] Section 4 Provision in respect of printing and publishing newspapers**

Omit “*Business Names Act 2002*” from section 4 (1) (a).

Insert instead “*Business Names Registration Act 2011* of the Commonwealth”.

**3.17 Property, Stock and Business Agents Act 2002 No 66**

**[1] Section 30 Business names**

Omit “*Business Names Act 2002*” from section 30 (1) (b).

Insert instead “*Business Names Registration Act 2011* of the Commonwealth”.

**[2] Section 30 (6)**

Omit the subsection. Insert instead:

- (6) The provisions of this section are intended to operate as referred to in sections 12 (2) (e), 19 (5) and 20 (3) of the *Business Names Registration Act 2011* of the Commonwealth.

**Note.** Section 12 (2) (e) of the *Business Names Registration Act 2011* of the Commonwealth (the **Commonwealth Act**) provides that the business names legislation referred to in that section is not intended to exclude or limit the concurrent operation of a law of a State that imposes obligations on an entity or class of entities that are in addition to obligations imposed under that Act.

Sections 19 (5) and 20 (3) of the Commonwealth Act also provide that an entity does not commit an offence under those sections concerning the inclusion or display of registered business names in written communications and at places of business if the inclusion, use or display of a business name in such a communication or at such a place would be contrary to a law of a State.

**3.18 Security Industry Regulation 2007**

**[1] Clause 13 Information and particulars to accompany licence application: section 14 (2) (b)**

Omit “*Business Names Act 2002*” wherever occurring.

Insert instead “*Business Names Registration Act 2011* of the Commonwealth”.

**[2] Clause 33 Job advertisements**

Omit “business or proper name (within the meaning of the *Business Names Act 2002*)”.

Insert instead “business name (within the meaning of the *Business Names Registration Act 2011* of the Commonwealth) or proper name”.

**[3] Clause 33 (2)**

Insert at the end of clause 33:

(2) In this clause:

*proper name* means:

(a) in relation to an individual:

- (i) the individual's full name, or
- (ii) the individual's family name, together with the initials or abbreviations of one or more of the individual's given names, and

(b) in relation to a corporation, the corporation's corporate name.

**[4] Clause 38B Information and particulars to accompany permit application**

Omit "*Business Names Act 2002*" from clause 38B (2) (b).

Insert instead "*Business Names Registration Act 2011* of the Commonwealth".

**3.19 Sheriff Act 2005 No 6**

**[1] Section 11 Use of word "sheriff" in operating name**

Omit "*Business Names Act 2002*" from section 11 (5).

Insert instead "*Business Names Registration Act 2011* of the Commonwealth".

**[2] Section 11 (6)**

Insert after section 11 (5):

(6) The provisions of this section and section 12 are intended to operate as referred to in sections 12 (2) (b) and (e), 19 (5) and 20 (3) of the *Business Names Registration Act 2011* of the Commonwealth.

**Note.** Section 12 (2) (b) and (e) of the *Business Names Registration Act 2011* of the Commonwealth (the **Commonwealth Act**) provide that the business names legislation referred to in that section is not intended to exclude or limit the concurrent operation of a law of a State that:

- (a) prohibits or restricts the use of a word or expression by an entity or class of entities, or
- (b) imposes obligations on an entity or class of entities that are in addition to obligations imposed under that Act.

Sections 19 (5) and 20 (3) of the Commonwealth Act also provide that an entity does not commit an offence under those sections concerning the inclusion or display of registered business names in written communications and at places of business if the inclusion, use or display of a business name in such a communication or at such a place would be contrary to a law of a State.

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**[3] Section 12 Consents for the purposes of section 11**

Omit section 12 (5) (b) and the note to the subsection. Insert instead:

- (b) if the consent relates to the name under which an association is incorporated under the *Associations Incorporation Act 2009*—to the Director-General of the Department of Finance and Services, and
- (c) if the consent relates to a business name registered under the *Business Names Registration Act 2011* of the Commonwealth—the Australian Securities and Investments Commission.

**Note.** In the case of the name under which an association is incorporated under the *Associations Incorporation Act 2009*, notification of the Director-General of the Department of Finance and Services will prompt the Director-General to exercise his or her powers under that Act to direct the association to change its name.

**[4] Section 12 (6) and (7)**

Omit “Department of Commerce” wherever occurring.

Insert instead “Department of Finance and Services”.

**[5] Schedule 2 Savings, transitional and other provisions**

Insert at the end of Schedule 2 (with appropriate Part and clause numbering):

**Part Provision consequent on enactment of  
Business Names (Commonwealth Powers)  
Act 2011**

**Continuation of existing consents under section 12**

Any consent in force under section 12 immediately before the commencement of Schedule 3.19 to the *Business Names (Commonwealth Powers) Act 2011* continues in force until such time as it is revoked under that section (as amended).

**3.20 Sheriff Regulation 2011**

**Clause 7 Matters for consideration for consents**

Omit “*Business Names Act 2002*” from clause 7 (a).

Insert instead “*Business Names Registration Act 2011* of the Commonwealth”.



### **3.21 Travel Agents Act 1986 No 5**

**[1] Section 12 Name under which licensee may operate**

Omit “*Business Names Act 2002*” from section 12 (1).

Insert instead “*Business Names Registration Act 2011* of the Commonwealth”.

**[2] Section 35 Name to appear on documents**

Omit “does not affect the operation of section 24 of the *Business Names Act 2002*” from section 35 (3).

Insert instead “is not intended to affect any requirement concerning the use of business names under the *Business Names Registration Act 2011* of the Commonwealth”.

### **3.22 Veterinary Practice Regulation 2006**

**Clause 14 Licensing procedures**

Omit “*Business Names Act 2002*”.

Insert instead “*Business Names Registration Act 2011* of the Commonwealth”.

[Agreement in principle speech made in Legislative Assembly on 13 September 2011

Second reading speech made in Legislative Council on 14 September 2011]

BY AUTHORITY