



# Business Names Regulation 2004

under the

Business Names Act 2002

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Business Names Act 2002*.

REBA PAIGE MEAGHER, M.P.,

Minister for Fair Trading

## Explanatory note

The object of this Regulation is to prescribe certain matters relating to the registration and use of business names under the *Business Names Act 2002*. The matters prescribed by this Regulation include:

- (a) the form of, and the power to correct entries in, the register of business names, and
- (b) the offences under the Act that may be dealt with by penalty notice, and
- (c) the fees payable under the Act, and
- (d) the issue of certificates of authority to authorised officers under the Act, and
- (e) other matters of a minor, consequential or ancillary nature.

This Regulation is made under the *Business Names Act 2002*, including section 40 (the general regulation-making power).

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## Business Names Regulation 2004

under the

Business Names Act 2002

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Business Names Regulation 2004*.

#### 2 Commencement

This Regulation commences on 5 October 2004.

#### 3 Definitions

(1) In this Regulation:

***Commissioner for Fair Trading*** means:

- (a) the Commissioner for Fair Trading, Department of Commerce, or
- (b) if there is no such position in that Department, the Director-General of that Department.

***Office of Fair Trading*** means the Office of Fair Trading within the Department of Commerce.

***the Act*** means the *Business Names Act 2002*.

(2) Notes included in this Regulation do not form part of this Regulation.

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Clause 4 Business Names Regulation 2004

Part 2 Registration

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## Part 2 Registration

### 4 Applications for Ministerial directions

An application to the Minister for a direction under section 6 (2) of the Act is to be lodged with, or sent to, the Commissioner for Fair Trading at the head office of the Office of Fair Trading.

### 5 Register of business names

- (1) Information is not to be omitted from the Register merely because the registration of a business name is cancelled or the registered particulars in relation to any business name are amended.
- (2) For the purposes of section 20 (2) (c) of the Act, the particulars to be recorded in the Register in relation to a person in whose name a business name is registered include the following:
  - (a) the date on which the business name was registered in relation to that person,
  - (b) the date on which the business name ceased to be registered in relation to that person,
  - (c) in relation to a natural person, that person's date of birth,
  - (d) in relation to a corporation under the *Corporations Act 2001* of the Commonwealth, the corporation's ACN within the meaning of that Act,
  - (e) in relation to a person who has an ABN for the business, the ABN.
- (3) In addition to the information required by section 20 (2) and (3) of the Act, the following information is to be included in the Register in relation to each registered business name:
  - (a) the date on which the business name was registered,
  - (b) the date on which registration of the business name falls due for renewal.
- (4) For the purposes of section 20 (5) of the Act, the places at which the Register is to be made available for public inspection are all offices of the Office of Fair Trading to which the general public has access.
- (5) In this clause, **ABN** means an Australian Business Number registered under the *A New Tax System (Australian Business Number) Act 1999* of the Commonwealth.

**6 Correction of entries in Register**

- (1) The Commissioner for Fair Trading may, on evidence that appears sufficient to the Commissioner, correct any entry in the Register.
- (2) Such a correction must be made by way of an annotation to the original entry, and must include the date on which the annotation is made, but must not erase or render illegible the original entry.
- (3) Any entry corrected under this clause has the same validity and effect as if the entry had been correctly made.

**7 Corresponding laws**

The following laws are declared to be *corresponding laws* for the purposes of section 21 of the Act:

- (a) the *Business Names Act 1963* of the Australian Capital Territory,
- (b) the *Business Names Act* of the Northern Territory,
- (c) the *Business Names Act 1962* of Queensland,
- (d) the *Business Names Act 1996* of South Australia,
- (e) the *Business Names Act 1962* of Tasmania,
- (f) the *Business Names Act 1962* of Victoria,
- (g) the *Business Names Act 1962* of Western Australia.

**8 Documents relating to registration**

Any application or notice that is required or permitted to be made or given under the Act must be in a form that is suitable for microfilming and electronic scanning.

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Clause 9 Business Names Regulation 2004

Part 3 Administration

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### Part 3 Administration

#### 9 Certificates of authority

A certificate of authority issued under section 30 (1) (a) of the Act:

- (a) must be in a form approved by the Commissioner for Fair Trading, and
- (b) must state that it is issued under the Act, and
- (c) must give the name of the person to whom it is issued, and
- (d) must describe the nature of the powers conferred on its holder and state that those powers are conferred by the Act, and
- (e) must state the date (if any) on which it expires, and
- (f) must state that the powers conferred on its holder do not extend to any part of premises used for residential purposes, and
- (g) must be signed by the Commissioner for Fair Trading or by such other officer of the Department as is authorised by the Commissioner to sign such a certificate.

#### 10 Penalty notice offences

For the purposes of section 32 of the Act:

- (a) an offence under a provision of the Act specified in Column 1 of Schedule 1 is a prescribed offence, and
- (b) the amount specified in Column 2 of Schedule 1 in respect of such an offence is the prescribed amount of penalty for the offence.

#### 11 Fees

- (1) The fees specified in Schedule 2 are payable to the Commissioner for Fair Trading for the matters so specified.
- (2) The amount of each fee is to be calculated by adding together the various components set out in Columns 2 and 3 of Schedule 2 in relation to that fee.
- (3) An amount specified in relation to an application fee in Column 3 of Schedule 2 under the heading **Processing component** is taken to be a fee to cover the costs incurred by the Commissioner for Fair Trading in processing the application.

**Note.** This amount is consequently a **processing fee** for the purposes of Part 3 of the *Licensing and Registration (Uniform Procedures) Act 2002*.

**12 Circumstances in which fees may be waived or refunded**

- (1) If a person's application for registration of a business name is refused because of an order made under section 21 (1) of the Act, the Commissioner for Fair Trading:
  - (a) if a subsequent application for registration is made by the same person within one month after the refusal, may waive such part of the relevant fee for the subsequent application as exceeds \$21, or
  - (b) if no subsequent application for registration is made by the same person within one month after the refusal, may refund such part of the relevant fee for the original application as exceeds \$21.
- (2) In relation to the eleventh and all subsequent applications to inspect the Register that are made on the same day by the same person, the Commissioner for Fair Trading may waive so much of each application fee as exceeds \$2.
- (3) The Commissioner for Fair Trading may waive any fee that would otherwise be payable in connection with the administration of the Act, or refund any such fee that has been paid, if satisfied:
  - (a) that the fee relates to a matter that has arisen as a consequence of a failure in the operation of the registration procedures under the Act, or
  - (b) that it would be unfair, in the circumstances of the case, to require payment of the fee.

**13 Repeal**

The *Business Names Regulation 2000* is repealed.

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Schedule 1 Penalty notice offences

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### Schedule 1 Penalty notice offences

(Clause 10)

<b>Column 1</b>	<b>Column 2</b>
<b>Offence</b>	<b>Penalty</b>
Section 4 (Business names to be registered)	\$400
Section 11 (Notification of additional persons commencing to carry on business under registered business name)	\$200
Section 12 (Notification of persons ceasing to carry on business under registered business name)	\$200
Section 13 (Notification of persons ceasing to carry on business in New South Wales)	\$200
Section 14 (Notification of changes in relation to business)	\$200
Section 15 (Notification of changes in relation to person in whose name business name is registered)	\$200
Section 24 (Use of business name)	\$400

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**Schedule 2 Fees**

(Clause 11)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	
<b>Matter</b>	<b>Basic component</b>	<b>Processing component</b>	
<b>Fees relating to registration under the Licensing and Registration (Uniform Procedures) Act 2002</b>			
1	Application for granting of registration of a business name	\$108	\$21
2	Application for renewal of registration of a business name	\$85	\$14
3	Application for replacement of certificate of registration	Nil	\$20
<b>Other fees</b>			
4	Application for Minister's direction under section 6 (2) of the Act	\$133	\$20
5	Application to inspect Register	Nil	\$12 for each registered business name for which particulars inspected
6	Application for certified copy of Register in association with an application to inspect Register	Nil	Nil for the first page, \$2 for each page beyond the first
7	Application for certified copy of Register otherwise than in association with an application to inspect Register	Nil	\$12, plus an additional \$2 for each page beyond the first

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Schedule 2 Fees

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Matter</b>	<b>Basic component</b>	<b>Processing component</b>
8 Application for copy (not certified) of Register in association with an application to inspect Register	Nil	Nil for up to 3 pages, \$1 for each page beyond the third
9 Application for copy (not certified) of Register otherwise than in association with an application to inspect Register	Nil	\$12 for up to 3 pages, plus an additional \$1 for each page beyond the third
10 Application for evidentiary certificate as to contents of Register	Nil	\$20

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BY AUTHORITY