

## BUSINESS NAMES (AMENDMENT) BILL 1989

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Business Names Act 1962—

- (a) to increase monetary penalties for offences under the Act and remove imprisonment penalties;
- (b) to provide for the issue of penalty notices (“on-the-spot” fines) for offences under the Act prescribed by the regulations;
- (c) to empower the Corporate Affairs Commission to enter premises used for carrying on business under a business name, to inspect business records there and make inquiries there, and to require any person to furnish information or produce documents relating to a suspected contravention of the Act;
- (d) to provide that certain corporations can be appointed as resident agent of a person not resident in the State, for the purposes of business names registration;
- (e) to prevent the registration of business names comprising letters, numerals or punctuation not of the English language;
- (f) to increase from 1 month to 2 months the period of grace after the registration of a business name expires during which the Commission will not register an identical or similar name to another person;
- (g) to recognise computerisation of the business names register and to make consequential amendments concerning the searching of the register and issue of copies of computerised records;
- (h) to permit service by post to remote areas of the State by posting to an address notified to the Commission as a person’s preferred address for postal service rather than an address at which business is carried on;
- (i) to authorise the Commission to notify an applicant for registration of a business name if an identical or very similar name is already registered and to make such a notification evidence that the applicant knew a person was carrying on business under a name so notified;
- (j) to replace the term “Christian name” with that of “Christian or given name”, and to replace the term “surname” with that of “family name”;

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- (k) to require the date and place of birth of persons to be notified to the Commission when they apply for a business name or commence business under a registered business name; and
- (l) to enact a savings provision and make other amendments of a minor or consequential nature.

The Bill also makes a consequential amendment to the Justices Act 1902 to apply the penalty notice enforcement provisions of that Act to proposed penalty notices under the Principal Act.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act commences on a day or days to be appointed by proclamation.

**Clause 3** gives effect to the Schedule of amendments to the Principal Act.

**Clause 4** makes a consequential amendment to the Justices Act 1902 to apply the provisions of that Act concerning penalty notices to penalty notices issued under proposed section 28A of the Principal Act.

### SCHEDULE 1—AMENDMENTS

#### **Increased penalties**

Schedule 1 (3) (a), (4), (10) (d), (12), (13), (18) and (19) increase the monetary penalties for various offences under the Act. The option of imprisonment as a penalty in some cases is removed. The offences involved are as follows:

- section 5 (carrying on business under unregistered business name—current penalty \$200, proposed new penalty \$5,000)
- section 5A (use of business name without leave of District Court when required—current penalty \$400 or 6 months imprisonment, proposed new penalty \$5,000)
- section 12 (failure to lodge notice of change of particulars—current penalty \$200, proposed new penalty \$1,000)
- section 17 (lodging false statement—current penalty \$200 or 3 months imprisonment, proposed new penalty \$5,000)
- section 20 (requirement to use and exhibit business name—current penalty \$100, proposed new penalty \$2,000)
- section 26 (use of business name in invitation to public to make deposits or loans—current penalty \$1,000, proposed new penalty \$2,000)
- section 28 (daily penalty for continuing offence—current penalty \$20 per day, proposed new penalty \$50 per day).

#### **Penalty notices**

Schedule 1 (20) empowers the Commission or an authorised officer to issue on-the-spot fines for an offence under the Act by issuing a penalty notice to a person believed to have committed the offence. It will apply only to those offences prescribed by the regulations as being penalty notice offences. The provisions of the Justices Act 1902 relating to the enforcement of penalty notices will apply to penalty notices issued under the proposed provisions.

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**Powers of entry, information gathering etc.**

Schedule 1 (11) replaces the provision of the Act that currently authorises the Commission to require information from persons concerning certain suspected contraventions of the Act. The new provision authorises the Commission to require information and production of documents concerning a possible contravention of any provision of the Act. It also permits an authorised officer of the Commission to enter premises where a business is carried on under a business name and to inspect records and ask questions there. The penalty for a failure to comply with the section has been increased from \$200 to \$2,000.

**Corporations as resident agent**

Schedule 1 (8) allows the appointment of a corporation as the resident agent of a person who has a registered business name but is not resident in the State. Only a company incorporated in the State, a recognised company or recognised foreign company with a principal office in the State, a registered foreign company and such other corporations as are prescribed by the regulations are permitted to be appointed.

**Use of English alphabet**

Schedule 1 (5) prevents registration of a business name unless it consists solely of letters, numerals (Roman numerals are permissible) or punctuation of the English language. Thus symbols (except punctuation) are not permitted nor are names comprising letters of a foreign alphabet. The new provision permits the carrying on of business under a business name that cannot be registered because of the new provision so long as the business is also carried on under a registered business name. A savings provision makes it clear that the new requirement does not apply to business names already registered (Schedule 1 (1), (22) and (23)).

**Expiry of registration—increased time for re-registration**

Schedule 1 (9) increases (from 1 month to 2 months) the period after registration of a business name expires during which the Commission cannot register an identical or similar name except to the holder of the expired registration.

**Computerisation of business names register**

Schedule 1 (14), (15), (16) and (17) recognise the computerisation of the business names register by permitting the Commission to direct that a computerised record of any entry in the register be made available for inspection. This will then require that any inspection of such an entry be made by inspecting the computerised record. Consequential amendments are made to provisions dealing with the issuing of copies of computerised entries in the register and certification of those copies.

**Preferred address for postal service in remote areas**

Schedule 1 (6) (b), (10) (a) and (21) permit persons in certain remote areas of the State (determined by the Commission) to nominate a preferred address for service of notices under the Act instead of the address of their place of business. Notices etc. to be sent to the person at the place of business will then be able, at the discretion of the Commission, to be sent to the preferred address.

**Notification of identical or similar names on registration**

Schedule 1 (7) requires the Commission, when it registers a business name to a person, to notify the person of any identical or very similar name already registered. This will constitute evidence (of particular relevance in an action for passing off) that the person notified knew that some other person in the State was carrying on business under that name.

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**Christian name/surname**

Schedule 1 (2), (3) (b)–(d), (6) (a) and (10) (b) and (c) replace the terms “Christian name” and “surname” throughout the Act with “Christian or given name” and “family name” respectively.

**Date and place of birth of applicants etc.**

Schedule 1 (6) (a) and (10) (c) require the furnishing to the Commission of the date and place of birth of persons who apply to become registered in respect of a business name or who commence to carry on business under a business name already registered.

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