

[Act 2002 No 97]



New South Wales

Business Names Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make provision with respect to the registration and use of business names. The Bill repeals the *Business Names Act 1962*, makes consequential amendments to other Acts and enacts savings and transitional provisions.

The principal differences between the proposed Act and the *Business Names Act 1962* are as follows:

- (a) businesses that are carried on exclusively over the Internet will no longer be required to register their business names or display them at their places of business,
 - (b) a business name will be able to be registered in the name of any person who carries on business in New South Wales, whether or not the person carries on business in New South Wales under that name,
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- (c) there will no longer be any need for a person who resides interstate to appoint a resident agent with respect to a business name registered in the person's name,
- (d) there will be a right of appeal to the Administrative Decisions Tribunal against decisions of the Director-General of Fair Trading (the *Director-General*) under the proposed Act.

Outline of provisions

Part 1 Preliminary

Clause 1 specifies the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act (apart from provisions that depend on uncommenced provisions of other Acts) on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions for the purposes of the proposed Act.

Part 2 Registration of business names

Division 1 Registration

Clause 4 prohibits a person from carrying on business in New South Wales under an unregistered business name. The prohibition does not apply to persons who carry on business under their own names or to persons who carry on business exclusively over the Internet. The maximum penalty for an offence under the proposed section is 50 penalty units (\$5,500).

Clause 5 provides for the registration of business names in accordance with the procedures set out in the *Licensing and Registration (Uniform Procedures) Act 2002*.

Clause 6 sets out the grounds on which registration of a business name may be refused.

Clause 7 provides that a business name is not to be registered in the name of a person who is not carrying on business in New South Wales.

Clause 8 provides that a business name is not to be registered in the name of a person who has recently been found guilty or convicted of certain kinds of offence except with the leave of the District Court.

Clause 9 provides for a person to be notified if his or her registered business name is identical to, or closely resembles, a previously registered business name,

and further provides that the giving of such notice is evidence that he or she has been made aware of that fact.

Clause 10 provides that registration of a business name has effect for 3 years.

Division 2 Notification of changes in relation to business names

Clause 11 requires notice that a person has commenced to carry on business under a registered business name to be given to the Director-General within one month after that fact.

Clause 12 requires notice that a person has ceased to carry on business under a registered business name to be given to the Director-General within one month after that fact.

Clause 13 requires notice that a person in whose name a business name is registered is no longer carrying on business in New South Wales to be given to the Director-General within one month after that fact.

Clause 14 requires notice of any change in the particulars registered in relation to a business name to be given to the Director-General within one month after the change occurs.

Clause 15 requires notice of any change in the particulars registered in relation to a person in whose name a business name is registered to be given to the Director-General within one month after the change occurs.

Clause 16 allows several notices under the proposed Division to be combined in the one document, allows the Director-General to extend the time for giving notifications under the proposed Division and provides for what is to be taken as a continuing offence under the proposed Division.

Division 3 Cancellation of registration

Clause 17 sets out the grounds on which registration of a business name may be cancelled generally.

Clause 18 sets out the grounds on which registration of a business name may be amended so as to remove the name of a person in whose name the business name is registered.

Clause 19 provides a right of review by the Administrative Decisions Tribunal in relation to decisions by the Director-General under the proposed Division.

Division 4 General

Clause 20 provides for the establishment and maintenance of a register of business names for the purposes of the proposed Act.

Clause 21 enables the Minister to publish an order in the Gazette prohibiting the registration of certain kinds of business name. Such an order may be made on the Minister's own initiative (in which case notice of the order is to be given to the Minister's interstate counterparts) or as a consequence of receiving notice that a similar kind of order has been made by one of the Minister's interstate counterparts.

Clause 22 makes it clear that registration of a business name does not authorise a person to use that name if the use of that name is prohibited by some other Act or law.

Clause 23 ensures that persons carrying on business in contravention of the proposed Act are in no more advantageous a position, as regards legal proceedings taken by or against them, than persons who are not in contravention of the proposed Act.

Clause 24 obliges a person who is carrying on business under a registered business name (unless exclusively by means of the Internet) to include the business name on all business correspondence, to display the business name at each of the person's places of business and to display the relevant certificate of registration for the business name at the person's principal place of business.

Clause 25 prohibits the use of a business name in any public invitation for loans or deposits. The prohibition does not apply to a person whose business is moneylending or to a company that is raising money in accordance with the *Corporations Act 2001* of the Commonwealth.

Clause 26 gives evidentiary weight to certificates issued by the Director-General (or a person authorised by the Director-General) as to the contents of the register of business names.

Clause 27 provides that evidence that a person carries on business from premises on which a business name is displayed is evidence that the person carries on business under that name.

Part 3 Administration

Division 1 Power to require information and documents

Clause 28 empowers the Director-General to require production of information and documents, on pain of a penalty of 20 penalty units (\$2,200). Self-incrimination does not excuse a person for failing to comply with such a requirement, but information so obtained cannot be used against the person unless the information is deliberately false.

Division 2 Power to enter premises

Clause 29 confers a power of entry on authorised officers investigating suspected contraventions of the proposed Act.

Clause 30 imposes certain obligations on an authorised officer exercising a power of entry.

Clause 31 provides for the payment of compensation to persons who suffer damage as a result of an authorised officer's exercise of a power of entry to premises.

Division 3 General

Clause 32 provides for the issuing of penalty notices with respect to offences under the proposed Act.

Clause 33 makes it an offence to obstruct or hinder an authorised officer in the exercise of the officer's functions under the proposed Act.

Clause 34 provides for the appointment of authorised officers for the purposes of the proposed Act.

Clause 35 provides for the delegation of the Director-General's functions under the proposed Act.

Clause 36 absolves certain persons from personal liability for anything done or omitted to be done by them in the execution of the proposed Act.

Part 4 Miscellaneous

Clause 37 is a standard provision with respect to directors' liability for offences committed by corporations.

Clause 38 facilitates the service of documents under the proposed Act.

Clause 39 allows proceedings for offences against the proposed Act to be taken up to 3 years after they occur.

Clause 40 empowers the Governor to make regulations for the purposes of the proposed Act.

Clause 41 is a formal provision repealing the *Business Names Act 1962*.

Clause 42 is a formal provision giving effect to a Schedule of amendments to other Acts (Schedule 1).

Clause 43 is a formal provision giving effect to a Schedule of savings, transitional and other provisions (Schedule 2).

Clause 44 is formal provision requiring the proposed Act to be reviewed at the end of 5 years from its date of assent.

Schedule 1 Amendment of other legislation

Schedule 1 amends the following legislation consequent on the enactment of the proposed Act:

- (a) the *Business Names Act 2002*,
- (b) the *Fines Act 1996*,
- (c) the *Gaming Machines Act 2001*,
- (d) the *Home Building Act 1989*,
- (e) the *Licensing and Registration (Uniform Procedures) Act 2002*,
- (f) the *Motor Dealers Act 1974*,
- (g) the *Motor Vehicle Repairs Act 1980*,
- (h) the *Partnership Act 1892*,
- (i) the *Printing and Newspapers Act 1973*,
- (j) the *Property, Stock and Business Agents Act 1941*,
- (k) the *Property, Stock and Business Agents Act 2002*,
- (l) the *Travel Agents Act 1986*.

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act, including a provision (clause 1) that allows the regulations under the proposed Act to make further provision of a savings or transitional nature.