



New South Wales

# Business Names Amendment Bill 2006

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Business Names Act 2002* (the **Principal Act**) so as:

- (a) to provide for the restoration of the registration of a business name within 3 months of the registration expiring, and
- (b) to prohibit the registration of a business name containing the word “sheriff” without consent, and
- (c) to allow the transfer of the registration of a business name to a person aged 16 years or over, and
- (d) to include a specific regulation-making power with respect to the refund and waiver of fees.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Business Names Act 2002* set out in Schedule 1.

**Clause 4** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## **Schedule 1 Amendments**

**Schedule 1 [1]** amends section 3 of the Principal Act to update definitions as a consequence of administrative changes affecting the former Department of Fair Trading.

**Schedule 1 [2]** amends section 5 (3) (a) of the Principal Act so that an application for transfer of registration of a business name may be made by a person aged 16 years or over. This amendment will establish a consistent minimum age of 16 years as the age at which a person may apply for the registration or transfer of a business name and will achieve consistency between sections 35 (1) and 37 (3) of the *Licensing and Registration (Uniform Procedures) Act 2002* (which is applied by the Principal Act).

**Schedule 1 [3]** substitutes section 5 (3) (c) of the Principal Act to provide for the restoration of registration of business names. Such restoration must be applied for within 3 months of the expiration of the registered business name. **Schedule 1 [5]** amends section 6 (3) (a) of the Principal Act to ensure that business names capable of restoration are protected from being registered by another person.

**Schedule 1 [4]** amends section 6 of the Principal Act so as to prohibit the registration of business names containing the word “sheriff” unless such registration has been consented to by the Sheriff under the *Sheriff Act 2005*. **Schedule 1 [6]** amends section 17 (1) of the Principal Act so that a registered business name containing the word “sheriff” may be cancelled in the event that consent to the use of that name is revoked.

**Schedule 1 [7]** amends section 23 of the Principal Act to make it clear that section 23 does not limit the operation of rules of court.

**Schedule 1 [8]** amends section 40 of the Principal Act so as to extend the regulation-making power to include the power to make regulations for or with respect to the refund and waiver of fees.

**Schedule 1 [9]** amends Schedule 2 to the Principal Act to enable regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

First print



New South Wales

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New South Wales

## **Business Names Amendment Bill 2006**

No. , 2006

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### **A Bill for**

An Act to amend the *Business Names Act 2002* to make further provision with respect to the registration and use of business names; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Business Names Amendment Act 2006</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5
<b>3 Amendment of Business Names Act 2002 No 97</b>	6
The <i>Business Names Act 2002</i> is amended as set out in Schedule 1.	7
<b>4 Repeal of Act</b>	8
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	9 10
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	11 12

<b>Schedule 1</b>	<b>Amendments</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 3 Definitions</b>	3
	Omit the definitions of <i>Department</i> and <i>Director-General</i> from section 3 (1).	4
	Insert instead:	5
	<i>Department</i> means the Department of Commerce.	6
	<i>Director-General</i> means:	7
	(a) the Commissioner for Fair Trading, Department of Commerce, or	8
	(b) if there is no such position in the Department—the Director-General of the Department.	10
		11
<b>[2]</b>	<b>Section 5 Application to registration of Licensing and Registration (Uniform Procedures) Act 2002</b>	12
	Omit “section 35 (1)” from section 5 (3) (a).	13
	Insert instead “sections 35 (1) and 37 (3)”.	14
		15
<b>[3]</b>	<b>Section 5 (3) (c)</b>	16
	Omit the paragraph. Insert instead:	17
	(c) applications for restoration of registration under section 39 of that Act must be made within 3 months of the registration expiring.	18
		19
		20
<b>[4]</b>	<b>Section 6 Refusal of registration of certain business names</b>	21
	Insert after section 6 (2A):	22
	(2B) A business name that includes the word “sheriff” is not to be registered unless the use of that name is the subject of a consent granted under section 12 of the <i>Sheriff Act 2005</i> .	23
		24
		25
<b>[5]</b>	<b>Section 6 (3) (a)</b>	26
	Insert “, or existing business name capable of restoration under section 5 (3) (c),” after “business name”.	27
		28

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<b>[6] Section 17 Cancellation of registration in relation to business name generally</b>	1
	2
Insert at the end of section 17 (1) (c):	3
, or	4
(d) in the case of a business name that includes the word “sheriff”, if the Director-General receives notice that consent to the use of that name has been revoked under section 12 of the <i>Sheriff Act 2005</i> .	5
	6
	7
	8
<b>[7] Section 23 Effect of certain contraventions on legal proceedings</b>	9
Insert after section 23 (3):	10
(4) This section does not limit the operation of the rules of a court on legal proceedings.	11
	12
<b>[8] Section 40 Regulations</b>	13
Insert at the end of the section:	14
(2) In particular the regulations may make provision for or with respect to the refund or waiver of the whole or any part of a fee payable under this Act.	15
	16
	17
<b>[9] Schedule 2 Savings, transitional and other provisions</b>	18
Insert at the end of clause 1 (1):	19
<i>Business Names Amendment Act 2006</i>	20