

# Business Names Act 1962 No 11

[1962-11]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill 2001](#)

### Authorisation

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# Business Names Act 1962 No 11



New South Wales

An Act to make provision with respect to the registration and use of business names; to repeal the *Business Names Act 1934* and certain other enactments; and for purposes connected therewith.

## 1 Name of Act and commencement

- (1) This Act may be cited as the *Business Names Act 1962*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

## 2 Construction

This Act shall be read and construed subject to the *Commonwealth of Australia Constitution Act* and so as not to exceed the legislative power of the State to the intent that where any provision of this Act or the application thereof to any person or circumstance is held invalid the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

## 3 Repeal, and savings and transitional provisions

- (1) The Acts mentioned in Schedule 1 to the extent to which they are therein expressed to be repealed are hereby repealed accordingly.
- (2) Notwithstanding the provisions of subsection (1):
  - (a) any judgment obtained or order made in any proceedings referred to in subsection (3) of section 13 of the repealed Act against a firm, individual or corporation may, to the extent that it has not been enforced before the commencement of this Act, be enforced against such firm or any member thereof or such individual or corporation, and
  - (b) any certificate furnished, or copy of or extract from a statement certified, in pursuance of the repealed Act shall be as valid and effectual as it would have been had the repealed Act not been repealed.
- (3) A reference in any Act, order, regulation, rule, instrument or document to a firm,

individual or corporation registered or required to have been registered under the repealed Act or any corresponding previous enactment shall unless the context otherwise requires be construed as referring also to a firm, the members of which are, or to an individual who or a corporation which, as the case may be, is, carrying on business under a business name registered or required to be registered under this Act.

- (4) A reference to the Registrar-General in any Act, order, regulation, rule, instrument or document relating to any matter under or in connection with the repealed Act or any corresponding previous enactment shall unless the context otherwise requires be construed as referring to the Corporate Affairs Commission.
- (5) A business name in respect of which a firm, individual or corporation was immediately before the commencement of this Act registered or deemed to be registered under the repealed Act shall subject to this Act upon the commencement of this Act be deemed to be registered under this Act in relation to each member of the firm, in relation to the individual or in relation to the corporation, as the case may be, and this Act shall apply to and in relation to the business name accordingly.
- (6) Schedule 2 has effect.

#### 4 Interpretation

- (1) In this Act unless the context or subject matter otherwise indicates or requires:

**Approved**, in relation to a form, means approved by the Commissioner.

**Business** includes trade and profession.

**Business name** means a name, style, title or designation under which a business is carried on.

**Carrying on business** includes establishing a place of business in the State and soliciting or procuring any order from a person in the State and **to carry on business** has a corresponding interpretation.

**Christian or given name** means the first name or any other name given to a person.

**Commissioner** means the Director-General of the Department of Fair Trading holding office as such under Part 2 of the [Public Sector Management Act 1988](#).

**Corporation** means any body corporate formed or incorporated whether in the State or outside the State and includes any foreign company within the meaning of the [Corporations Act 2001](#) of the Commonwealth.

**Director** in relation to a corporation includes any person occupying the position of director of the corporation by whatever name called.

**Family name** means the surname or other part of a name which is not a Christian or

given name.

**Firm** means an unincorporated body of persons (whether consisting of individuals or of corporations or partly of individuals and partly of corporations) associated together for the purpose of carrying on business.

**Individual** means a natural person and does not include a corporation.

**Initial** includes a recognised abbreviation of a Christian or given name.

**Machine-copy** of a document means a copy of the document made by a machine performing a process:

- (a) that involves the production of a latent image of the document (not being a latent image on photo-sensitive material on a transparent base) and the development of that image by chemical means or otherwise, or
- (b) that, without the use of photo-sensitive material, produces a copy of the document simultaneously with the making of the document.

**Minor** means a person under the age of eighteen years.

**Prescribed** means prescribed by or under this Act.

**Process** includes any writ, summons, plaint, pleading, order or document in or relating to any legal proceedings.

**Register** means the register of business names referred to in section 6.

**Regulations** means regulations made under this Act.

**Repealed Act** means the [Business Names Act 1934](#), as amended by subsequent Acts.

**Reproduction** of a document means a machine-copy of the document or a print made from a transparency of the document.

**Secretary** in relation to a corporation:

- (a) includes any person performing the duties of secretary of the corporation, and
- (b) in relation to a corporation that is a registered foreign company under Division 2 of Part 5B.2 of the [Corporations Act 2001](#) of the Commonwealth, includes a local agent (within the meaning of that Act) of the corporation.

**Section** means section of this Act.

**State** means the State of New South Wales.

**Transparency** of a document means the following:

- (a) a developed negative or positive photograph of that document (in this definition referred to as an **original photograph**) made, on a transparent base, by means of light reflected from, or transmitted through, the document,
  - (b) a copy of an original photograph made by the use of photo-sensitive material (being photo-sensitive material on a transparent base) placed in surface contact with the original photograph,
  - (c) any one of a series of copies of an original photograph, the first of the series being made by the use of photo-sensitive material (being photo-sensitive material on a transparent base) placed in surface contact with a copy referred to in paragraph (b), and each succeeding copy in the series being made, in the same way, from any preceding copy in the series.
- (2) For the purposes of this Act a person shall not be regarded as carrying on business within the State for the reason only that within the State the person:
- (a) is or becomes a party to any action or suit or any administrative or arbitration proceeding, or effects settlement of an action, suit or proceeding or of any claim or dispute,
  - (b) maintains any account with a bank, building society or credit union,
  - (c) effects any sale through an independent contractor,
  - (d) creates evidence of any debt or creates a charge on real or personal property,
  - (e) secures or collects any of his or her debts or enforces his or her rights in regard to any securities relating to such debts,
  - (f) conducts an isolated transaction that is completed within a period of thirty-one days, but not being one of a number of similar transactions repeated from time to time, or
  - (g) invests any of his or her funds or holds any property.
- (3) For the purposes of this Act a business name shall be deemed to be registered under this Act in relation to a person if it appears from the register that the person either alone or together with other persons is carrying on business under that name.
- (4) In this Act, a reference to an Act includes all amendments of that Act and any Act passed in substitution for the Act referred to or incorporating any of its provisions.

## **5 Certain business names to be registered**

- (1) A person shall not either alone or together with other persons carry on business in the State under a business name unless:
- (a) the business name consists of the name of that person and the name of each

other person, if any, in association with whom that person is so carrying on business, without any addition, or

- (b) the business name is registered under this Act in relation to that person and each other person, if any, in association with whom that person is so carrying on business and any provisions of section 12 that are applicable have been complied with by or on behalf of the person or persons in relation to whom the business name is registered.

Maximum penalty: 50 penalty units.

- (2) For the purposes of subsection (1) of this section, and of subsection (2) of section 5A, the name of a person consists of:
- (a) in the case of an individual—the person’s full name, or the person’s family name together with:
- (i) the person’s Christian or given name or names,
  - (ii) the initial or initials of the person’s Christian or given name or names,
  - (iii) a combination of one or more of the person’s Christian or given names and the initial or initials of the person’s remaining Christian or given name or names, or
  - (iv) the Christian or given name or names by which the person is commonly known or the initial or initials by which the person is commonly known or any combination of one or more of such names and such initials,
- (b) in the case of a corporation—the corporate name of the corporation.
- (3) The addition to a business name of words indicating that the business is carried on in succession to a former owner of the business shall for the purposes of subsection (1) of this section, and of subsection (2) of section 5A be deemed not to be an addition to the business name.
- (4) Where a business is carried on by an official receiver, a trustee in bankruptcy or a trustee under a deed or scheme of arrangement entered into under a law of the Commonwealth relating to bankruptcy, or by a receiver manager or other person appointed by any court, or under the powers contained in any instrument to carry on the business, the business shall for the purposes of this Act be deemed to be carried on by the person or persons who carried on the business immediately before the appointment of the receiver, trustee, manager or other person.
- (5) Notwithstanding anything in this Act a contravention of or failure to comply with any provision thereof shall not operate to avoid any agreement transaction act or matter.



**5A Leave of District Court required in certain cases before using business name**

(1) This section applies:

- (a) to a person convicted after the commencement of section 6 of the *Companies and Business Names (Amendment) Act 1969*, whether within or without the State:
  - (i) on indictment of an offence in connection with the promotion, formation or management of a corporation,
  - (ii) of an offence involving fraud or dishonesty punishable on conviction with imprisonment for three months or more, or
  - (iii) of an offence against section 47, 124, 374B or 374C of the *Companies Act 1961*, or any corresponding law of another State, or of a Territory, of the Commonwealth of Australia,
- (b) to a person so convicted before that commencement, where:
  - (i) the person was not, immediately before that commencement, carrying on business in the State under a business name, or
  - (ii) being a person who was, immediately before that commencement, carrying on business in the State under a business name, the person ceases so to carry on business under that business name, and
- (c) to a person convicted on or after the date appointed and notified pursuant to section 2 (2) of the *Companies (Application of Laws) Act 1981* of an offence under section 108, 229, 554, 555, 556, 559 or 560 of the *Companies (New South Wales) Code* or under any other provision of that Code that may be prescribed, under section 44 of the *Companies (Acquisition of Shares) (New South Wales) Code*, under section 129 of the *Securities Industry (New South Wales) Code*, or under any corresponding provision of a law in force in another State or in a Territory, and
- (d) to a person convicted on or after the commencement of the *Corporations Act 2001* of the Commonwealth of an offence under any of the following provisions of that Act:
  - (i) section 184, 590, 592, 595, 670A, 728 or 1307,
  - (ii) Part 7.11,
  - (iii) any other provision of that Act that is prescribed by the regulations.

(2) A person to whom this section applies shall not, within the period of five years next succeeding any occasion on which the person is convicted as referred to in subsection (1) or, where the person has served a term of imprisonment imposed pursuant to any such conviction, within the period of five years next succeeding the person's release

from that imprisonment, carry on business in the State under a business name unless:

- (a) the business name under which the person so carries on business:
  - (i) consists of the person's name, or
  - (ii) where the person carries on business in association with another person or other persons, consists of the person's name and the name or names of the person or persons in association with whom the person carries on business, without any addition, or
- (b) the person has obtained the leave of a District Court, upon application made as provided by subsection (3), so to carry on business.

Maximum penalty: 50 penalty units.

- (3) An application for the leave of a District Court, as referred to in paragraph (b) of subsection (2):
  - (a) shall not be made unless the Minister has been given not less than twenty-eight days' notice of the proposed application, and
  - (b) shall be made, in accordance with rules of court, to the District Court for the district where the applicant proposes to carry on business or, where the applicant proposes to carry on business in more than one district, to the District Court for the district in which the applicant resides.
- (4) On the hearing of an application made under subsection (3), the Minister may be represented at the hearing of, and may oppose, the application.
- (4A) No appeal shall lie from the decision of the District Court on an application made under subsection (3).
- (5) Nothing in this section shall be construed as affecting the operation of section 5.

#### **5B Business names must use English alphabet etc**

- (1) A business name shall not be registered under this Act unless it is comprised solely of any or all of the following: letters, numerals (which may include Roman numerals) and punctuation that are part of the English language.
- (2) Nothing in this Act prevents a person from carrying on business under a business name not in the English language if the person also carries on the business under a business name registered under this Act that is an English language translation of that name.

## **6 Register of business names**

- (1) The Commissioner shall keep a register of business names registered under this Act in such form as the Commissioner thinks fit.
- (2) A statement lodged under this Act in relation to a business name registered under this Act, whether lodged before or after the registration, shall for the purposes of this Act be deemed to be incorporated with and to form part of the register.
- (3) The register and index of the business names of firms, individuals and corporations registered or deemed to be registered under the repealed Act, and any statement or notice furnished or sent to the Registrar-General under the repealed Act or any corresponding previous enactment, shall be deemed to be incorporated with and to form part of the register kept under this Act.

## **7 Registration of business names**

- (1) An application for the registration of a business name shall be made by lodging with the Commissioner a statement in an approved form which shall be signed by the person or persons carrying on or proposing to carry on business in the State under that name and shall set out:
  - (a) the business name (and, if the applicant or applicants wish, up to 2 alternative business names in order of preference),
  - (b) a concise description of the true nature of the business carried on or proposed to be carried on under that name by the applicant or applicants,
  - (c) the address of any place in the State where the business is or is proposed to be carried on showing, if the business is or is proposed to be carried on at more than one place in the State, which of those places is or is to be the principal place of business,
  - (d) the Christian or given names and family name (and any former Christian or given names or family name), the date and place of birth and the usual place of residence of each applicant who is an individual and the corporate name of each applicant which is a corporation,
  - (e) the date or proposed date of commencement of the carrying on of business in the State under the business name by the applicant or applicants, and
  - (f) where the business name is a name adopted by the applicant or applicants in substitution for another name—that other name.
- (1A) If the place where a business is carried on or proposed to be carried on is determined by the Commissioner to be a remote place, the statement may also set out the address of some other place in the State as the preferred address for postal service under this Act in respect of that place of business.

- (1B) The preferred address for postal service may be the address of a post office box and it does not matter that the address is also in a remote place.
- (2) If any applicant is a minor and the applicant is not so described in the statement and the date of the applicant's birth is not set out in the statement, the statement shall for the purposes of section 17 be deemed to be false in a material particular.
- (3) Subject to this Act the Commissioner shall upon the lodging of a statement under subsection (1) in relation to a business name, if the prescribed fee has been paid, register the business name.
- (3A) If the business name set out in the statement lodged under subsection (1) is not able to be registered under this Act because of the operation of section 5B or 9, the Commissioner is to consider (in the applicant's preferred order) any alternative business names set out in that statement and is to register the first of those alternatives that is, subject to this Act, able to be registered.
- (4) The Commissioner shall upon registering a business name issue a certificate of registration in an approved form signed by the Commissioner.
- (5) The Commissioner may upon payment of the prescribed fee issue a further certificate of registration.
- (6) A business name shall not be registered under this Act if the statement referred to in subsection (1) is lodged with the Commissioner on a date preceding by more than two months the date shown in the statement as the proposed date of commencement of carrying on business.
- (7) The Commissioner may refuse to register a business name if the Commissioner is not satisfied that the particulars set out in the statement lodged under subsection (1) are correct, or if the prescribed fee has not been paid.

**7A Notice to be given of registration of certain names**

- (1) When the Commissioner registers a business name that is identical to or that, in the Commissioner's opinion, closely resembles a business name already registered, the Commissioner may give notice in writing of that fact to the person or persons in respect of whom the Commissioner registers the business name.
- (2) The notice may specify each business name already registered that is identical to or that, in the Commissioner's opinion, closely resembles the business name concerned.
- (3) When the Commissioner gives a notice under this section, the Commissioner shall make an entry in the register noting the fact and giving details of the notice given.
- (4) Evidence (including evidence under section 24) that a person was given a notice under this section is prima facie evidence in any proceedings that the person was

aware, when the notice was given, that a person was carrying on business in the State under a business name specified in the notice.

## **8 Resident agent**

- (1) Where a business name is required to be registered under this Act and the person or all the persons carrying on or proposing to carry on business in the State under that name resides or reside outside the State, or has or have no fixed address within the State, the statement referred to in subsection (1) of section 7 is to be accompanied by a further statement:
- (a) that sets out the name and address of some person resident in the State who in relation to the carrying on of business under that name:
    - (i) has consented in writing to be the resident agent of the person or persons for the purposes of this Act, and
    - (ii) is authorised in writing by the person or persons to accept service on behalf of the person or persons of any notices for the purposes of this Act and of any process, and
  - (b) that is signed by the person who has consented to be the resident agent.
- (1A) A corporation may be appointed as a resident agent for the purposes of this Act but only if:
- (a) it has one or more places of business in the State (in which case its address for the purposes of this Act shall be the address of that place of business, or any one of those places of business), or
  - (b) it is a corporation of a class prescribed for the purposes of this section (in which case its address for the purposes of this Act shall be determined in accordance with the regulations).
- (2) The address shown in any statement lodged with the Commissioner under this Act as the address of the resident agent appointed for the purposes of this Act by the person or persons in relation to whom a business name is registered shall, for the purpose of serving any notice or process on the person or persons under this Act, be deemed to be the address of a place where business is carried on by the person or persons under that name.

## **9 Restriction on registration of business names that are undesirable etc**

- (1) Except with the consent of the Minister a business name shall not be registered under this Act if the business name is a name that is, in the opinion of the Commissioner, undesirable or is a name, or a name of a kind, that the Minister has, for the purposes of this Act, directed the Commissioner not to accept for registration.

- (2) The Minister shall cause a direction given under subsection (1) to be published in the Gazette and a copy of the direction to be forwarded to the Attorney-General of the Commonwealth and the Minister in each State and Territory of the Commonwealth who administers the Act of the State or Territory that is concerned with the registration of business names.

#### **10 Power to cancel registration of business names that are undesirable etc**

- (1) If a business name which could not be registered under this Act without contravention of subsection (1) of section 9 is registered through inadvertence or otherwise, the Commissioner may send by post a notice addressed to the person or persons in relation to whom the name is so registered at the place shown in the register as the place where business is carried on under that name:
  - (a) stating that the Commissioner proposes to cancel the registration of that name upon the expiration of such period (being a period of not less than twenty-eight days) as is specified in the notice, and
  - (b) setting out the reasons of the Commissioner for the proposed cancellation,and upon the expiration of that period the Commissioner may, if the notice has not been annulled under subsection (3), cancel the registration of that name.
- (2) The Commissioner shall not except with the approval of the Minister exercise the Commissioner's powers under subsection (1) with respect to a business name that is deemed to be registered under this Act by virtue of subsection (5) of section 3.
- (3) The Minister may at any time before the expiration of the period specified in a notice given by the Commissioner under subsection (1) annul the notice.
- (4) The Commissioner may remit any fee payable in respect of an application for the registration of a new business name in place of a business name the registration of which is cancelled under subsection (1).

#### **11 Duration of registration and renewal of registration**

- (1) Subject to this Act, the registration, or renewal of a registration of a business name, shall be in force for a period of three years but the registration may from time to time be renewed by lodging with the Commissioner at any time within the period of one month before or after the expiry of the registration or renewal a statement in an approved form signed by the person or one of the persons in relation to whom the name is registered accompanied by the prescribed fee.
- (2) The renewal of a registration shall take effect from the day on which the previous registration or renewal expires or has expired, as the case may be.
- (3) The Commissioner shall upon renewing the registration of a business name issue a certificate of registration in an approved form signed by the Commissioner.

- (4) The Commissioner shall before or after the expiration of the registration of a business name but not earlier than one month before, nor later than one month after, the expiration send by post to the person or persons in relation to whom the business name is or was registered at the place shown in the register as the place where business is carried on under that name a notice of the date on which the registration is due to expire or has expired, as the case may be.
- (5) Where the registration of a business name has expired the Commissioner shall not, except where the Commissioner is of the opinion that owing to the nature of the business and the locality in which it is carried on the public are not likely to be misled, accept for registration from any person or persons other than the person or persons in relation to whom the business name was registered, any business name that is identical with that business name or that in the opinion of the Commissioner so nearly resembles it as to be calculated to deceive until the expiration of 2 months after the expiry of the registration.
- (6) Notwithstanding the provisions of subsection (1) the following provisions shall apply in relation to a business name which is deemed to be registered under this Act by virtue of being registered or having been deemed to have been registered under the repealed Act:
  - (a) the registration of the business name shall subject to this Act remain in force until a date fixed by the Commissioner,
  - (b) notice in writing of the date so fixed shall be sent by post by the Commissioner to the person or persons in relation to whom the business name is registered at the place shown in the register as the place where business is carried on under that name,
  - (c) the date fixed by the Commissioner shall be a date not less than one month after the notice in writing has been sent by post to such person or persons,
  - (d) no such notice in writing shall be sent by the Commissioner until the expiration of a period of at least three years from the date upon which the name was registered or deemed to be registered under the repealed Act,
  - (e) the Commissioner shall not be required to send to the person or persons in relation to whom the business name is or was registered the notice referred to in subsection (4), and
  - (f) after the renewal of the registration of the business name the provisions of this subsection shall cease to apply in relation to the business name.

## **12 Notification of changes in particulars relating to registered business names, cessation of business etc**

- (1) Where a business name is registered under this Act and a change occurs:

- (a) which renders the description of the nature of the business lodged with the Commissioner insufficient to disclose the true nature of the business,
- (b) in relation to the place or places in the State at which business is carried on under that name or in the address of any such place, or
- (c) in the registered particulars relating to the resident agent of the person or persons in relation to whom the name is registered,

there shall be lodged with the Commissioner, within one month thereafter, a statement in an approved form, signed by the person or one of the persons in relation to whom the name is registered at the time of the change, notifying the Commissioner of particulars of and of the date of the change.

- (1A) If a place shown in the register as a place where business is carried on is determined by the Commissioner to be a remote place, a person in respect of whom the business name concerned is registered:
  - (a) may lodge with the Commissioner a notification in an approved form specifying the address of some other place in the State as the preferred address for postal service under this Act in respect of the place shown in the register, and
  - (b) may lodge a further notification or further notifications under this subsection in substitution for any previous notification.
- (1B) The preferred address for postal service may be the address of a post office box and it does not matter that the address is also in a remote place.
- (2) Where a change occurs in the Christian or given names or family name or the place of residence of any person being an individual in relation to whom a business name is registered under this Act or in the corporate name or the place of the registered office in the State of a person being a corporation in relation to which a business name is registered under this Act, there shall be lodged with the Commissioner, within one month thereafter, a statement in an approved form, signed by that person notifying the Commissioner of particulars of and of the date of the change.
- (3) Where a business name is registered under this Act in relation to a person or persons and that person ceases or all or any of those persons cease to carry on business in the State under that name, there shall be lodged with the Commissioner, within one month thereafter, a statement in an approved form notifying the Commissioner of the cessation and of the date thereof signed by each person who was carrying on business under that name immediately before the cessation or in the case of a deceased person by his or her personal representative.
- (4) Where a business name is registered under this Act in relation to a person or persons and another person or other persons commences or commence to carry on business in the State under that name in place of or in association with the person or persons in



relation to whom the name is already registered, there shall be lodged with the Commissioner, within one month thereafter, a statement in an approved form signed by the person or all of the persons carrying on business under the name immediately after that other person or those other persons so commenced carrying on business under that name, setting out the date on which that other person or those other persons so commenced to carry on the business and in relation to each person required to sign the statement:

- (a) who is an individual—the Christian or given names and family name (and any former Christian or given names or family name), the date and place of birth and the usual place of residence of the individual, or
- (b) who is a corporation—the corporate name and the place of the registered office in the State of the corporation,

and where the person or all of the persons carrying on business under that business name after that date is or are not resident within the State or does not or do not have a fixed address or fixed addresses within the State, the statement shall:

- (i) also set out the name and address of some person resident in the State who in relation to the carrying on of business under that name:
  - (a) has consented in writing to be the resident agent for the purposes of this Act of the person or persons required to sign the statement, and
  - (b) is authorised in writing by the person or persons required to sign the statement to accept service on behalf of the person or persons of any notices for the purposes of this Act and of any process, and

(ii) in addition be signed by the person who has consented to be the resident agent.

- (5) Where, while a person is the resident agent of a person or persons in relation to whom a business name is registered, the person or any one or more of the persons in relation to whom the name is registered commences or commence to reside within the State or acquires or acquire a fixed address or fixed addresses within the State, there shall be lodged with the Commissioner within one month after such person or persons so commenced to reside or acquired a fixed address or fixed addresses, a statement in an approved form signed by the person or one of the persons in relation to whom the name is registered:

- (a) notifying the Commissioner that the person appointed to be the resident agent of the person or persons in relation to whom the name is registered has ceased to be the resident agent of such person or persons, and
- (b) setting out the name or names of the person or persons in relation to whom the name is registered and who has or have commenced to reside or has or have acquired a fixed address or fixed addresses in the State, and the usual place or

places of residence or the fixed address or fixed addresses within the State of such person or persons.

- (6) Where, while a person is the resident agent of a person or persons in relation to whom a business name is registered, another person or other persons commences or commence to carry on business in the State under that name in place of or in association with the person or persons in relation to whom the name is already registered and that other or one of those other persons resides within the State or has a fixed address within the State, there shall be lodged with the Commissioner within one month after that other person or those other persons so commenced to carry on business, a statement in an approved form signed by the person or one of the persons carrying on business under that name after that other or those other persons so commenced to carry on business:
- (a) notifying the Commissioner that the person who was the resident agent of the person or persons in relation to whom the name was registered immediately before that other or those other persons so commenced to carry on business is not or has ceased to be the resident agent of the person or persons carrying on business under that name immediately after that other person or those other persons so commenced carrying on business, and
  - (b) setting out the name or names of that other person or those other persons who resides or reside within the State or has or have a fixed address or fixed addresses within the State, and the usual place or places of residence or the fixed address or fixed addresses within the State of that other person or those other persons.
- (7) Where a business name is registered under this Act and a person appointed the resident agent of the person or persons in relation to whom the name is registered ceases to be the resident agent of that person or those persons, there shall be lodged with the Commissioner a statement in an approved form notifying the Commissioner of the appointment of another person in place of or in succession to the person who has ceased to be the resident agent of the person or persons in relation to whom the name is registered, and of the date of the appointment:
- (a) signed by the person or by one of the persons in relation to whom the name is registered and by the other person so appointed, and
  - (b) showing that the other person so appointed:
    - (i) is in relation to the carrying on of business under that name authorised by the person or persons in relation to whom the name is registered to accept service on behalf of the person or persons of any notices for the purposes of this Act and of any process, and
    - (ii) has consented in writing to act as the resident agent for that person or those persons, as the case requires.

Such statement shall be lodged with the Commissioner within one month after the appointment.

- (8) Where a business name is registered under this Act and the person or all the persons in relation to whom the name is registered ceases or cease to reside within the State or to have a fixed address or fixed addresses in the State, there shall be lodged with the Commissioner within one month after that person or those persons has or have ceased to so reside or to have a fixed address or fixed addresses, a statement in an approved form notifying the Commissioner of the name and address of some other person appointed to be the resident agent of the person or persons in relation to whom the name is registered in the State:
- (a) signed by the person or one of the persons in relation to whom the name is registered and by the person so appointed, and
  - (b) showing that the other person so appointed:
    - (i) has consented in writing to be the resident agent of the person or persons for the purposes of this Act, and
    - (ii) is authorised in writing by the person or persons to accept service on behalf of the person or persons of any notices for the purposes of this Act and of any process.
- (9) If a statement required by a provision of this section to be lodged with the Commissioner is not lodged in accordance with the provision, or if lodged does not comply with the provision, each person required or authorised by the provision to sign the statement shall unless the person proves that the person took all reasonable steps to ensure compliance with the provision be guilty of an offence against this Act.
- Maximum penalty: 10 penalty units. Default penalty.
- (10) Where by reason of a person commencing to carry on business under a business name registered under this Act a statement is lodged with the Commissioner in accordance with and within the time prescribed by subsection (4) or within such further time as the Commissioner may in accordance with that subsection have allowed neither that person nor any other person shall be guilty of an offence against section 5 by reason only that before the lodging of the statement the person carried on business under that name.
- (11) Any statement required to be lodged with the Commissioner under this section with respect to any matter may be combined with a statement required to be lodged under this section with respect to another matter.
- (12) A statement lodged under this section shall be accompanied by the prescribed fee.

### **12A Commissioner may allow further time**

- (1) Where, pursuant to this Act, a statement, notice or other document, being a statement, notice or other document relating to a business name, is required to be lodged within a specified period, the Commissioner may, whether or not that period has expired, authorise an extended period for the lodging thereof, and the statement, notice or other document shall be deemed to have been duly lodged if it is lodged within the extended period authorised by the Commissioner.
- (2) If default has been made in lodging a statement, notice or other document under this Act within a time specified by this Act for the lodging thereof, as extended by any authority of the Commissioner given under subsection (1), the statement, notice or other document may, subject to subsection (3), be lodged notwithstanding that default.
- (3) Subsection (2) shall not affect any liability of any person in respect of a default referred to in that subsection.

### **13 Power to require information and documents**

- (1) A public servant authorised by the Commissioner for the purposes of this section (referred to in this section as an **authorised officer**) may, for the purpose of ascertaining whether this Act has been or is being complied with:
  - (a) at any reasonable time, enter any premises (other than any part of premises used for residential purposes) that the officer believes on reasonable grounds to be premises where business is carried on under a business name, and
  - (b) inspect and make copies of or take extracts from any documents that are on the premises and that relate to the carrying on of business there, and
  - (c) require any person apparently employed or engaged on the premises to furnish information concerning the carrying on of business there.
- (2) The Commissioner may, by notice in writing served on a person believed by the Commissioner to be capable of giving information or producing documents in relation to a possible contravention of this Act:
  - (a) require the person to give the Commissioner within the time and in the manner specified in the notice any such information, or
  - (b) require the person to produce to the Commissioner, in accordance with the notice, any such documents.
- (3) A person shall not:
  - (a) fail to comply with a requirement under this section to the extent that the person is capable of complying with it, or

(b) in purported compliance with such a requirement, give information or produce a document knowing that it is false or misleading in a material particular, or

(c) hinder or obstruct an authorised officer in the exercise of the officer's powers under this section.

Maximum penalty: 20 penalty units.

- (4) A person is not excused from giving information or producing a document as required under this section on the ground that it may tend to incriminate the person but any information so given or document so produced is not admissible against the person in any criminal proceedings except proceedings under subsection (3).
- (5) An authorised officer exercising or proposing to exercise a power under this section to enter premises must, on request, produce the officer's certificate of authority to a person apparently in charge there.
- (6) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be a public servant authorised under subsection (1).

#### **14 Disability of persons in default**

- (1) Where a person carrying on business under a business name in contravention of section 5 or 5A or a person who being guilty of an offence under section 12 by reason of the failure to lodge a statement referred to in that section in relation to a business name fails to lodge that statement commences any proceedings in that business name or in respect of a cause of action arising out of any dealing in or under that business name, the court before which the proceedings are commenced may order the person to cease to contravene section 5 or 5A or to cause the statement to be lodged as the case may be and may stay the proceedings until the order is complied with or may allow the proceedings to be continued on an undertaking being given by the person that the person will comply with the order within such time as is limited by the court.
- (2) The power given by this section to a court may be exercised in the case of a District Court by a Judge thereof in chambers or may be exercised by a Local Court.
- (3) Subject to the *Supreme Court Act 1970*, proceedings may be taken and prosecuted in any court of competent jurisdiction against any person or persons in the business name under which the person is or the persons are carrying on business if that business name is not registered under this Act, and the name shall, for the purpose of the proceedings, be a sufficient designation of the person or persons in any process or other legal document or instrument and any judgment obtained or order made in such proceedings may be enforced against that person, or against those persons or any of those persons, as the case may be.
- (4) Nothing in this section shall be construed as exempting any person from compliance

with any provision of this Act.

### **15 Signing of statements**

- (1) Any statement lodged with the Commissioner under this Act shall be deemed to be signed by a person who is required to sign the statement if:
  - (a) in the case of an individual—it is signed on the person's behalf by a person authorised in writing to so sign the statement, or
  - (b) in the case of a corporation—it is signed by a director or the chief executive officer or secretary of the corporation.
- (2) Notwithstanding any other provision of this Act where the Commissioner is satisfied that it is not practicable to obtain the signature of a person required by this Act to sign a statement the Commissioner may accept the statement for registration without its being signed by that person; but a person is not relieved of the requirement to sign a statement and a statement not signed by any person is not by reason only of its registration under this Act evidence relating to that person's interest in a business.

### **16 Verification of particulars**

The Commissioner may in a particular case if the Commissioner thinks fit refuse to accept a statement required to be lodged with the Commissioner under this Act unless the particulars set out in the statement are verified by a statutory declaration made by a person who signed the statement.

### **17 Penalty for false statement**

A person shall not sign or lodge with the Commissioner a statement made or purporting to be made for the purposes of this Act which to the person's knowledge is false in any material particular and a person shall not authorise or permit the lodging with the Commissioner of such a statement which to the person's knowledge is false in any material particular.

Maximum penalty: 50 penalty units.

### **18 Notice of proposed cancellation**

- (1) Where the Commissioner has reasonable cause to believe that a person or persons in relation to whom a business name is registered under this Act is not or are not carrying on business in the State under that name the Commissioner may send by post a notice addressed to the person or persons at the place shown in the register as the place where business is carried on under that name enquiring whether the person is or the persons are carrying on business under the name and stating that unless the Commissioner is satisfied within one month from the date of the notice that business is being carried on in the State by that person or those persons under that name the registration of the business name may be cancelled.

- (2) Where the Commissioner has reasonable cause to believe that any provision of section 12 has not been complied with the Commissioner may send by post a notice addressed to the person or persons who appear to the Commissioner to be guilty of an offence by reason of the failure to comply with such provision at the place shown in the register as the place where business is carried on under that name stating that unless within one month from the date of the notice that provision is complied with or the Commissioner is satisfied that there was in fact no failure to comply with the provision the registration of the business name may be cancelled.

## **19 Cancellation of registration**

- (1) The Commissioner may cancel the registration of a business name:
- (a) if there is lodged with the Commissioner a statement under section 12 notifying the Commissioner that the person or all the persons in relation to whom the business name is registered has or have ceased to carry on business in the State under that name and it does not appear from that statement or another statement accompanying that statement that another person has or other persons have commenced to carry on business in the State under that name,
  - (b) if the Commissioner has sent a notice to any person or persons in respect of the business name under subsection (1) of section 18 and the Commissioner is not satisfied within one month from the date of the notice that business is being carried on in the State by that person or those persons under that name,
  - (c) if the Commissioner has sent a notice to any person or persons under subsection (2) of section 18 and within one month after the date of the notice the provision of section 12 to which the notice relates has not been complied with or the Commissioner is not satisfied that there was no failure to comply with the provision, or
  - (d) if the business name is registered in relation to a corporation only and the name of the corporation has been struck off any register of corporations kept under the [Corporations Act 2001](#) of the Commonwealth or the corporation has been dissolved.
- (2) The Commissioner may on any grounds which the Commissioner thinks sufficient revoke any cancellation by the Commissioner of the registration of a business name and in that event the business name shall be deemed to have continued to be registered as if the registration had not been cancelled.
- (3) Where the registration of a business name has been cancelled under this section a person in relation to whom the business name was registered immediately before the cancellation may apply to the Supreme Court for an order directing the Commissioner to restore the registration of the business name.

- (4) On an application under subsection (3) the Supreme Court may if it is satisfied that the applicant is carrying on business under the business name and that it is just and equitable so to do make the order applied for upon such terms as the Court thinks fit.
- (5) Upon the making of an order by the Supreme Court under subsection (4) the business name shall be deemed to have continued to be registered as if the registration had not been cancelled and the Commissioner upon the lodging with the Commissioner of an office copy of the order shall make such entries and alterations in the register as the Commissioner considers necessary for the purposes of the order.

## **20 Use and exhibition of business name**

Where a business name is registered under this Act:

- (a) a person or persons in relation to whom a business name is registered shall not issue or sign in connection with the carrying on of that business any business letter, statement of account, invoice, official notice, publication, order for goods or receipt unless the business name appears in legible characters thereon,
- (b) the business name shall at all times be displayed in a conspicuous position on the outside of every place at which business is carried on under that name, and
- (c) the certificate of registration of the business name shall at all times be exhibited in a conspicuous position at the place where business is carried on under that name or if there is more than one such place at the principal place where business is so carried on,

and in the event of a contravention of this section each person carrying on business under that name shall unless the person proves that the person took all reasonable steps to ensure compliance with this section be guilty of an offence against this Act.

Maximum penalty: 20 penalty units. Default penalty.

## **21 Commissioner may correct errors in register etc**

- (1) The Commissioner may on such evidence as to the Commissioner appears sufficient correct any error in any entry in the register or in any certificate of registration of a business name.
- (2) When correcting an error under subsection (1) the Commissioner shall not erase or render illegible the original words and shall affix the date upon which the correction was made.
- (3) Any entry or certificate corrected under this section shall have the same validity and effect as if the error had not been made.
- (4) The Commissioner may accept and register a statement lodged to correct any error in or to supply any particular omitted from a statement previously lodged and registered;



and in that event the statement previously lodged and that lodged under this subsection shall be read as one and shall both be incorporated with and form part of the register.

## **22 Inspection of statements**

- (1) A person may on payment of the prescribed fee inspect any statement lodged with the Commissioner under this Act and not destroyed pursuant to section 25, or furnished under any corresponding previous enactment and not destroyed at the commencement of this Act, unless the Commissioner directs that a transparency, reproduction or computerised record of the statement be made available for inspection, or, where the Commissioner has directed that a transparency, reproduction or computerised record of such a statement be made available for inspection, a person may, on payment of the prescribed fee, inspect the transparency, reproduction or computerised record, and any such person may make a copy of or take extracts from a statement, transparency, reproduction or computerised record inspected.
- (2) The Commissioner may, on receiving:
  - (a) a written enquiry with respect to any business name specified in the enquiry, and
  - (b) the prescribed fee,issue or send by post a reply to the enquiry.
- (3) The Commissioner may, on receiving the prescribed fee, issue to a person an uncertified reproduction or transparency or extract from a document or transparency forming part of the register, or a copy of or extract from a computerised record forming part of the register.
- (4) For the purposes of this section and sections 23 and 24, a document in writing embodying the contents of a computerised record (or of an extract from such a record) shall be regarded as a copy of the computerised record (or as an extract from it).

## **23 Certificates of registration or non-registration**

- (1) The Commissioner shall upon request in writing made by any person and payment of the prescribed fee issue or send by post to that person:
  - (a) a copy of or extract from the register or a copy of or extract from a document, transparency or computerised record forming part of the register certified to be a true copy or extract, or
  - (b) a certificate that a business name was, or was not, on a date or during a period specified in the certificate registered under this Act in relation to a person or that a firm, individual or corporation was, or was not, on a date or during a period specified in the certificate registered under any corresponding previous

enactment.

- (2) The Commissioner shall not be required to issue:
- (a) under paragraph (a) of subsection (1) a copy of or extract from a document, transparency or computerised record forming part of the register where that document, transparency or computerised record has been destroyed pursuant to subsection (1) of section 25 or has been destroyed before the commencement of this Act, or
  - (b) under paragraph (b) of subsection (1) a certificate in respect of a firm, individual or corporation where the registration was effected under the *Registration of Firms Act 1902* and such registration was not in force at the commencement of the repealed Act.

#### **24 Evidence of registration or non-registration**

A document purporting to be:

- (a) a certificate of registration issued under this Act,
- (b) a copy of or extract from the register or a copy of or extract from a document, transparency or computerised record forming part of the register issued under paragraph (a) of subsection (1) of section 23,
- (c) a certificate issued under paragraph (b) of subsection (1) of section 23, or
- (d) a combination of two or more of the certificates, copies or extracts referred to in paragraph (a), (b) or (c),

shall in all courts and before all persons having authority to hear receive and examine evidence be prima facie evidence of any matter contained or set out therein.

#### **25 Authority of Commissioner to destroy documents**

- (1) Subject to the *Archives Act 1960*, the Commissioner may, if in the opinion of the Commissioner it is no longer necessary or desirable to retain them, destroy or dispose of any statement or notice lodged, furnished or registered under this Act or under any corresponding previous enactment, or any transparency of any such statement or notice, where the registration of the business name or of the firm, individual or corporation, as the case may be, in respect of which the statement or notice was lodged, filed, received, or registered has not been in force at any time during the preceding twelve years.
- (2) Subject to the *Archives Act 1960*, the Commissioner may destroy or dispose of any statement or notice lodged, furnished or registered under this Act or under any corresponding previous enactment, where a transparency or computerised record of the statement or notice has been incorporated with the register.

## **26 Invitations to the public to make deposits or loans**

- (1) A person shall not, in connection with an invitation to lend or deposit money, being an invitation made, by advertisement or otherwise, to the public, or to any person as a member of the public, use or refer to a business name that:
  - (a) is, or is deemed to be, registered under this Act,
  - (b) is required to be registered under this Act, or
  - (c) would, if business were carried on in the State thereunder, be required to be registered under this Act.

Maximum penalty: 20 penalty units.

- (2) This section does not apply to an invitation to the public made by a body in conformity with the *Corporations Act 2001* of the Commonwealth or to an invitation made to a person whose ordinary business is to lend money.

## **27 General penalty provisions**

- (1) A person who:
  - (a) does that which by or under this Act the person is forbidden to do,
  - (b) does not do that which by or under this Act the person is required or directed to do, or
  - (c) otherwise contravenes or fails to comply with any provision of this Act,shall be guilty of an offence against this Act.

Nothing in this subsection shall apply to any offence against a regulation.

- (2) A person who is guilty of an offence against this Act shall be liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or punishment for the offence.
- (3) The penalty or punishment pecuniary or other set out in or at the foot of any section or part of a section of this Act shall indicate that the offence is punishable upon conviction by a penalty or punishment not exceeding that so set out and where the penalty or punishment is expressed to apply to a part only of the section it shall apply to that part only.

## **28 Default penalty**

- (1) Where in or at the foot of any section or part of a section of this Act there appears the expression "Default penalty" it shall indicate that any person who is convicted of an offence against this Act in relation to that section or part shall be guilty of a further offence against this Act if the offence continues after the person is so convicted and

liable to an additional penalty for each day during which the offence so continues of not more than 0.5 penalty unit.

- (2) Where any offence is committed by a person by reason of the person's failure to comply with any provision of this Act by or under which the person is required or directed to do anything within a particular period that offence for the purpose of subsection (1) shall be deemed to continue so long as the thing so required or directed to be done by the person remains undone notwithstanding that such period has elapsed.
- (3) Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a Local Court constituted by a Magistrate sitting alone.
- (4) Notwithstanding anything contained in any Act, proceedings for any offence against this Act may be brought within the period of three years after the commission of the alleged offence.

#### **28A Penalty notices for certain offences**

- (1) The Commissioner or an authorised officer may serve a penalty notice on a person if it appears to the Commissioner or officer that the person has committed an offence under this Act, being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceedings arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.

- (7) The amount of a penalty prescribed under this section for an offence shall not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.
- (9) In this section:
- authorised officer** means:
- (a) a public servant authorised by the Commissioner for the purposes of this section, or
- (b) an investigator appointed under section 18 of the *Fair Trading Act 1987*.

### **29 Offences committed by corporations**

Where a person guilty of an offence against this Act:

- (a) is a corporation, or
- (b) is a person who purported to act for or on behalf of a corporation,

any director, manager, secretary or other officer of the corporation who was knowingly a party to the offence shall also be guilty of that offence.

### **30 Evidentiary provisions**

If in any proceedings for an offence against this Act proof is given that a business name has been displayed on any premises, and evidence is given from which the court may infer that the business name has reference to any business carried on at the premises, the person or persons carrying on the business shall in the absence of proof to the contrary be deemed for the purposes of this Act to be carrying on the business under that business name.

### **31 As to service of notices**

- (1) Where by this Act the Commissioner is required or permitted to send a notice to the person or persons in relation to whom the business name is registered the notice may, notwithstanding any other provision of this Act, be sent by post addressed to the business name:
- (a) at the place shown in the register as the place where the business is carried on, or
- (b) where more than one place is shown in the register as the place where the business is carried on:
- (i) at the place shown in the register as the principal place where the business is carried on, or

- (ii) if no place is so shown as the principal place, at the place shown which appears first in the register as a place where the business is carried on, or
  - (c) if it appears from the register that there is for the purposes of this Act a resident agent appointed for the purposes of this Act by the person or persons in relation to whom the business name is registered, at the place shown in the register as the address of such resident agent in the State.
- (2) Service of any communication or notice or process on any person or persons carrying on business under a business name:
  - (a) by leaving it at the place where business is carried on by such person or persons with some person apparently in the service of such person or persons and apparently of or above the age of sixteen years,
  - (b) by sending it by registered post, or certified mail service, addressed to such person or persons at the place where business is carried on by such person or persons,shall be deemed to be personal service on such person or persons.
- (3) For the purposes of subsection (2):
  - (a) ***the place where business is carried on*** means the place shown in the register as the place where the business is carried on or where there is more than one such place shown in the register:
    - (i) the place shown in the register as the principal place where the business is carried on, or
    - (ii) if no place is so shown as the principal place, the place shown which appears first in the register as the place where the business is carried on, and
  - (b) a resident agent appointed for the purposes of this Act by the person or persons so carrying on business shall be deemed to be a person in the service of such person or persons.
- (4) If this section permits a document to be sent to a person at the address of a place of business that is determined by the Commissioner to be a remote place:
  - (a) the notice may instead be sent to the address (if any) last notified to the Commissioner under this Act as the preferred address for postal service in respect of that place, and
  - (b) if it is sent to the address so notified, shall for the purposes of this Act be regarded as having been sent to the address of that place of business.

### 31A Delegation by Commissioner

- (1) The Commissioner may delegate any of the Commissioner's functions, other than this power of delegation.
- (2) Except in so far as the instrument of delegation otherwise provides, a person to whom a function has been delegated under subsection (1) may authorise another person to perform the function so delegated.

### 32 Regulations

- (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed to carry this Act into effect or to give effect to any power, function, duty or authority under this Act.
- (2) Without limiting the generality of subsection (1) the regulations may prescribe:
  - (a) the fees (not exceeding \$500) to be paid under this Act to the Commissioner,
  - (b) the conditions under and subject to which fees may be waived by the Commissioner or the Minister,
  - (c) the imposition of additional fees on the late lodgment of documents,
  - (d) (Repealed)
  - (e) the duties of the Commissioner for the purposes of this Act, and
  - (f) generally the conduct and regulation of registration under this Act.
- (3) The regulations may prescribe penalties not exceeding 0.5 penalty unit for any breach thereof.
- (4) (Repealed)

### Schedule 1 Repeals

(Section 3)

Number of Act	Title of Act	Extent of repeal
Act No 50, 1934	<a href="#">Business Names Act 1934</a>	The whole
Act No 35, 1937	<a href="#">Statute Law Revision Act 1937</a>	So much of the Second Schedule as amended section 20 of Act No 50 of 1934

## **Schedule 2 Savings and transitional provisions**

(Section 3 (6))

### **Business Names (Amendment) Act 1989**

#### **1 Business names not using English alphabet etc**

Section 5B does not apply to a business name registered under this Act before the commencement of that section and that section does not prevent any renewal of the registration of such a business name.