



Business Names Registration Act 2011

No. 126, 2011

An Act in relation to business names, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Business Names Registration Act 2011

No. 126, 2011

An Act in relation to business names, and for related purposes

[Assented to 3 November 2011]

The Parliament of Australia enacts:

Business Names Registration Act 2011 No. 126, 2011 1

Part 1—Preliminary

Division 1—Introduction

1 Short title

This Act may be cited as the *Business Names Registration Act 2011*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	3 November 2011
2. Sections 3 to 17	A single day to be fixed by Proclamation.	20 April 2012 (see F2012L00891)
3. Part 2	A single day to be fixed by Proclamation.	28 May 2012 (see F2012L00891)
4. Section 22	At the same time as the provision(s) covered by table item 2.	20 April 2012
5. Sections 23 to 36	At the same time as the provision(s) covered by table item 3.	28 May 2012
6. Section 37	At the same time as the provision(s) covered by table item 2.	20 April 2012

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
7. Sections 38 to 62	At the same time as the provision(s) covered by table item 3.	28 May 2012
8. Sections 63 to 90	At the same time as the provision(s) covered by table item 2.	20 April 2012
9. Schedule 1	At the same time as the provision(s) covered by table item 2.	20 April 2012

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

Division 2—Definitions

3 Dictionary

In this Act:

ABN for an entity means the entity's ABN as shown in the Australian Business Register.

affected Territory means:

- (a) the Australian Capital Territory; and
- (b) the Northern Territory; and
- (c) the Jervis Bay Territory; and
- (d) the Territory of Christmas Island; and
- (e) the Territory of Cocos (Keeling) Islands.

application fee, for an application by an entity for an extract of the Business Names Register, means the fee imposed under the *Business Names Registration (Fees) Act 2011* in relation to such an application.

ASIC means the Australian Securities and Investments Commission.

ASIC Act means the *Australian Securities and Investments Commission Act 2001*.

ASIC member means a member of ASIC (as defined for the purposes of the ASIC Act).

Australia, when used in a geographical sense, includes the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include any other external Territory.

Australian Business Register means the register established under section 24 of the *A New Tax System (Australian Business Number) Act 1999*.

available: a business name is **available** to an entity in the circumstances set out in:

- (a) section 25 and subsection 31(3) of this Act; and
- (b) item 21 of Schedule 1 to the Transitional Act.

business has the meaning given by section 4.

business day means a day that is not a Saturday, a Sunday, a public holiday or a bank holiday in a referring/adopting State or an affected Territory.

business name means a name used, or to be used, in relation to one or more businesses.

Business Names Register means the register established and maintained under section 22.

carrying on a business includes doing anything in the course of the commencement or termination of the business.

Commonwealth Minister means the Minister.

company means a body registered as a company under the *Corporations Act 2001*.

consent application means an application for registration of a business name that includes a statement that the entity to whom the business name is currently registered has consented to the registration of the business name to the applicant.

court means any court.

disqualified: an entity is **disqualified** in the circumstances specified in section 32.

entity has the meaning given by section 5.

entity on whose application a decision is reviewable means an entity on whose application the decision is reviewable under section 56.

Federal Court means the Federal Court of Australia.

government body has the meaning given by subsection 11(3).

Section 3

identical: means identical under rules made by the Minister under section 26.

intelligence or security agency has the meaning given by section 85ZL of the *Crimes Act 1914*.

nearly identical: means nearly identical under rules made by the Minister under section 26.

non-entity joint venture means an arrangement that the Commissioner of Taxation is satisfied is a contractual arrangement:

- (a) under which 2 or more parties undertake an economic activity that is subject to the joint control of the parties; and
- (b) that is entered into to obtain individual benefits for the parties, in the form of a share of the output of the arrangement rather than joint or collective profits for all the parties.

notified State/Territory register has the meaning given by section 6.

notified successor, in relation to a business name, means an entity entered on the Business Names Register under subsection 40(4) as a notified successor in relation to the business name.

priority: an entity has **priority** over a business name in the circumstances set out in section 29.

referring/adopting State has the meaning given by section 8.

registered owner, in relation to a registered trade mark, has the meaning given by section 6 of the *Trade Marks Act 1995*.

registered trade mark has the meaning given by section 6 of the *Trade Marks Act 1995*.

registration fee, for the registration of a business name to an entity, means the fee imposed under the *Business Names Registration (Fees) Act 2011* in relation to the registration.

renewal fee, for the renewal of the registration of a business name to an entity, means the fee imposed under the *Business Names Registration (Fees) Act 2011* in relation to the renewal.

reviewable: a decision is **reviewable** if it is reviewable under section 56.

staff member has the same meaning as in the ASIC Act.

State, when used in a geographical sense, includes the coastal sea of the State.

superannuation fund has the same meaning as in the *Income Tax Assessment Act 1997*.

Territory, when used in a geographical sense, includes the coastal sea of the Territory.

this Act includes instruments made under this Act.

Transitional Act means the *Business Names Registration (Transitional and Consequential Provisions) Act 2011*, and includes instruments made under that Act.

4 Business

- (1) **Business** means an activity, or series of activities, done:
 - (a) in the form of a profession, a trade, employment, a vocation or a calling; or
 - (b) in the form of an adventure or concern in the nature of trade; or
 - (c) on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property.
- (2) **Business** does not include an activity, or a series of activities, done in circumstances in which an entity doing that activity or series of activities in, or in connection with, Australia would not be entitled to an ABN.

5 Entities

- (1) **Entity** means any of the following:
 - (a) an individual;
 - (b) a body corporate;
 - (c) a corporation sole;

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- (d) a body politic;
- (e) a partnership;
- (f) any other unincorporated association or body of persons;
- (g) a trust;
- (h) a superannuation fund.

Note: The term *entity* is used in a number of different but related senses. It covers all kinds of legal persons. It also covers groups of legal persons, and other things, that in practice are treated as having a separate identity in the same way as a legal person does.

- (2) Paragraph (1)(f) does not include a non-entity joint venture.
- (3) The trustee of a trust or of a superannuation fund is taken to be an *entity* consisting of the person who is the trustee, or the persons who are the trustees, at any given time.

Note: This is because a right or obligation cannot be conferred or imposed on an entity that is not a legal person.

- (4) A legal person can have a number of different capacities in which the person does things. In each of those capacities, the person is taken to be a different *entity*.

Example: In addition to his or her personal capacity, an individual may be:

- (a) sole trustee of one or more trusts; and
- (b) one of a number of trustees of a further trust.

In his or her personal capacity, he or she is one entity. As trustee of each trust, he or she is a different entity. The trustees of the further trust are a different entity again, of which the individual is a member.

- (5) If a provision refers to an *entity* of a particular kind, it refers to the entity in its capacity as that kind of entity, not to that entity in any other capacity.

Example: A provision that refers to a company does not cover a company in a capacity as trustee, unless it also refers to a trustee.

6 Notified State/Territory registers

- (1) A register is a *notified State/Territory register* if:
 - (a) the register is maintained under the law of a referring/adopting State or an affected Territory; and

- (b) notice of the names of entities entered on the register is received by ASIC in electronic form from that State or Territory, and updated electronically from time to time to reflect changes in the register; and
 - (c) the register is specified, or of a kind specified, in Schedule 1 to this Act.
- (2) Schedule 1 to this Act has effect subject to any modifications made by the regulations to reflect changes in the registers, or kinds of registers, maintained by the States and Territories.
- (3) If a Minister of a referring/adopting State or of an affected Territory notifies the Commonwealth Minister in writing of a proposed modification to Schedule 1, the Commonwealth Minister must consult with all other referring/adopting States and affected Territories about the proposed modification.
- (4) In this section:
modifications include additions, omissions and substitutions.

Division 3—Constitutional basis and application of this Act and the Transitional Act

7 Constitutional basis for this Act and the Transitional Act

Application in a referring/adopting State

- (1) The application of this Act and the Transitional Act in a referring/adopting State is based on:
 - (a) the legislative powers that the Commonwealth Parliament has under the Constitution (other than paragraph 51(xxxvii)); and
 - (b) the legislative powers that the Commonwealth Parliament has because of a reference or an adoption by the Parliament of the referring/adopting State under paragraph 51(xxxvii) of the Constitution.

Application in a Territory

- (2) The application of this Act and the Transitional Act in the affected Territories is based on:
 - (a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of the Territory; and
 - (b) the other legislative powers that the Commonwealth Parliament has under the Constitution.

Despite the *Acts Interpretation Act 1901*, this Act and the Transitional Act as applying in the affected Territory are laws of the Commonwealth.

Application outside Australia

- (3) The operation of this Act and the Transitional Act outside Australia is based on:
 - (a) the legislative power the Commonwealth Parliament has under paragraph 51(xxix) of the Constitution; and

- (b) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of a Territory; and
- (c) the other legislative powers that the Commonwealth Parliament has under the Constitution.

8 Meaning of *referring/adopting State*

Meaning of referring/adopting State

- (1) A State is a ***referring/adopting State*** if, for the purposes of paragraph 51(xxxvii) of the Constitution, the Parliament of the State:
 - (a) has referred the matters covered by subsections (3) and (4) to the Parliament of the Commonwealth; or
 - (b) has:
 - (i) adopted the initial version of this Act and the initial version of the Transitional Act; and
 - (ii) referred the matters covered by subsection (4) to the Parliament of the Commonwealth.
- (2) A State is a ***referring/adopting State*** even if a law of the State provides that:
 - (a) the reference to the Parliament of the Commonwealth of a matter covered by subsection (3) or (4) is to terminate in particular circumstances; or
 - (b) the adoption of the initial version of this Act or the initial version of the Transitional Act is to terminate in particular circumstances; or
 - (c) the reference to the Parliament of the Commonwealth of a matter covered by subsection (3) or (4) has effect only:
 - (i) if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under section 51(xxxvii) of the Constitution); or
 - (ii) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.

Reference covering the initial versions of this Act and the Transitional Act

- (3) This subsection covers the matters to which the referred provisions relate to the extent of making laws with respect to those matters by including the referred provisions in the initial version of this Act and the initial version of the Transitional Act.

Reference covering amendments of this Act or the Transitional Act

- (4) This subsection covers the referred business names matters to the extent of the making of laws with respect to those matters by making express amendments of this Act or the Transitional Act.

Effect of terminating reference or adoption of initial versions

- (5) A State ceases to be a **referring/adopting State** if:
- (a) in the case where the Parliament of the State has referred to the Parliament of the Commonwealth the matters covered by subsection (3)—that reference terminates; or
 - (b) in the case where the Parliament of the State has adopted the initial version of this Act and the initial version of the Transitional Act—the adoption of the initial version of this Act or the initial version of the Transitional Act terminates.

Effect of terminating amendment reference

- (6) A State ceases to be a **referring/adopting State** if:
- (a) the State's amendment reference terminates; and
 - (b) subsection (7) does not apply to the termination.
- (7) A State does not cease to be a **referring/adopting State** because of the termination of its amendment reference if:
- (a) the termination is effected by the Governor of that State fixing a day by Proclamation as the day on which the reference terminates; and
 - (b) the day fixed is no earlier than the first day after the end of the period of 6 months beginning on the day on which the Proclamation is published; and

- (c) that State's amendment reference, and the amendment reference of every other State, terminates on the same day.

Definitions

- (8) In this section:

amendment reference of a State means the reference by the Parliament of the State to the Parliament of the Commonwealth of the matters covered by subsection (4).

express amendment of this Act or the Transitional Act means the direct amendment of the text of this Act or the Transitional Act (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has, or will have, substantive effect otherwise than as part of the text of this Act or the Transitional Act.

initial version of the Transitional Act means the Transitional Act as originally enacted.

initial version of this Act means this Act as originally enacted.

referred business names matter has the meaning given by section 9.

referred provisions means:

- (a) the initial version of this Act; and
 - (b) the initial version of the Transitional Act;
- to the extent to which they deal with matters that are included in the legislative powers of the Parliaments of the States.

9 Meaning of *referred business names matter*

- (1) Each of the following matters is a ***referred business names matter***:
- (a) the registration of business names;
 - (b) the regulation of the use of business names to assist entities who engage with an entity carrying on a business under a business name to identify the entity;

- (c) the regulation of the use of business names to assist entities who engage with an entity carrying on a business under a business name to contact the entity;
 - (d) the regulation of the use of business names to reduce the risks that arise from an entity carrying on a business under a name that is not the entity's own;
 - (e) the prohibition or restriction of the use of business names that are undesirable, offensive or confusing;
 - (f) the prohibition or restriction of the use of business names by an entity because:
 - (i) the entity has engaged in unlawful conduct; or
 - (ii) a person involved in the management of the entity has engaged in unlawful conduct.
- (2) However, none of the following matters is a *referred business names matter*:
- (a) the imposition of a restriction on a government body affecting the ability of the body to carry on business under a name;
 - (b) the imposition of a restriction on an entity affecting the ability of the entity to carry on business under a name that is registered to the entity on a notified State/Territory register;
 - (c) the imposition of a restriction on an entity affecting the ability of the entity to carry on business under a name that is specified as the name of the entity in an Act of a State, or an instrument made under such an Act;
 - (d) the imposition of an obligation on a government body to include a name in a communication or to display a name;
 - (e) the imposition of an obligation on an entity to include in a communication, or to display, a name that is registered to the entity on a notified State/Territory register;
 - (f) the imposition of an obligation on an entity to include in a communication, or to display, a name that is specified as the name of the entity in an Act of a State, or an instrument made under such an Act;
 - (g) the omission of an exemption provision without the insertion of an equivalent provision, or the imposition of a limitation on the operation of an exemption provision;

(h) any matter relating to the imposition or payment of taxes under an Act of a State, or an instrument made under such an Act.

(3) In this section:

exemption provision means a provision in the terms, or substantially in the terms, of subsection 19(5) or 20(3).

10 General application of this Act and the Transitional Act

Application in this jurisdiction

(1) Each provision of this Act and the Transitional Act applies in this jurisdiction.

Geographical coverage of this jurisdiction

(2) **This jurisdiction** means the geographical area that consists of:
(a) each referring/adopting State (including its coastal sea); and
(b) each affected Territory (including its coastal sea).

11 Government bodies not liable to prosecution

- (1) A government body that carries on a business under a business name:
- (a) is not liable to be prosecuted for an offence against this Act or the Transitional Act; and
 - (b) is not subject to proceedings for an injunction or any other remedy in relation to conduct that would constitute an offence against this Act or the Transitional Act.
- (2) However, nothing in this Act or the Transitional Act prevents the registration of a business name to a government body if the provisions of this Act or the Transitional Act are otherwise satisfied.
- (3) Each of the following is a **government body**:
- (a) the Commonwealth;
 - (b) a referring/adopting State;

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- (c) an affected Territory;
- (d) an agency or authority of the Commonwealth;
- (e) an agency or authority of a referring/adopting State or an affected Territory;
- (f) an agency or authority of the Commonwealth and any of the referring/adopting States and the affected Territories, acting jointly;
- (g) an agency or authority of any 2 or more of the referring/adopting States and affected Territories, acting jointly;
- (h) a local government body.

Division 4—Interaction between business names legislation and State and Territory laws

12 Concurrent operation intended

- (1) This Act and the Transitional Act (the *business names legislation*) are not intended to exclude or limit the concurrent operation of any law of a referring/adopting State or an affected Territory.
- (2) Without limiting subsection (1), the business names legislation is not intended to exclude or limit the concurrent operation of a law that:
 - (a) requires or permits a word or expression to be used by an entity or class of entities; or
 - (b) prohibits or restricts the use of a word or expression by an entity or class of entities; or
 - (c) relates to the accreditation or licensing of an entity that carries on a business; or
 - (d) makes provision for the conversion of one body into another or the amalgamation of bodies; or
 - (e) imposes obligations on an entity or class of entities that are in addition to obligations imposed under this Act; or
 - (f) makes provision in relation to a notified State/Territory register; or
 - (g) specifies a name as the name of an entity.
- (3) This section does not apply to a law of a referring/adopting State or an affected Territory if there is a direct inconsistency between that law and the business names legislation.

Note: Section 14 avoids direct inconsistency arising in some cases by limiting the operation of the business names legislation.

13 When business names legislation does not apply

- (1) Subsection (2) applies if a provision of a law of a referring/adopting State or an affected Territory declares a matter

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Section 14

to be an excluded matter for the purposes of this section in relation to:

- (a) the whole of the business names legislation; or
 - (b) a specified provision of the business names legislation; or
 - (c) the business names legislation other than a specified provision; or
 - (d) the business names legislation otherwise than to a specified extent.
- (2) By force of this subsection:
- (a) none of the provisions of the business names legislation (other than this section) applies in or in relation to the State or Territory with respect to the matter if the declaration is one to which paragraph (1)(a) applies; and
 - (b) the specified provision of the business names legislation does not apply in or in relation to the State or Territory with respect to the matter if the declaration is one to which paragraph (1)(b) applies; and
 - (c) the provisions of the business names legislation (other than this section and the specified provisions) do not apply in or in relation to the State or Territory with respect to the matter if the declaration is one to which paragraph (1)(c) applies; and
 - (d) the provisions of the business names legislation (other than this section and otherwise than to the specified extent) do not apply in or in relation to the State or Territory with respect to the matter if the declaration is one to which paragraph (1)(d) applies.
- (3) Subsection (2) does not apply to the declaration to the extent to which the regulations provide that that subsection does not apply to that declaration.

14 Avoiding direct inconsistency between Commonwealth and State and Territory laws

This section overrides other business names legislation

- (1) This section has effect despite anything else in the business names legislation.

When this section does not apply to a referring/adopting State or Territory law

- (2) This section does not apply to a provision of a law of a referring/adopting State or an affected Territory that is capable of concurrent operation with the business names legislation.

Note: This kind of provision is dealt with by section 12.

When this section applies to a referring/adopting State or Territory law

- (3) This section applies to the interaction between a provision (the **displacement provision**) of a law of a referring/adopting State or an affected Territory and a provision (the **Commonwealth provision**) of the business names legislation only if the displacement provision is declared by a law of the State or Territory to be a business names legislation displacement provision for the purposes of this section (either generally or specifically in relation to the Commonwealth provision).

Effect of displacement provision

- (4) The Commonwealth provision does not:
- (a) prohibit the doing of an act; or
 - (b) impose a liability (whether civil or criminal) for doing an act;
- if the displacement provision specifically permits, authorises or requires the doing of that act.
- (5) The Commonwealth provision does not operate in or in relation to the State or Territory to the extent necessary to ensure that no inconsistency arises between:
- (a) the Commonwealth provision; and
 - (b) the displacement provision to the extent to which the displacement provision would, apart from this subsection, be inconsistent with the Commonwealth provision.

Note 1: The displacement provision is not covered by this subsection if subsection (4) applies to the displacement provision: if that subsection applies there would be no potential inconsistency to be dealt with by this subsection.

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Division 4 Interaction between business names legislation and State and Territory laws

Section 15

Note 2: The operation of the displacement provision will be supported by section 12 to the extent to which it can operate concurrently with the Commonwealth provision.

- (6) Subsections (4) and (5) do not apply in relation to the displacement provision to the extent to which the regulations provide that those subsections do not apply in relation to the displacement provision.

15 Regulations to deal with interaction between laws

- (1) The regulations may modify the operation of the business names legislation so that:
- (a) provisions of the business names legislation do not apply to a matter that is dealt with by a law of a referring/adopting State or an affected Territory specified in the regulations; or
 - (b) no inconsistency arises between the operation of a provision of the business names legislation and the operation of a provision of a law of a referring/adopting State or an affected Territory specified in the regulations.
- (2) Without limiting subsection (1), regulations made for the purposes of that subsection may provide that a provision of the business names legislation:
- (a) does not apply to:
 - (i) a person specified in the regulations; or
 - (ii) a body specified in the regulations; or
 - (iii) circumstances specified in the regulations; or
 - (iv) a person or body specified in the regulations in the circumstances specified in the regulations; or
 - (b) does not prohibit an act to the extent to which the prohibition would otherwise give rise to an inconsistency with a law of a referring/adopting State or an affected Territory; or
 - (c) does not require a person to do an act to the extent to which the requirement would otherwise give rise to an inconsistency with a law of a referring/adopting State or an affected Territory; or
 - (d) does not authorise a person to do an act to the extent to which the conferral of that authority on the person would otherwise give rise to an inconsistency with a law of a referring/adopting State or an affected Territory; or
-

- (e) does not impose an obligation on a person to the extent to which complying with that obligation would require the person not to comply with an obligation imposed on the person under a law of a referring/adopting State or an affected Territory; or
- (f) authorises a person to do something for the purposes of the business names legislation that the person:
 - (i) is authorised to do under a law of a referring/adopting State or an affected Territory; and
 - (ii) would not otherwise be authorised to do under the business names legislation; or
- (g) will be taken to be satisfied if a law of a referring/adopting State or an affected Territory is satisfied.

Division 5—Objects of this Act and consequences of registration

16 Objects of this Act

- (1) The objects of this Act are:
 - (a) to ensure that if an entity carries on a business under a business name, those who engage or propose to engage with that business can identify the entity and how the entity may be contacted; and
 - (b) to remove the inconvenience caused by the registration of business names under the law of more than one jurisdiction within Australia.
- (2) These objects are achieved by requiring an entity that intends to carry on a business under a business name to register the business name on a nationally established and maintained register of business names.
- (3) The objects of this Act are also:
 - (a) to avoid confusion by ensuring that business names that are identical or nearly identical are not registered; and
 - (b) to ensure that business names that are undesirable (for example, because they are offensive) are not registered; and
 - (c) to ensure that business names that should be restricted for any other reason (for example, because they might mislead consumers) are not registered.
- (4) The objects mentioned in subsection (3) are achieved by rules dealing with the availability of business names.

17 Consequences of registration of a business name

- (1) The registration of a business name does not affect the rights of any entity in relation to the business name, or a word or an expression that constitutes or is included in the business name, under the law of the Commonwealth or of a State or Territory, or under the general law.

- (2) An entity does not acquire property in a business name, or in a word or an expression that constitutes or is included in a business name, because the name is registered to the entity under this Act or the Transitional Act.

Part 2—Offences relating to business names

18 Offence—carrying on a business under an unregistered business name

- (1) An entity commits an offence if:
- (a) the entity carries on a business under a name; and
 - (b) the name is not registered to the entity as a business name on the Business Names Register.

Penalty: 30 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the entity is an individual and the name is the individual's name; or
 - (b) the entity is a corporation and the name is the corporation's name; or
 - (c) the entity is a partnership and the name consists of all of the partners' names; or
 - (d) the name is registered to the entity on a notified State/Territory register; or
 - (e) an Act of the Commonwealth, a referring/adopting State or an affected Territory, or an instrument made under such an Act, specifies the name as the name of the entity; or
 - (f) the entity is a government body; or
 - (g) the entity is a notified successor in relation to the name; or
 - (h) other circumstances prescribed by the regulations for the purposes of this paragraph apply.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

19 Offence—must include business name in written communications

- (1) An entity commits an offence if:
- (a) the entity carries on a business under a business name; and
 - (b) the entity communicates in writing with another entity; and
 - (c) that communication is a business document connected with carrying on the business under the name; and
 - (d) the entity does not include clearly legible business names information in the document.

Penalty: 5 penalty units.

- (2) ***Business names information*** means the name and, if the entity has an ABN, the entity's ABN, where the business document is of one of the following kinds:
- (a) a document that is lodged with ASIC;
 - (b) a statement of account (including an invoice);
 - (c) a receipt;
 - (d) an order for goods or services;
 - (e) a cheque;
 - (f) a promissory note or bill of exchange;
 - (g) an offer to provide goods or services (rather than an invitation to treat).
- (3) In any other case, ***business names information*** means the name.
- (4) Subsection (1) does not apply if:
- (a) the entity is an individual and the name is the individual's name; or
 - (b) the entity is a corporation and the name is the corporation's name; or
 - (c) the entity is a partnership and the name consists of all of the partners' names; or
 - (d) the name is registered to the entity on a notified State/Territory register; or
 - (e) an Act of the Commonwealth, a referring/adopting State or an affected Territory, or an instrument made under such an Act, specifies the name as the name of the entity; or
 - (f) the entity is a government body; or

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- (g) the entity is a notified successor in relation to the name; or
 - (h) the Minister has exempted the entity from the requirement in relation to the business and the business name, under subsection (6); or
 - (i) other circumstances prescribed by the regulations for the purposes of this paragraph apply.
- (5) Subsection (1) does not require an entity to include a name or the entity's ABN in a written communication in circumstances where:
- (a) it would be contrary to the law of the Commonwealth or of a referring/adopting State or an affected Territory to include the name or the entity's ABN in the communication; or
 - (b) the inclusion of the name in the communication would directly or indirectly give rise to a representation that would be contrary to the law of the Commonwealth or of a referring/adopting State or an affected Territory; or
 - (c) the use of the name by the entity would be contrary to the law of the Commonwealth or of a referring/adopting State or an affected Territory.

Note 1: A defendant bears an evidential burden in relation to the matters in subsections (4) and (5): see subsection 13.3(3) of the *Criminal Code*.

Note 2: As an example, the use of a name would be contrary to the law of a referring/adopting State or an affected Territory if the law of that jurisdiction provided that the name could not be used without the consent of a relevant authority and that consent was not obtained.

- (6) The Minister may, by determination in writing, exempt an entity from the requirement to include a name or the entity's ABN in a written communication in connection with a specified business carried on under a specified business name, if the Minister is satisfied that the inclusion of that information in a written communication would create a serious risk to:
- (a) public safety; or
 - (b) significant infrastructure such as:
 - (i) transport infrastructure; or
 - (ii) energy infrastructure; or
 - (iii) communications infrastructure; or
 - (iv) water infrastructure.

The determination is not a legislative instrument.

(7) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

20 Offence—must display business name at places open to public

(1) An entity commits an offence if:

- (a) the entity carries on a business under a business name; and
- (b) the entity does not display the name prominently at every place at which the entity carries on the business that is open to the public.

Penalty: 5 penalty units.

(2) Subsection (1) does not apply if:

- (a) the entity is an individual and the name is the individual's name; or
- (b) the entity is a corporation and the name is the corporation's name; or
- (c) the entity is a partnership and the name consists of all of the partners' names; or
- (d) the name is registered to the entity on a notified State/Territory register; or
- (e) an Act of the Commonwealth, a referring/adopting State or an affected Territory, or an instrument made under such an Act, specifies the name as the name of the entity; or
- (f) the entity is a government body; or
- (g) the entity is a notified successor in relation to the name; or
- (h) the Minister has exempted the entity from the requirement in relation to the business name and the place, under subsection (4); or
- (i) other circumstances prescribed by the regulations for the purposes of this paragraph apply.

(3) Subsection (1) does not require an entity to display a name at a place in circumstances where:

- (a) it would be contrary to the law of the Commonwealth or of a referring/adopting State or an affected Territory to display the name at that place; or

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- (b) displaying the name at the place would directly or indirectly give rise to a representation that would be contrary to the law of the Commonwealth or of a referring/adopting State or an affected Territory; or
- (c) the use of the name by the entity would be contrary to the law of the Commonwealth or of a referring/adopting State or an affected Territory.

Note 1: A defendant bears an evidential burden in relation to the matters in subsections (2) and (3): see subsection 13.3(3) of the *Criminal Code*.

Note 2: As an example, the law of a referring/adopting State or an affected Territory may prohibit advertising in relation to gambling. A sign relating to gambling would not therefore be required to be displayed under this Act.

- (4) The Minister may, by determination in writing, exempt an entity from the requirement to display a specified name at a specified place, if the Minister is satisfied that the display of that name at that place would create a serious risk to:
 - (a) public safety; or
 - (b) significant infrastructure such as:
 - (i) transport infrastructure; or
 - (ii) energy infrastructure; or
 - (iii) communications infrastructure; or
 - (iv) water infrastructure.

The determination is not a legislative instrument.

- (5) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

21 Offence—carrying on a business under a business name while disqualified

- (1) An entity commits an offence if it carries on a business under a business name while disqualified.

Penalty: 30 penalty units.

- (2) Subsection (1) does not apply if:
 - (a) the entity is an individual and the name is the individual's name; or

- (b) the entity is a corporation and the name is the corporation's name; or
- (c) the entity is a partnership and the name consists of all of the partners' names; or
- (d) the name is registered to the entity on a notified State/Territory register; or
- (e) an Act of the Commonwealth, a referring/adopting State or an affected Territory, or an instrument made under such an Act, specifies the name as the name of the entity; or
- (f) the entity is a government body; or
- (g) the entity is a notified successor in relation to the name; or
- (h) other circumstances prescribed by the regulations for the purposes of this paragraph apply.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Part 3—Registering a business name

22 The Business Names Register

- (1) ASIC must establish and maintain a Business Names Register.
- (2) The purpose of the Business Names Register is to enable those who engage or propose to engage with a business carried on under a business name to identify the entity carrying on the business and how the entity may be contacted.
- (3) The Business Names Register may be kept in any form that ASIC considers appropriate.
- (4) The Business Names Register is not a legislative instrument.

23 Application to register a business name

- (1) An entity that intends to carry on a business under a name may lodge with ASIC an application for the name to be registered to the entity as a business name.

Note: Under section 18, it is an offence to carry on a business under an unregistered business name.

- (2) The application must:
 - (a) include:
 - (i) details sufficient to identify the entity; and
 - (ii) the entity's ABN or, if an application for an ABN is pending, a statement to that effect and the reference number for the ABN application; and
 - (iii) the address of the entity's principal place of business in Australia; and
 - (iv) an address in Australia for service of documents; and
 - (v) the business name to which the application relates; and
 - (b) specify the period for which registration is sought; and
 - (c) specify whether the entity is disqualified.

- (3) The application:
 - (a) must be in the prescribed form; and
 - (b) must be lodged in the prescribed manner.
- (4) The applicant must pay the registration fee.
- (5) If an application for registration of a business name is lodged with ASIC by post, it is taken to have been lodged with ASIC immediately after the end of the period of 5 business days beginning on the day on which it is received by ASIC.
- (6) The prescribed form for an application for registration of a business name must require the applicant to provide details of a person's date and place of birth if it is necessary for or directly related to the purposes of:
 - (a) identifying the entity to whom the business name is to be registered; or
 - (b) determining whether the entity is disqualified.

24 Decision to register a business name to an entity

- (1) ASIC must register the business name to the entity if ASIC is satisfied that:
 - (a) the entity has an ABN; and
 - (b) the registration fee has been paid; and
 - (c) the name is available to the entity; and
 - (d) the entity is not disqualified.
- (2) ASIC may request the entity in writing to give ASIC, within the period specified in the request, information or a document that is of a kind specified in the request and that ASIC needs to be satisfied of the matters mentioned in subsection (1).
- (3) If the entity does not comply with the request within the time specified, ASIC may refuse the application.
- (4) Subsection (3) does not limit the grounds on which ASIC may refuse an application to register a business name to an entity.

25 Is a business name *available* to an entity?

A business name is *available* to an entity if:

- (a) the name is not identical or nearly identical to:
 - (i) a business name registered to another entity; or
 - (ii) a name that is reserved or registered under the *Corporations Act 2001* for another body; or
 - (iii) a name that is registered to another entity on a notified State/Territory register; or
 - (iv) if ASIC receives notice electronically from a referring/adopting State or an affected Territory of the name of a government body and the entity is not that body—that name; or
 - (v) if ASIC receives notice electronically from a referring/adopting State or an affected Territory that an Act of the State or Territory, or an instrument made under such an Act, specifies a name as the name of another entity—that name; or
 - (vi) if ASIC receives notice electronically from a Commonwealth government body of the name of that body and the entity is not that body—that name; or
 - (vii) if ASIC receives notice electronically from a body that an Act of the Commonwealth, or an instrument made under such an Act, specifies a name as the name of that body and the entity is not that body—that name; and
- (b) a name that is identical or nearly identical is not held under section 54 or a provision of the Transitional Act; and
- (c) no other entity has priority over a name that is identical or nearly identical; and
- (d) either:
 - (i) the name is not of a kind that is undesirable; or
 - (ii) the name is of a kind that is undesirable but the Minister has determined under subsection 27(2) that the name is available to the entity; and
- (e) either:
 - (i) the name is not constituted by, and does not include, a restricted word or expression; or

- (ii) the name is constituted by or includes a word or expression that is restricted unless a condition is satisfied, and the entity satisfies the condition.

26 Identical or nearly identical names

The Minister may, by legislative instrument, make rules for determining whether a name is *identical* or *nearly identical* to another name.

27 Undesirable names

- (1) The Minister may, by legislative instrument, determine the kinds of name that are undesirable for the purposes of this Act.
- (2) The Minister may determine in writing that a business name specified in the determination is to be available to an entity specified in the determination, even though the name is of a kind that is undesirable.
- (3) A determination under subsection (2) is not a legislative instrument.
- (4) The Minister must, at least 28 days before revoking a determination made under subsection (2), give notice in writing to the entity specified in the determination:
 - (a) informing the entity of the Minister's intention to revoke the determination; and
 - (b) setting out the Minister's reasons for revoking the determination.

28 Restricted words and expressions

- (1) The Minister may, by legislative instrument, determine that a word or expression specified in the determination:
 - (a) is restricted; or
 - (b) is restricted in relation to a specified class of entity or business unless a condition or conditions specified in the determination are met.

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- (2) The Minister may determine in writing that a word or expression specified in the determination is restricted in relation to a specified entity or a specified business unless a condition or conditions specified in the determination are met.
- (3) A determination under subsection (2) is not a legislative instrument.

29 Priority

- (1) Where:
 - (a) 2 or more applications are lodged with ASIC for registration of business names that are identical or nearly identical; and
 - (b) none of the applications is a consent application;the applications take priority in the order in which they are lodged.
- (2) To avoid doubt, the priority of an entity over a business name is not affected by the fact that an ABN application by the entity is pending.
- (3) If an entity's application for registration of a business name to the entity is refused, the entity's priority over the business name is not affected during the review period in relation to that decision.
- (4) The *review period*, in relation to a decision to refuse an application by an entity for the registration of a business name to the entity, is:
 - (a) a period of 28 days beginning on the day on which the entity is notified of the decision; or
 - (b) if ASIC determines a longer period under subsection (5)—that longer period.
- (5) ASIC may determine in writing a longer review period. The determination is not a legislative instrument.
- (6) ASIC must give a copy of the determination to the applicant.
- (7) ASIC may refuse 2 or more applications for registration of business names that are identical or nearly identical if all of the applications take the same priority.

30 Refusal for failure to pay registration fee on time

- (1) This section applies if an entity lodges with ASIC an application for the registration of a business name to the entity, but the entity does not pay the registration fee when the application is lodged.
- (2) The application is taken to have been refused if the registration fee is not paid before the end of the fee payment period.
- (3) The *fee payment period* begins at the time at which the application is lodged and ends immediately before that time on the day 10 business days after the day on which the application is lodged.

31 Consent applications*Consent of holder of the business name to registration by another entity*

- (1) An entity to whom a business name is registered may, by notice in accordance with subsection (2), consent to the registration of the business name to another entity.

Note: So if, for example, the entity to whom the business name is registered uses the business name in relation to a business that is then sold, the entity might also consent to the business name being registered to the purchaser.

Prescribed manner and form

- (2) The consent notice:
 - (a) must be in the prescribed form; and
 - (b) must be lodged in the prescribed manner.

Availability of business name

- (3) If:
 - (a) an application under section 23 for registration of a business name to an entity (the *applicant*) is lodged with ASIC; and
 - (b) each of the following notices is lodged with ASIC:
 - (i) a notice under subsection (1) by the entity to whom the business name is registered consenting to the registration of the business name to the applicant;

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- (ii) a notice under subsection 42(1) by the entity to whom the business name is registered requesting ASIC to cancel the registration of the business name to the entity;

the business name is taken to be *available* to the applicant.

Potential applicant may carry on a business

- (4) If an entity to whom a business name is registered gives notice under subsection (1) consenting to the registration of the business name to another entity (the *potential applicant*), the potential applicant may notify ASIC in accordance with subsection (5) that the consent has been given.
- (5) The notice:
 - (a) must be in the prescribed form; and
 - (b) must be lodged in the prescribed manner.
- (6) If the potential applicant gives notice under subsection (4), the potential applicant does not commit an offence under subsection 18(1) if the potential applicant carries on a business under the business name during the period of 3 months beginning on the day on which that notice is given.

Note 1: A defendant bears an evidential burden in relation to the matters in subsection (6): see subsection 13.3(3) of the *Criminal Code*.

Note 2: Subsections (4) to (6) allow the potential applicant to trade while an application for registration of a business name is being processed.

32 Disqualified entities

- (1) An entity is *disqualified* if:
 - (a) the entity is a person disqualified from managing corporations under subsection 206B(1) of the *Corporations Act 2001* because the person is convicted of an offence; or
 - (b) a person involved in the management of the entity is disqualified from managing corporations under subsection 206B(1) of the *Corporations Act 2001* because the person is convicted of an offence; or
 - (c) the entity is a person who is not disqualified under subsection 206B(1) of the *Corporations Act 2001*, but is convicted of an

- offence against a law of the Commonwealth, a State, a Territory or a foreign country that involves dishonesty and is punishable by imprisonment for at least 3 months; or
- (d) the entity is a person who is not disqualified under subsection 206B(1) of the *Corporations Act 2001*, but is convicted of an offence against the law of a foreign country that is punishable by imprisonment for a period of more than 12 months; or
- (e) a person involved in the management of the entity is not disqualified under subsection 206B(1) of the *Corporations Act 2001*, but is convicted of an offence referred to in paragraph (c) or (d) of this subsection.
- (2) The entity is *disqualified*:
- (a) in a case mentioned in paragraph (1)(a)—during the period for which the entity is disqualified under subsection 206B(2) of the *Corporations Act 2001*; and
- (b) in a case mentioned in paragraph (1)(b)—during the period for which the person involved in the management of the entity is disqualified under subsection 206B(2); and
- (c) in a case mentioned in paragraph (1)(c) or (d):
- (i) if the entity does not serve a term of imprisonment—for a period of 5 years after the day on which the entity is convicted; or
- (ii) if the entity serves a term of imprisonment—for a period of 5 years after the day on which the entity is released from prison; and
- (d) in a case mentioned in paragraph (1)(e):
- (i) if the person involved in the management of the entity does not serve a term of imprisonment—for a period of 5 years after the day on which the person is convicted; or
- (ii) if the person involved in the management of the entity serves a term of imprisonment—for a period of 5 years after the day on which the person is released from prison.
- (3) The Minister may, on application in writing by a person, determine that:
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- (a) where the person is the entity that would otherwise be disqualified—the entity is not disqualified despite the conviction; and
 - (b) where the person is involved in the management of an entity that would otherwise be disqualified—the entity is not disqualified despite the conviction.
- (4) A determination under subsection (3) must be in writing but is not a legislative instrument.

33 Steps taken by ASIC to register a business name to an entity

- (1) ASIC registers a business name to an entity by entering in the Business Names Register:
- (a) details sufficient to identify the entity, including the entity's ABN; and
 - (b) the business name; and
 - (c) the address of the entity's principal place of business in Australia; and
 - (d) an address in Australia for service of documents; and
 - (e) the period for which the business name is registered to the entity, including the time at which, and the day on which, the period starts.
- (2) The registration period for which the business name is registered to the entity must be a period of either 1 year or 3 years, unless an alternative registration period is determined by ASIC under subsection (3) or (4).
- (3) ASIC may determine an alternative registration period for the registration of a business name to an entity if:
- (a) the entity lodges a request with ASIC, in the prescribed form and manner, to have an alternative registration period determined; and
 - (b) the entity is a company; and
 - (c) the alternative registration period would align the day on which the registration period for the registration of the business name to the company would expire with the

company's review date, as defined for the purposes of the *Corporations Act 2001*.

- (4) ASIC may determine an alternative registration period for the registration of a business name (the *new business name*) to an entity if:
 - (a) the entity lodges a request with ASIC, in the prescribed form and manner, to have an alternative registration period determined; and
 - (b) another business name (the *other business name*) is registered to the entity; and
 - (c) the alternative registration period would align the day on which the registration period for the registration of the new business name to the entity would expire with the day on which the registration period for the registration of the other business name to the entity would expire.
- (5) However, an alternative registration period must be:
 - (a) if the registration period would otherwise have been 1 year—of no more than 18 months; and
 - (b) if the registration period would otherwise have been 3 years—of no more than 3 years and 6 months.
- (6) A determination under subsection (3) or (4) must be in writing, but is not a legislative instrument.
- (7) The Business Names Register may include any other details prescribed, but no others.
- (8) ASIC must give the entity notice in writing of:
 - (a) the fact that the business name has been registered to the entity; and
 - (b) the day and time on which the registration took effect; and
 - (c) the other details entered in relation to the business name and the entity in the Business Names Register.

34 Refusal to register

- (1) If ASIC refuses an application for registration of a business name to an entity, it must:
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- (a) give written notice to the applicant of the refusal and the reasons for refusal; and
 - (b) if the applicant has paid the registration fee—refund the registration fee to the applicant.
- (2) If ASIC has not decided an application for registration of a business name to an entity within 28 days after the application is lodged, the entity may, at any time, lodge with ASIC notice that the entity wishes to treat the application as having been refused.
- (3) The notice under subsection (2):
 - (a) must be in the prescribed form; and
 - (b) must be lodged in the prescribed manner.
- (4) If an entity lodges notice under subsection (2):
 - (a) for the purposes of Part 7 (Review), ASIC is taken to have refused the entity's application for registration on the day on which the notice is lodged; and
 - (b) if the entity has paid the registration fee—ASIC must refund the registration fee to the applicant.
- (5) For the purposes of counting the 28 days mentioned in subsection (2), disregard each period (if any):
 - (a) starting on the day when ASIC requests the entity under subsection 24(2) to give ASIC specified information or a specified document; and
 - (b) ending at the end of the day the entity gives ASIC the specified information or specified document.

Part 4—Obligations to give information to ASIC

35 Notifying changes—entity that gives information to ASIC

- (1) If:
 - (a) an entity gives information to ASIC; and
 - (b) the information is recorded in relation to a business name in the Business Names Register; and
 - (c) circumstances change so that the information is no longer correct;the entity must lodge with ASIC notice of the change within 28 days after becoming aware of it.
- (2) The notice:
 - (a) must be in the prescribed form; and
 - (b) must be lodged in the prescribed manner.

36 Obligation to notify ASIC if entity becomes disqualified

- (1) If an entity becomes disqualified after registration of a business name to the entity, the entity must immediately lodge with ASIC notice of the disqualification.
- (2) The notice:
 - (a) must be in the prescribed form; and
 - (b) must be lodged in the prescribed manner.

37 Obligation to give ASIC information if requested

- (1) ASIC may request an entity (other than a government body) to give ASIC information relevant for the purposes of establishing or maintaining the Business Names Register.
- (2) A request under subsection (1) to an entity:
 - (a) is to be made by notice in writing to the entity; and
 - (b) must specify:

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- (i) the information the entity is to give; and
- (ii) the period within which the entity is to give the information.

The period specified under subparagraph (b)(ii) must be of at least 28 days, beginning on the day on which the notice is given.

- (3) If ASIC requests an entity to give information under this section, the entity must comply with the request.

Penalty: 5 penalty units.

- (4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (5) The information must be given by lodging a response with ASIC in the prescribed form and manner.

- (6) If:

- (a) an entity fails to comply with a request given under this section; and
- (b) ASIC reasonably believes that information on the Business Names Register to which the request relates is not correct;

ASIC may delete, correct or annotate the information on the Register.

- (7) If:

- (a) an entity gives ASIC information in purported compliance with a request given under this section; and
 - (b) ASIC reasonably believes that the information is incorrect;
- ASIC may decide not to include the information on the register, or to include the information in a corrected or annotated form.

- (8) If ASIC deletes, decides not to include, corrects or annotates information under subsection (6) or (7), ASIC must give the entity to whom the business name is registered notice in writing:

- (a) setting out the action ASIC has taken; and
- (b) in the case of a correction or annotation, setting out the details of that correction or annotation; and
- (c) giving ASIC's reasons for its decision.

38 Notifying ASIC of bankruptcy, insolvency etc.

- (1) If:
- (a) a business name is registered to an entity; and
 - (b) a person is appointed or authorised to act as a debtor representative of the entity;
- the person must lodge with ASIC notice of that fact in accordance with subsection (2).
- (2) The notice:
- (a) must be given to ASIC within 28 days after the appointment or authorisation; and
 - (b) must identify who (if anyone) will carry on a business under the business name while the person is appointed or authorised; and
 - (c) must be in the prescribed form; and
 - (d) must be lodged in the prescribed manner.
- (3) In this section:

debtor representative means:

- (a) a trustee in bankruptcy; or
- (b) a liquidator within the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*; or
- (c) a receiver; or
- (d) a controller (within the meaning of section 9 of the *Corporations Act 2001*); or
- (e) an administrator appointed to an entity under Division 2 of Part 5.3A of the *Corporations Act 2001*; or
- (f) a person appointed, or authorised, under a law of the Commonwealth, or of a State or Territory, to manage the affairs of an entity because it is unable to pay all its debts as and when they become due and payable; or
- (g) an administrator of a deed of company arrangement executed by the entity; or
- (h) a foreign representative in respect of a foreign proceeding that has been recognised for the purposes of the *Cross-Border Insolvency Act 2008*.

trustee in bankruptcy means:

- (a) in relation to a bankruptcy—the trustee of the estate of the bankrupt; or
- (b) in relation to a composition or scheme of arrangement under Division 6 of Part IV of the *Bankruptcy Act 1966*—the trustee of the composition or scheme of arrangement; or
- (c) in relation to a debtor whose property is subject to control under Division 2 of Part X of the *Bankruptcy Act 1966*—the controlling trustee in relation to the debtor under that Part of that Act; or
- (d) in relation to a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*—the trustee of the agreement; or
- (e) in relation to the estate of a deceased person in respect of which an order has been made under Part XI of the *Bankruptcy Act 1966*—the trustee of the estate.

39 Notifying ASIC of appointment of a legal personal representative

- (1) If:
 - (a) a business name is registered to an entity that is an individual; and
 - (b) the individual dies; and
 - (c) one of the following is granted to a person (the *legal personal representative*):
 - (i) probate of the will of the deceased;
 - (ii) letters of administration of the estate of the deceased;
 - (iii) any other similar grant;

the legal personal representative must lodge with ASIC notice of the grant within 28 days after the grant is made.
- (2) The notice:
 - (a) must be in the prescribed form; and
 - (b) must be lodged in the prescribed manner.
- (3) If ASIC receives notice under this section:
 - (a) ASIC must (if it has not already done so) register the Business Name to the estate of the deceased; and

- (b) enter the details of the legal personal representative on the Business Names Register.

40 Notification by successor in relation to a deceased estate

- (1) If:
 - (a) a business name is registered to an entity that is an individual; and
 - (b) the individual dies; and
 - (c) none of the following has been granted to a person:
 - (i) probate of the will of the deceased;
 - (ii) letters of administration of the estate of the deceased;
 - (iii) any other similar grant; and
 - (d) there are reasonable grounds for concluding that an entity will inherit assets formerly used by the deceased in carrying on a business under the business name;the entity may lodge with ASIC notice of that fact.
- (2) The notice:
 - (a) must be in the prescribed form; and
 - (b) must be lodged in the prescribed manner.
- (3) ASIC must register the Business Name to the estate of the deceased.
- (4) ASIC may enter the name of an entity as a notified successor in relation to a business name, and other prescribed details, if the entity lodges notice with ASIC in accordance with subsections (1) and (2).
- (5) ASIC may refuse to enter the name of an entity as a notified successor in relation to a business name if ASIC is not satisfied that there are reasonable grounds for concluding that the entity will inherit assets formerly used by the deceased in carrying on a business under the business name.
- (6) ASIC must remove the entry for a notified successor in relation to a business name from the Business Names Register if ASIC receives notice in relation to the business name under section 39.

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- (7) If one or more entities is noted on the Business Names Register as a notified successor, ASIC is taken to satisfy an obligation under this Act or the Transitional Act to give notice to the entity to whom the business name is registered if ASIC gives notice to each notified successor.

41 Federal Court may order information be given to ASIC

- (1) If an entity has failed to comply with any provision of this Act or the Transitional Act that requires the entity to lodge with ASIC any information, ASIC may give the entity a written notice requiring the entity to comply with the requirement within 10 business days after the notice is given.
- (2) If the entity does not comply with the notice within that period, the Federal Court may, on an application by ASIC, make an order directing any of the following persons to comply with the requirement or request:
- (a) if the entity is a person—the entity;
 - (b) if the entity is a body corporate—a director, secretary or senior manager of the body corporate;
 - (c) if the entity is a partnership or the trustees of a trust—a partner or trustee;
 - (d) if the entity is an unincorporated association—a member of the committee of management of the association;
 - (e) in the case of a joint venture, an individual who is a joint venture entity or involved in the management of a joint venture entity.
- (3) In paragraph (2)(e), *joint venture* and *joint venture entity* have the same meaning as in Part 10.
- (4) The order may provide that all costs of and incidental to the application are to be borne by the person.

Part 5—Cancelling the registration of a business name

42 Cancellation—request by entity to whom business name is registered

- (1) ASIC must cancel the registration of a business name to an entity if the entity lodges a notice with ASIC requesting ASIC to do so.
- (2) The notice:
 - (a) must be in the prescribed form; and
 - (b) must be lodged in the prescribed manner.
- (3) ASIC must, at least 28 days before cancelling the registration, give notice in writing to the entity informing the entity that ASIC intends to cancel the registration.

43 Cancellation—ASIC becomes aware of matter that would have affected registration decision

- (1) ASIC may cancel the registration of a business name to an entity if:
 - (a) ASIC becomes aware of a matter after the business name is registered to the entity; and
 - (b) ASIC is satisfied that, had it known of the matter at the time the business name was registered to the entity, ASIC would not have registered the business name to the entity; and
 - (c) ASIC is not satisfied that there are exceptional circumstances justifying the continued registration of the business name.
- (2) ASIC must, at least 28 days before cancelling the registration, give notice in writing to the entity informing the entity:
 - (a) of the matter that has, since registration, become known to ASIC; and
 - (b) that ASIC will cancel the registration of the business name unless the entity satisfies ASIC that there are exceptional

circumstances justifying the continued registration of the business name.

44 Cancellation—entity is disqualified

- (1) ASIC must cancel the registration of a business name to an entity if ASIC becomes aware that the entity is disqualified.
- (2) ASIC must, at least 28 days before cancelling the registration, give notice in writing to the entity informing the entity that:
 - (a) ASIC has formed the view that the entity is disqualified; and
 - (b) ASIC proposes to cancel the registration of the business name on that basis.

45 Cancellation—Ministerial determination revoked

- (1) ASIC must cancel the registration of a business name to an entity if a Ministerial determination in relation to the availability of the business name to the entity made under subsection 27(2) is revoked.
- (2) ASIC must, at least 28 days before cancelling the registration, give notice in writing to the entity informing the entity that:
 - (a) the determination in relation to the availability of the business name to the entity made under subsection 27(2) has been revoked; and
 - (b) ASIC proposes to cancel the registration of the business name on that basis.

46 Cancellation—failure to satisfy a condition of registration

- (1) ASIC must cancel the registration of a business name to an entity if:
 - (a) the name contains a word or expression that, under an instrument made under paragraph 28(1)(b) or subsection 28(2), is restricted unless a condition is satisfied; and
 - (b) the entity ceases to satisfy the condition.
 - (2) ASIC must, at least 28 days before cancelling the registration, give notice in writing to the entity informing the entity that:
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- (a) ASIC has formed the view that the entity ceases to satisfy the condition; and
- (b) ASIC proposes to cancel the registration of the business name on that basis.

47 Cancellation—entity not carrying on a business under the business name

- (1) ASIC may cancel the registration of a business name to an entity if:
 - (a) ASIC is satisfied that:
 - (i) the entity is not carrying on a business under the business name; and
 - (ii) the entity has not, in the immediately preceding period of 3 months, carried on a business under the business name; and
 - (b) the entity is not a government body; and
 - (c) ASIC is not satisfied that there are exceptional circumstances justifying the failure to carry on a business under the business name during that 3 month period.
- (2) ASIC must, at least 28 days before cancelling the registration, give notice in writing to the entity:
 - (a) informing the entity that ASIC intends to cancel the registration; and
 - (b) inviting the entity to give ASIC evidence that:
 - (i) it is carrying on, or has within the immediately preceding period of 3 months carried on, a business under the business name; or
 - (ii) there are exceptional circumstances justifying the failure to carry on a business under the business name during that period.

48 Cancellation—failure to provide information

- (1) ASIC may cancel the registration of a business name to an entity if:
 - (a) either:

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- (i) the entity is obliged under section 35 to notify ASIC of a change to information and the entity fails to do so within the period required under that section; or
 - (ii) ASIC requests the entity to give ASIC information under section 37 and the entity fails to do so within the period specified in the request; and
 - (b) ASIC is satisfied that the failure to provide the information affects the integrity of the Business Names Register; and
 - (c) ASIC is not satisfied that there are exceptional circumstances justifying the failure to give the information.
- (2) ASIC must, at least 28 days before cancelling the registration, give notice in writing to the entity informing the entity that ASIC will cancel the registration unless:
- (a) the information is given to ASIC within that 28 day period; or
 - (b) the entity satisfies ASIC that there are exceptional circumstances justifying the failure to give the information.

49 Cancellation—registration has expired

- (1) ASIC must, at least 28 days before the registration period for the registration of a business name to an entity expires, remind the entity in writing of the time and day on which the registration period will expire.
- (2) Failure to give a reminder in accordance with subsection (1) does not affect ASIC's power to cancel the registration if not renewed.
- (3) If the registration period for the registration of a business name to an entity expires, ASIC may give notice in writing to the entity that ASIC will cancel the registration unless it is renewed.
- (4) ASIC may cancel the registration of a business name to an entity under this section with effect on the later of:
 - (a) the end of a period of 3 months beginning when the registration expires; and
 - (b) the end of a period of 6 weeks beginning on the day on which notice is given in accordance with subsection (3).

- (5) To avoid doubt, a business name continues to be registered to an entity after the expiry of the registration period for the registration unless the registration is cancelled.

50 Cancellation—entity to whom business name registered ceases to exist

ASIC must cancel the registration of a business name to an entity (other than an individual) if ASIC is reasonably satisfied that the entity no longer exists.

51 Cancellation—business name used in infringement of trade mark

- (1) To avoid doubt, the relief that a court may grant in an action for an infringement of a registered trade mark includes an order that the registration of a business name to an entity must be cancelled.
- (2) ASIC must cancel the registration of the business name to the entity if:
- (a) a copy of the court's order is lodged with ASIC; and
 - (b) ASIC is satisfied, within a reasonable period after the order is lodged, that:
 - (i) no application for the stay of the order is pending; and
 - (ii) no appeal of the order is pending; and
 - (iii) the order is not stayed; and
 - (iv) the order has not been overturned on appeal.
- (3) Nothing in this section limits any orders that a court may make (in an action for an infringement of trade mark or otherwise) in relation to the registration of a business name, or ASIC's obligations under such orders.

52 Notification of cancellation of business name

If ASIC cancels the registration of a business name to an entity, ASIC must give written notice of the decision to the entity and ASIC's reasons for the decision.

53 Notice requirements in relation to partnerships, unincorporated associations, trusts and joint ventures

- (1) Where ASIC is required under a provision of this Part to give notice to a partnership, ASIC must also give copy of the notice to each partner within the partnership in relation to whom ASIC has details.
- (2) Where ASIC is required under a provision of this Part to give notice to an unincorporated association or body, ASIC must also give a copy of the notice to each member of the committee of management of the association or body in relation to whom ASIC has details.
- (3) Where ASIC is required under a provision of this Part to give notice to a trust and there are 2 or more trustees of the trust, ASIC must also give a copy of the notice to each trustee in relation to whom ASIC has details.
- (4) Where ASIC is required under a provision of this Part to give notice to a joint venture, ASIC must also give a copy of the notice to each joint venture entity in relation to whom ASIC has details.
- (5) In subsection (4), *joint venture* and *joint venture entity* have the same meaning as in Part 10.

54 Business name held during review period for cancellation decision

- (1) If ASIC cancels the registration of a business name to an entity:
 - (a) the business name is held during the review period in relation to that decision; and
 - (b) the entity does not commit an offence under subsection 18(1) if the entity carries on a business under the business name during the review period in relation to that decision.

Note: A defendant bears an evidential burden in relation to the matters in paragraph (1)(b): see subsection 13.3(3) of the *Criminal Code*.

- (2) The *review period*, in relation to a decision to cancel the registration of a business name to an entity, is:

- (a) a period of 4 months beginning on the day on which the entity is notified of the decision under section 52; or
 - (b) if ASIC determines a longer period under subsection (3)—that longer period.
- (3) ASIC may determine in writing a longer review period. The determination is not a legislative instrument.
- (4) ASIC must give a copy of the determination to the entity.

Part 6—Renewing the registration of a business name

55 Application to renew registration

- (1) An entity may renew the registration of a business name to the entity for a period of 1 year or 3 years by lodging the renewal fee appropriate to that period with ASIC.
- (2) An entity may lodge an application with ASIC to have the registration of a business name to the entity renewed for an alternative registration period.
- (3) The application:
 - (a) must be in the prescribed form; and
 - (b) must be lodged in the prescribed manner; and
 - (c) must specify the period for which renewal is sought; and
 - (d) must be accompanied by the renewal fee appropriate to the period sought.
- (4) ASIC may determine an alternative registration period for the renewal of the registration of a business name to an entity if:
 - (a) the entity is a company; and
 - (b) the alternative registration period would align the day on which the registration period for the registration of the business name to the company would expire with the company's review date, as defined for the purposes of the *Corporations Act 2001*.
- (5) ASIC may determine an alternative registration period for the renewal of the registration of a business name (the **renewed business name**) to an entity if:
 - (a) another business name (the **other business name**) is registered to the entity; and
 - (b) the alternative registration period would align the day on which the registration period for the registration of the

renewed business name to the entity would expire with the day on which the registration period for the registration of the other business name to the entity would expire.

- (6) A determination under subsection (4) or (5) must be in writing, but is not a legislative instrument.
- (7) However, an alternative registration period must be:
 - (a) if the registration period would otherwise have been 1 year—of no more than 18 months; and
 - (b) if the registration period would otherwise have been 3 years—of no more than 3 years and 6 months.
- (8) An entity may:
 - (a) renew the registration of a business name to the entity under subsection (1); or
 - (b) make an application under subsection (2);no earlier than 2 months before the expiry of the registration period for the business name.
- (9) The period of registration on renewal begins immediately after the end of the immediately preceding registration period.

Part 7—Review

56 Reviewable decisions

A decision specified in an item in column 1 of the table, made under a provision specified in that item in column 2 of the table, is *reviewable* on the application of an entity specified in that item in column 3 of the table.

Reviewable decisions			
Item	Column 1 Decision	Column 2 Provision	Column 3 Who may seek review
1	Registration of a business name to an entity	Section 24	an entity in relation to whom there is a real risk of substantial detriment because of the registration of the business name
2	Refusal to register a business name to an entity	Section 24	the entity
3	Refusal to determine that a business name of a kind that is undesirable is available to an entity	Subsection 27(2)	the entity
4	Revocation of determination that a business name of a kind that is undesirable is available to an entity	Subsection 27(2)	the entity
5	Determination that a word or expression specified in the determination is restricted in relation to a specified entity or specified business unless a condition or conditions specified in the determination are met	Subsection 28(2)	(a) where an entity is specified—that entity; and (b) where a business is specified—the entity carrying on that business

Reviewable decisions			
Item	Column 1 Decision	Column 2 Provision	Column 3 Who may seek review
6	Determination of a longer review period (priority of an entity's application for registration)	Subsection 29(5)	any entity that, but for the determination, would have priority over a name that is identical, or nearly identical to the name to which the determination relates
7	Refusal to determine a longer review period (priority of an entity's application for registration)	Subsection 29(5)	the entity
8	Refusal to determine that an entity that would otherwise be disqualified is not to be disqualified	Subsection 32(3)	the entity
9	Refusal to determine an alternative registration period in relation to the registration of a business name to an entity	Subsection 33(3) or (4)	the entity
10	Revocation of a determination of an alternative registration period in relation to the registration of a business name to an entity	Subsection 33(3) or (4)	the entity
11	Deletion, refusal to include, correction or annotation of information in relation to a business name on the Business Names Register	Subsection 37(6) or (7)	the entity to whom the business name is registered
12	Refusal to enter an entity's name on the Business Names Register as a notified successor in relation to a	Subsection 40(5)	the entity

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Reviewable decisions			
Item	Column 1 Decision	Column 2 Provision	Column 3 Who may seek review
	business name		
13	Cancellation of the registration of a business name to an entity	Section 43, 47 or 48	the entity
14	Refusal to determine a longer review period (holding business name after registration to an entity cancelled)	Subsection 54(3)	the entity
15	Revocation of a determination of an alternative registration period in relation to the renewal of the registration of a business name to an entity	Subsection 55(4) or (5)	the entity
16	Refusal to decide that it is appropriate to excise details in relation to an entity from disclosure	Subsection 60(6)	the entity
17	Refusal to receive a document submitted by an entity	Subsection 69(1) or (5)	the entity

57 Internal review of certain decisions

- (1) If a reviewable decision is made by ASIC other than as a delegate of the Minister, an entity on whose application the decision is reviewable may lodge an application with ASIC (the *review body*) for review of the decision.
- (2) If a reviewable decision is made by an ASIC member or staff member as a delegate of the Minister, an entity on whose application the decision is reviewable may lodge an application with the Minister (the *review body*) for review of the decision.
- (3) An application for review of a decision:

- (a) must set out the reasons for making the application; and
 - (b) must be in the prescribed form; and
 - (c) must be lodged in the prescribed manner.
- (4) An application for review of a decision must be lodged:
- (a) in the case of a decision of the kind specified in item 1 of the table in section 56—within 15 months after the day on which the business name is registered to the entity; or
 - (b) in any other case—within 28 days after the entity is notified of the decision.
- (5) Despite subsection (4), an application for review of a decision may be lodged within such longer period as the review body allows.
- (6) After an application for review of a decision is lodged with a review body, the review body must review the decision and:
- (a) affirm the decision under review; or
 - (b) vary the decision under review; or
 - (c) set aside the decision under review and make a decision in substitution for it.
- (7) A decision of the review body under subsection (6) takes effect:
- (a) on a day, provided in the decision, that is after the decision is made; or
 - (b) if a day is not so provided—on the day on which the decision is made.
- (8) If the review body has not decided an application by an entity for review of a decision:
- (a) where the review body is ASIC—within 28 days after the application is lodged; and
 - (b) where the review body is the Minister—within 60 days after the application is lodged;
- the entity may, at any time, give the review body written notice that the entity wishes to treat the decision as having been affirmed.
- (9) For the purposes of section 58, if an entity gives notice under subsection (8), the review body is taken to have refused the entity's application on the day on which the notice is given.
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58 Administrative review of certain decisions

- (1) An application may be made to the Administrative Appeals Tribunal for review of a decision made or taken to have been made by ASIC or the Minister under section 57.
- (2) The application may be made by any entity that could have lodged an application under subsection 57(1) in relation to the decision in relation to which the decision under section 57 was made or taken to have been made.
- (3) An application may be made to the Administrative Appeals Tribunal for review of one of the following decisions made personally by the Minister:
 - (a) a refusal to determine under subsection 27(2) that a business name of a kind that is undesirable is available to an entity;
 - (b) the revocation of a determination made under subsection 27(2) that a business name of a kind that is undesirable is available to an entity;
 - (c) a determination made under subsection 28(2) that a word or expression specified in the determination is restricted in relation to a specified entity or specified business unless a condition or conditions specified in the determination are met.
- (4) The application may be made by:
 - (a) in the case of a decision mentioned in paragraph (3)(a) or (b)—the entity referred to in that paragraph; and
 - (b) in the case of a determination mentioned in paragraph (3)(c) in relation to a specified entity—that entity; and
 - (c) in the case of a determination mentioned in paragraph (3)(c) in relation to a specified business—the entity carrying on the business specified.

59 Payment of registration fee if business name to be registered as result of review

- (1) This section applies if, as a result of a review of a decision carried out under section 57 or 58 or by a court, a decision is made (the

review decision) that a business name is to be registered to an entity.

- (2) The entity must pay the registration fee.
- (3) The registration fee is payable at the end of a period of 5 business days beginning on the day on which the entity is notified of the review decision.

Part 8—Accessing the Business Names Register

60 Access to certain information in the Business Names Register by request

- (1) A person may lodge an application with ASIC for a copy of:
 - (a) the entry in the Business Names Register relating to a particular business name; or
 - (b) the entries in the Business Names Register relating to a particular entity.
- (2) The application:
 - (a) must be in the prescribed form; and
 - (b) must be lodged in the prescribed manner; and
 - (c) must be accompanied by the application fee.
- (3) If a person lodges an application under subsection (1), ASIC must give the person a copy of the entry or entries sought.
- (4) However, before a copy of an entry is given to a person, ASIC must excise from it:
 - (a) any detail which under the regulations made under subsection (5) is to be excised; and
 - (b) any detail that ASIC is prohibited from disclosing under subsection (6).
- (5) The regulations may provide that details of a kind specified in the regulations are to be excised from a copy of an entry before it is given to any person, or any person of a prescribed class.
- (6) If:
 - (a) a person lodges with ASIC an application for a detail in relation to a business name or the person not to be disclosed; and
 - (b) ASIC is satisfied that it is not appropriate to disclose the detail;ASIC must not disclose the detail under this section.

- (7) An application mentioned in paragraph (6)(a):
- (a) must be in the prescribed form; and
 - (b) must be lodged in the prescribed manner.

61 Certain information to be publicly available

In addition to providing copies under section 60, ASIC must make publicly available on the internet or otherwise free of charge any details of a kind prescribed by the regulations.

62 Certain information to be made available to government bodies

- (1) In addition to providing copies under section 60 and making details publicly available under section 61, ASIC must make available details of a kind prescribed by the regulations:
- (a) to a government body, if the body has requested ASIC to make the information available for one or more of the following the purposes:
 - (i) the enforcement of the criminal law;
 - (ii) the enforcement of a law imposing a pecuniary penalty;
 - (iii) the protection of the public revenue;
 - (iv) the exercise of the powers or the performance of the functions of that body in relation to consumer protection;
 - (v) the exercise of the powers or the performance of the functions of that body in relation to anti-discrimination;
 - (vi) the exercise of the powers or the performance of the functions of that body in relation to workers' compensation;
 - (vii) the exercise of the powers or the performance of the functions of that body in relation to insolvency or bankruptcy;
 - (viii) the exercise of the powers or the performance of the functions of that body in relation to licences;
 - (ix) maintaining a notified State/Territory register; and
 - (b) to an intelligence or security agency, if the agency has requested ASIC to provide the information for the purposes

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of the exercise of the powers or the performance of the functions of the agency in relation to intelligence or security.

- (2) The details must be made available electronically and without charge.

Part 9—Administration

63 ASIC's functions and powers

- (1) ASIC has the functions and powers conferred on it by or under this Act and the Transitional Act.
- (2) ASIC has power to do whatever is necessary for or in connection with, or reasonably incidental to, the performance of its functions under this Act and the Transitional Act.
- (3) Subject to the ASIC Act, ASIC has the general administration of this Act and the Transitional Act.

64 Directions by Minister

- (1) The Minister may give ASIC a written direction about policies it should pursue, or priorities it should follow, in performing or exercising any of its functions or powers under this Act or the Transitional Act. The direction is not a legislative instrument.
- (2) The Minister must not give a direction under subsection (1) unless he or she has:
 - (a) notified ASIC in writing that he or she is considering giving the direction; and
 - (b) given the Chairperson of ASIC an adequate opportunity to discuss with the Minister the need for the proposed direction.
- (3) The Minister must not give a direction under subsection (1) about a particular case.
- (4) ASIC must comply with a direction under subsection (1).
- (5) The Minister must cause a copy of an instrument under subsection (1):
 - (a) to be published in the *Gazette* within 21 days after the instrument is made; and

(b) to be laid before each House of the Parliament within 15 sitting days of that House after the publication; but failure of the Minister to do so does not affect the instrument's validity.

65 Arrangements with States and Territories

- (1) ASIC may, with the consent of the Minister, enter into an agreement or arrangement with a State or Territory for the performance of functions or the exercise of powers by ASIC as an agent of the State or Territory.
- (2) ASIC has such functions and powers as are referred to it in such an agreement or arrangement. However, ASIC is not under a duty to perform such functions or exercise such powers.
- (3) ASIC is not subject to any directions of the Minister in relation to:
 - (a) entering into an agreement or arrangement under subsection (1); or
 - (b) performing functions or exercising powers referred to in subsection (2).

66 ASIC may arrange for use of computer programs to make decisions

- (1) ASIC may arrange for the use, under ASIC's control, of computer programs for any purposes for which ASIC may make decisions under this Act or the Transitional Act, other than a decision under subsection 57(6) of this Act or subitem 28(6) of Schedule 1 to the Transitional Act.
- (2) A decision made by the operation of a computer program under an arrangement made under subsection (1) is taken to be a decision made by ASIC.

67 Forms for documents to be lodged with ASIC

- (1) A document that this Act or the Transitional Act requires to be lodged with ASIC in a prescribed form must:

- (a) if a form for the document is prescribed in the regulations made under that Act:
 - (i) be in the prescribed form; and
 - (ii) include the information, statements, explanations or other matters required by the form; and
 - (iii) be accompanied by any other material required by the form; or
 - (b) if a form for the document is not prescribed in the regulations made under that Act but ASIC has approved a form for the document:
 - (i) be in the approved form; and
 - (ii) include the information, statements, explanations or other matters required by the form; and
 - (iii) be accompanied by any other material required by the form.
- (2) A reference in this Act or the Transitional Act to a document that has been lodged (being a document to which subsection (1) applies), includes, unless a contrary intention appears, a reference to any other material lodged with the document as required by the relevant form.
- (3) If:
- (a) this Act or the Transitional Act requires a document to be lodged with ASIC in a prescribed form; and
 - (b) a provision of this Act or the Transitional Act either specifies, or provides for regulations to specify, information, statements, explanations or other matters that must be included in the document, or other material that must accompany the document;
- that provision is not taken to exclude or limit the operation of subsection (1) in relation to the prescribed form (and so the prescribed form may also require information etc. to be included in the form or material to accompany the form).

68 Manner in which documents to be lodged with ASIC

A document that this Act or the Transitional Act requires to be lodged with ASIC in a prescribed manner must:

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- (a) if a manner in which the document is to be lodged is prescribed in the regulations made under that Act—be lodged in the prescribed manner; and
- (b) if a manner in which the document is to be lodged is not prescribed in the regulations under that Act but ASIC has approved a manner for lodging the document—be lodged in the approved manner.

69 ASIC may refuse to receive document etc.

ASIC may refuse to receive document etc.

- (1) If ASIC considers that a document submitted to ASIC under this Act or the Transitional Act:
 - (a) contains matter that, in a material particular, is false or misleading in the form or context in which it is included; or
 - (b) is incomplete; or
 - (c) is to be lodged in a prescribed form or in a prescribed manner under this Act or the Transitional Act and is not submitted in that form or manner; or
 - (d) otherwise contravenes this Act or the Transitional Act; or
 - (e) contains an error, alteration or erasure;

ASIC may refuse to receive the document and may make a request under subsection (2).

Note: The effect of ASIC refusing to receive the document is that the document is not lodged with ASIC (see subsection (6)).

- (2) For the purposes of subsection (1), ASIC may request:
 - (a) that the document be appropriately amended or completed and resubmitted; or
 - (b) that a fresh document be submitted in its place; or
 - (c) if the document is incomplete—that a supplementary document in the prescribed form be lodged.

Notice to provide further document or information

- (3) ASIC may give a written notice to an entity that submits a document (the **first document**) under this Act or the Transitional Act, requiring the entity to:

- (a) give to ASIC any other document; or
 - (b) give to ASIC any information;
- that ASIC considers necessary in order to form an opinion as to whether it may refuse to receive the first document.

Notice must specify day by which entity must comply

- (4) The notice must specify the day by which the entity must comply with the notice (which must be a reasonable period after the notice is given). ASIC may specify a later day by giving a written notice to the entity.

Requirement to comply with notice

- (5) If the entity does not comply with the notice within the time specified in the notice, ASIC may refuse the first document.

Consequences of refusal to receive

- (6) If ASIC refuses to receive a document, it is taken never to have been lodged with ASIC.

70 Fees are payable to ASIC on behalf of the Commonwealth

Fees are payable to ASIC on behalf of the Commonwealth.

71 When is an application fee fully paid?

ASIC may, by legislative instrument, determine the circumstances in which fees are taken to be fully paid.

72 Waiver and refund of fees

Nothing in this Act, the Transitional Act or the *Business Names Registration (Fees) Act 2011* prevents ASIC, on behalf of the Commonwealth, from:

- (a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable; or
- (b) refunding, in whole or in part, in a particular case or in particular classes of cases, fees.

73 Address for receipt of notices

If a business name is registered to an entity, a notice under this Act and the Transitional Act may be given to the entity by:

- (a) leaving it at, or sending it by pre-paid post to, the address shown in the Business Names Register as the address for service; or
- (b) if there is an email address on the Business Names Register for the entity, and the entity has given its consent to the use of that address in receipt of notices—sending it to that email address.

74 ASIC may destroy or dispose of certain documents

ASIC may destroy or otherwise dispose of any document that is lodged with ASIC under this Act or the Transitional Act, or otherwise given to ASIC under this Act or the Transitional Act, if:

- (a) ASIC considers that it is no longer necessary or desirable to retain it; and
- (b) either of the following apply:
 - (i) it has been in ASIC's possession for the period prescribed by the regulations;
 - (ii) an electronic copy of the document is retained by ASIC.

75 ASIC may issue formal warning

If ASIC has reasonable grounds to believe that an entity has contravened a provision of this Act, ASIC may, by written notice given to the entity:

- (a) inform the entity of that fact; and
- (b) warn the entity of the action that may be taken by ASIC under this Act in response to the contravention.

76 Interaction with Australian Business Register

- (1) ASIC may disclose information to the Registrar of the Australian Business Register for the purposes of:
 - (a) identifying business names registered to an entity on the Business Names Register; and
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- (b) ensuring consistency between that Australian Business Register and the Business Names Register in details registered on those registers.
- (2) ASIC may record and use information disclosed to ASIC by the Registrar of the Australian Business Register for the purposes of ensuring consistency between the Australian Business Register and the Business Names Register in details registered on those registers.

77 Protection of confidentiality of information

- (1) A person who obtains information in the course of performing functions or exercising powers under this Act or the Transitional Act must not:
 - (a) make a record of the information; or
 - (b) use the information; or
 - (c) disclose the information.

Penalty: Imprisonment for 1 year.

- (2) Subsection (1) does not apply if:
 - (a) the information is recorded, used or disclosed for the purposes of performing functions or exercising powers under this Act or the Transitional Act; or
 - (b) the information is recorded, used or disclosed in accordance with a provision of this Act or the Transitional Act; or
 - (c) the information is recorded, used or disclosed with the consent of the entity that provided the information; or
 - (d) the information is given to a court or tribunal.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- (3) A person commits an offence if:
 - (a) information is made available to a government body or to an intelligence or security agency under section 62; and
 - (b) a person obtains the information in the course of performing functions or exercising powers for the body or agency; and

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- (c) the person would not have had access to the information if it had not been made available to the body or agency under section 62; and
- (d) the person records, uses or discloses the information for a purpose other than that for which it was made available; and
- (e) the person is reckless as to whether the purpose for which the information is recorded, used or disclosed is that for which it was made available.

Penalty: Imprisonment for 6 months.

Note: Where a fault element for a physical element of an offence is not stated, see section 5.6 of the *Criminal Code* for the appropriate fault element.

- (4) Subsection (3) does not apply if:
 - (a) the person discloses the information to another person; and
 - (b) the disclosure is reasonably necessary for:
 - (i) the enforcement of the criminal law; or
 - (ii) the enforcement of a law imposing a pecuniary penalty; or
 - (iii) the protection of the public revenue.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

- (5) Subsections (1) and (3) are not intended to have an operation that would infringe an implied constitutional immunity of a referring/adopting State.

78 Liability for damages

None of the following:

- (a) the Minister;
- (b) ASIC;
- (c) a member of ASIC;
- (d) a staff member or a person who is, or is a member of, an ASIC delegate or is authorised to perform or exercise a function or power of, or on behalf of, ASIC;
- (e) an APS employee or an officer or employee of an authority of the Commonwealth, whose services are made available to

ASIC in connection with the performance or exercise of any of its functions or powers;
is liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power, conferred or expressed to be conferred by or under this Act or the Transitional Act.

79 Delegation

- (1) ASIC may, by writing under its common seal, delegate all or any of its functions and powers under the following provisions to an ASIC member or a staff member who is an SES employee or an acting SES employee:
 - (a) section 37 (requesting information and correcting the register);
 - (b) subsection 41(1) (giving notice requiring entity to lodge information);
 - (c) subsection 47(1) (cancellation for not carrying on a business).
- (2) ASIC may, by writing under its common seal, delegate any or all of its functions and powers under this Act or the Transitional Act, other than the functions and powers under the following provisions, to a staff member who has the expertise appropriate to the function or power delegated:
 - (a) the provisions mentioned in subsection (1);
 - (b) subsection 41(2) (application to Federal Court to obtain information);
 - (c) subsection 65(1) (arrangements with States and Territories).
- (3) In the performance of a function, or the exercise of a power, delegated under this section, the delegate must comply with any directions by ASIC.

80 Minister may delegate prescribed functions and powers under this Act

- (1) The Minister may, by signed instrument, delegate to:
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- (a) an ASIC member; or
 - (b) a staff member who is an SES employee or an acting SES employee;
such of the Minister's functions and powers under this Act or the Transitional Act as are prescribed.
- (2) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the Minister.

Part 10—General

81 Application of this Act to partnerships

- (1) An obligation that would otherwise be imposed on a partnership under this Act or the Transitional Act is imposed on each partner, but may be discharged by any of the partners.
- (2) If this Act or the Transitional Act would otherwise require or permit something to be done by a partnership, the thing may be done by one or more of the partners on behalf of the partnership.
- (3) An offence against this Act or the Transitional Act that would otherwise be committed by the partnership is taken to have been committed by each partner.
- (4) A partner does not commit an offence because of subsection (3) if the partner:
 - (a) does not know of the circumstances that constitute the contravention of the provision concerned; or
 - (b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the partner becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

82 Principal contact of a partnership

- (1) A notice, signed by all the partners in a partnership, may be lodged with ASIC, nominating a person as the principal contact for the partnership for the purposes of this Act and the Transitional Act.
- (2) If a person is nominated as the principal contact for a partnership for the purposes of this Act or the Transitional Act, that person is taken to be the agent of the partnership for the purposes of that Act, until the nomination is withdrawn.

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- (3) Subsection (2) is not affected by a change in the composition of the partnership.
- (4) A notice, signed by all the partners in a partnership, may be lodged with ASIC, withdrawing the nomination of a person as principal contact for the partnership for the purposes of this Act or the Transitional Act.
- (5) A notice under this section:
 - (a) must be in the prescribed form; and
 - (b) must be lodged in the prescribed manner.

83 Application of this Act to unincorporated associations and bodies

- (1) An obligation that would otherwise be imposed on an unincorporated association or body under this Act or the Transitional Act is imposed on each member of the committee of management of the association or body, but may be discharged by any of the members of the committee.
- (2) If this Act or the Transitional Act would otherwise require or permit something to be done by an unincorporated association or body, the thing may be done by one or more of the members of the committee of management of the association or body on behalf of the association or body.
- (3) An offence against this Act or the Transitional Act that would otherwise be committed by the association or body is taken to have been committed by each member of the committee of management of the association or body.
- (4) A member of the committee of management of the association or body does not commit an offence because of subsection (3) if the member:
 - (a) does not know of the circumstances that constitute the contravention of the provision concerned; or
 - (b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

84 Principal contact of an unincorporated association or body

- (1) A notice, signed by all the members of the committee of management of an unincorporated association or body, may be lodged with ASIC, nominating a person as the principal contact for the association or body for the purposes of this Act or the Transitional Act.
- (2) If a person is nominated as principal contact for an unincorporated association or body for the purposes of this Act or the Transitional Act, that person is taken to be the agent of the association or body for the purposes of that Act, until the nomination is withdrawn.
- (3) Subsection (2) is not affected by:
 - (a) a change in the membership of the association or body; or
 - (b) a change in the membership of the committee of management of the association or body.
- (4) A notice, signed by all the members of the committee of management of an unincorporated association or body, may be lodged with ASIC, withdrawing the nomination of a person as the principal contact for the association or body for the purposes of this Act or the Transitional Act.
- (5) A notice under this section:
 - (a) must be in the prescribed form; and
 - (b) must be lodged in the prescribed manner.

85 Application of this Act to a trust with 2 or more trustees

- (1) This section applies where a trust has 2 or more trustees.
- (2) An obligation that would otherwise be imposed on the trust by this Act or the Transitional Act is imposed on each trustee instead, but may be discharged by any of the trustees.
- (3) If this Act or the Transitional Act would otherwise require or permit something to be done by the trust, the thing may be done by one or more of the trustees on behalf of the trust.

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- (4) An offence against this Act or the Transitional Act that would otherwise be committed by the trust is taken to have been committed by each trustee.
- (5) A trustee does not commit an offence because of subsection (4) if the trustee:
 - (a) does not know of the circumstances that constitute the contravention of the provision concerned; or
 - (b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the trustee becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5): see subsection 13.3(3) of the *Criminal Code*.

86 Principal contact of a trust

- (1) This section applies where a trust has 2 or more trustees.
- (2) A notice, signed by all the trustees of a trust, may be lodged with ASIC, nominating a person as the principal contact for the trustees for the purposes of this Act or the Transitional Act.
- (3) If a person is nominated as the principal contact for the trustees of a trust for the purposes of this Act or the Transitional Act, that person is taken to be the agent of the trustees in relation to the trust for the purposes of that Act, until the nomination is withdrawn.
- (4) Subsection (3) is not affected by a change in the trustees of the trust.
- (5) A notice, signed by all the trustees of a trust, may be lodged with ASIC, withdrawing the nomination of a person as principal contact for the trustees in relation to the trust, for the purposes of this Act or the Transitional Act.
- (6) A notice under this section:
 - (a) must be in the prescribed form; and
 - (b) must be lodged in the prescribed manner.

87 Joint ventures

Application

- (1) This section applies if:
- (a) 2 or more entities (the *joint venture entities*) have entered into a contractual arrangement under which they carry on, or intend to carry on, a business jointly under a business name; and
 - (b) the entities do not form another entity to do so.

Subject to this section, the joint venture entities are together treated as a single entity (the *joint venture*) for the purposes of this Act and the Transitional Act.

Treat joint venture in the same way as an entity

- (2) An obligation that would otherwise be imposed on the joint venture under this Act or the Transitional Act is imposed on each joint venture entity, but may be discharged by any of the joint venture entities.
- (3) If this Act or the Transitional Act would otherwise require or permit something to be done by the joint venture, the thing may be done by one or more of the joint venture entities on behalf of all of the joint venture entities.
- (4) An offence against this Act or the Transitional Act that would otherwise be committed by the joint venture is taken to have been committed by each joint venture entity.
- (5) A joint venture entity does not commit an offence because of subsection (4) if the joint venture entity:
 - (a) does not know of the circumstances that constitute the contravention of the provision concerned; or
 - (b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the joint venture entity becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5): see subsection 13.3(3) of the *Criminal Code*.

Principal contact of joint venture

- (6) A notice, signed by all the joint venture entities, may be lodged with ASIC, nominating a person as the principal contact for the joint venture for the purposes of this Act or the Transitional Act.
- (7) If a person is nominated as the principal contact for the joint venture for the purposes of this Act or the Transitional Act, that person is taken to be the agent of the joint venture entities for the purposes of this Act and the Transitional Act, until the nomination is withdrawn.
- (8) A notice, signed by all the joint venture entities, may be lodged with ASIC, withdrawing the nomination of a person as principal contact for the joint venture for the purposes of this Act or the Transitional Act.
- (9) A notice under subsection (6) or (8):
 - (a) must be in the prescribed form; and
 - (b) must be lodged in the prescribed manner.

ABN numbers

- (10) An application for registration of a business name to the joint venture must include the ABNs of each of the joint venture entities, or, if an application for an ABN for a joint venture entity is pending, a statement to that effect and the reference number for the ABN application.
- (11) ASIC must not register the business name to the joint venture unless each of the joint venture entities has an ABN.
- (12) To avoid doubt, the priority of a joint venture over a business name is not affected by the fact that an ABN application by any joint venture entity is pending.
- (13) Otherwise, a reference in this Act to the ABN of an entity means, in the case of a joint venture, the ABN of each of the joint venture entities.

Death of a joint venture entity

- (14) If a joint venture entity who is an individual dies:
- (a) the business name continues to be registered to the joint venture; and
 - (b) sections 39 and 40 otherwise apply in relation to the joint venture entity in the same way as they apply in relation to an individual to whom a business name is registered.

88 Application in the Territories of Christmas Island and Cocos (Keeling) Islands

- (1) This section applies if, because Australia is not defined to include the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands in the *A New Tax System (Australian Business Number) Act 1999* (the *ABN Act*), an entity is not entitled to have an ABN.
- (2) If an activity, or a series of activities, done by the entity would be a business (as defined in section 4) if Australia were defined for the purposes of the ABN Act as including the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands, the activity or series of activities is a business for the purposes of this Act.
- (3) An application for registration of a business name to the entity need not include an ABN for the entity or a statement that an application for an ABN is pending.
- (4) ASIC may register the business name to the entity even though the entity does not have an ABN, and ASIC need not include details of an ABN for the entity on the Business Names Register.

89 Entities that have ceased to exist

If, under this Act, notice must or may be given to an entity that no longer exists, notice is taken to be given to the entity if it is given to a person, or a person of a class, prescribed by the regulations for the purposes of this section, to be the relevant person, or class of persons, for an entity of that kind.

90 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1—Notified State/Territory registers

Note: See section 6.

1 New South Wales

Each of the following registers of New South Wales is specified:

- (a) the Register of Co-operatives established under the *Co-operatives Act 1992* of New South Wales;
- (b) the Register of Incorporated Associations established under the *Associations Incorporation Act 2009* of New South Wales;
- (c) the Register of Limited and Incorporated Limited Partnerships established under the *Partnership Act 1892* of New South Wales;
- (d) the register of co-operative housing societies and Starr-Bowkett societies established under the *Co-operative Housing and Starr-Bowkett Societies Act 1998* of New South Wales;
- (e) any register of the same kind as a register mentioned in paragraphs (a) to (d), established in substitution for a register mentioned in one of those paragraphs.

2 Victoria

Each of the following registers of Victoria is specified:

- (a) the Register of Co-operatives established under the *Co-operatives Act 1996* of Victoria;
- (b) the register of incorporated associations established under the *Associations Incorporation Act 1981* of Victoria;
- (c) the Register of Incorporated Limited Partnerships established under the *Partnership Act 1958* of Victoria;
- (d) the Register of Limited Partnerships established under the *Partnership Act 1958* of Victoria;
- (e) any register of the same kind as a register mentioned in paragraphs (a) to (d), established in substitution for a register mentioned in one of those paragraphs.

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3 Queensland

Each of the following registers of Queensland is specified:

- (a) the register of incorporated associations established under the *Associations Incorporation Act 1981* of Queensland;
- (b) the register of cooperatives, foreign cooperatives and cooperative charges established under the *Cooperatives Act 1997* of Queensland;
- (c) the register of incorporated limited partnerships established under the *Partnership Act 1891* of Queensland;
- (d) the register of the current addresses of incorporated church entities (other than the Corporation of the Bishops) that the Corporation of the Bishops is obliged to keep under the *Roman Catholic Church (Incorporation of Church Entities) Act 1994* of Queensland;
- (e) any register of the same kind as a register mentioned in paragraphs (a) to (d), established in substitution for a register mentioned in one of those paragraphs.

4 Western Australia

Each of the following registers of Western Australia is specified:

- (a) the register of co-operatives established under the *Co-operatives Act 2009* of Western Australia;
- (b) the register of foreign co-operatives established under the *Co-operatives Act 2009* of Western Australia;
- (c) the register of associations incorporated by the issue of a certificate of incorporation under the *Associations Incorporation Act 1987* of Western Australia;
- (d) any register of the same kind as a register mentioned in paragraphs (a) to (c), established in substitution for a register mentioned in one of those paragraphs.

5 South Australia

Each of the following registers of South Australia is specified:

- (a) the register of incorporated co-operatives continued in existence under the *Co-operatives Act 1997* of South Australia;

- (b) the register of incorporated associations established under the *Associations Incorporation Act 1985* of South Australia;
- (c) the Register of Limited Partnerships and Incorporated Limited Partnerships established under the *Partnership Act 1891* of South Australia;
- (d) any register of the same kind as a register mentioned in paragraphs (a) to (c), established in substitution for a register mentioned in one of those paragraphs.

6 Tasmania

Each of the following registers of Tasmania is specified:

- (a) the Register of Cooperatives established under the *Cooperatives Act 1999* of Tasmania;
- (b) the register of associations incorporated by the issue of a certificate of incorporation under the *Associations Incorporation Act 1964* of Tasmania;
- (c) the Register of Limited Partnerships and Incorporated Limited Partnerships established under *Partnership Act 1891* of Tasmania;
- (d) any register of the same kind as a register mentioned in paragraphs (a) to (c), established in substitution for a register mentioned in one of those paragraphs.

7 Australian Capital Territory

Each of the following registers of the Australian Capital Territory is specified:

- (a) the cooperatives register established under the *Cooperatives Act 2002* of the Australian Capital Territory;
- (b) the register of associations incorporated by the issue of a certificate of incorporation under the *Associations Incorporation Act 1991* of the Australian Capital Territory;
- (c) the register of incorporated limited partnerships established under the *Partnership Act 1963* of the Australian Capital Territory;

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- (d) any register of the same kind as a register mentioned in paragraphs (a) to (c), established in substitution for a register mentioned in one of those paragraphs.

8 Northern Territory

Each of the following registers of the Northern Territory is specified:

- (a) the Register of Co-operatives established under the *Co-operatives Act* of the Northern Territory;
- (b) the register of associations incorporated by the issue of a certificate of incorporation under the *Associations Act* of the Northern Territory;
- (c) any register of the same kind as a register mentioned in paragraphs (a) and (b), established in substitution for a register mentioned in one of those paragraphs.

*[Minister's second reading speech made in—
House of Representatives on 17 August 2011
Senate on 14 September 2011]*

(153/11)
