

**Business Names (Commonwealth Powers)
Bill 2011**

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Western Australia

LEGISLATIVE COUNCIL

**Business Names (Commonwealth Powers)
Bill 2011**

A Bill for

An Act —

- 1 • to adopt the *Business Names Registration Act 2011*
2 (Commonwealth) and the *Business Names Registration*
3 *(Transitional and Consequential Provisions) Act 2011*
4 (Commonwealth), and to refer certain matters relating to the
5 registration and use of business names to the Parliament of the
6 Commonwealth, for the purposes of section 51(xxxvii) of the
7 Constitution of the Commonwealth; and
8 • to amend the *Business Names Act 1962* to effect the transition of
9 the regulation of business names from the State to the
10 Commonwealth; and
11 • to make consequential amendments to various Acts,
and for related purposes.

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Business Names (Commonwealth Powers) Act 2011*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) Parts 2 and 3 — on the day after that day;
- (c) Part 4 — when the *Business Names Registration Act 2011* (Commonwealth) Part 2 comes into operation.

1 **Part 2 — Adoption of national business names**
2 **legislation and referral to Commonwealth**

3 **3. Terms used**

4 In this Act, unless the contrary intention appears —

5 **adoption** means the adoption under section 5(1);

6 **amendment reference** means the reference under section 6(1);

7 **business name** has the same meaning as in the *Business Names*
8 *Registration Act 2011* (Commonwealth) as originally enacted;

9 **continuing business names matter** has the meaning given by
10 section 4;

11 **entity** includes an individual, body corporate or unincorporate,
12 partnership or anything that is an entity within the meaning of
13 the *Business Names Registration Act 2011* (Commonwealth) as
14 originally enacted;

15 **exemption provision** means a provision in the terms, or
16 substantially in the terms, of section 19(5) or section 20(3) of
17 the *Business Names Registration Act 2011* (Commonwealth) as
18 originally enacted;

19 **express amendment** of the national business names legislation
20 means the direct amendment of the text of the national business
21 names legislation (whether by the insertion, omission, repeal,
22 substitution or relocation of words or matter) by another
23 Commonwealth Act, but does not include the enactment by a
24 Commonwealth Act of a provision that has or will have
25 substantive effect otherwise than as part of the text of the
26 national business names legislation;

27 **government body** means —

28 (a) the State or an agency or authority of the State or of the
29 State acting jointly with the Commonwealth, another
30 State or a Territory; or

31 (b) a local government or regional local government;

s. 4

1 **national business names instrument** means any instrument
2 (whether or not of a legislative character) that is made or issued
3 under the national business names legislation;

4 **national business names legislation** means —

5 (a) the *Business Names Registration Act 2011*
6 (Commonwealth); and

7 (b) the *Business Names Registration (Transitional and*
8 *Consequential Provisions) Act 2011* (Commonwealth);

9 **notified State register** means a register that is maintained under
10 a State law and is a **notified State/Territory register** within the
11 meaning given by section 6 of the *Business Names Registration*
12 *Act 2011* (Commonwealth) as originally enacted;

13 **registration** means the inclusion of information in any system
14 for the recording of information (whether in written or
15 electronic form);

16 **State law** means an Act of the State, or an instrument made
17 under an Act of the State, whenever enacted or made and as in
18 force from time to time;

19 **taxes** means taxes, duties, charges or other imposts, however
20 described.

21 **4. Continuing business names matters**

22 (1) Each of the following matters is a continuing business names
23 matter to the extent that it is included in the legislative powers
24 of the Parliament of the State —

25 (a) the registration of business names;

26 (b) the regulation of the use of business names to assist
27 entities who engage with an entity carrying on a
28 business under a business name to identify the entity;

29 (c) the regulation of the use of business names to assist
30 entities who engage with an entity carrying on a
31 business under a business name to contact the entity;

- 1 (d) the regulation of the use of business names to reduce the
2 risks that arise from an entity carrying on a business
3 under a name that is not the entity's own;
- 4 (e) the prohibition or restriction of the use of business
5 names that are undesirable, offensive or confusing;
- 6 (f) the prohibition or restriction of the use of business
7 names by an entity because —
- 8 (i) the entity has engaged in unlawful conduct; or
9 (ii) a person involved in the management of the
10 entity has engaged in unlawful conduct.
- 11 (2) However, none of the following matters is a continuing business
12 names matter —
- 13 (a) the imposition of a restriction on a government body
14 affecting the ability of the body to carry on business
15 under a name;
- 16 (b) the imposition of a restriction on an entity affecting the
17 ability of the entity to carry on business under a name
18 registered to the entity on a notified State register;
- 19 (c) the imposition of a restriction on an entity affecting the
20 ability of the entity to carry on business under a name
21 that is specified as the name of the entity in a State law;
- 22 (d) the imposition of an obligation on a government body to
23 include a name in a communication or to display a
24 name;
- 25 (e) the imposition of an obligation on an entity to include in
26 a communication, or to display, a name that is registered
27 to the entity on a notified State register;
- 28 (f) the imposition of an obligation on an entity to include in
29 a communication, or to display, a name that is specified
30 as the name of the entity in a State law;
- 31 (g) the omission of an exemption provision without the
32 insertion of an equivalent provision, or the imposition of
33 a limitation on the operation of an exemption provision;

s. 5

1 (h) any matter relating to the imposition or payment of taxes
2 under a State law.

3 **5. Adoption of national business names legislation**

4 (1) The national business names legislation, as originally enacted, is
5 adopted within the meaning of section 51(xxxvii) of the
6 Constitution of the Commonwealth.

7 (2) The adoption has effect for a period —

8 (a) beginning when subsection (1) comes into operation;
9 and

10 (b) ending at the end of the day fixed under section 8(1)(a)
11 or (c) as the day on which the adoption is to terminate,

12 but not longer.

13 **6. Reference of continuing business names matters**

14 (1) Each continuing business names matter is referred to the
15 Parliament of the Commonwealth, but only to the extent of the
16 making of laws with respect to the matter by making express
17 amendments of the national business names legislation.

18 (2) The reference of a matter under subsection (1) has effect only if
19 and to the extent that the matter is not included in the legislative
20 powers of the Parliament of the Commonwealth (otherwise than
21 by a reference for the purposes of section 51(xxxvii) of the
22 Constitution of the Commonwealth).

23 (3) Despite any provision other than section 9(4), the amendment
24 reference has effect for a period —

25 (a) beginning when subsection (1) comes into operation;
26 and

27 (b) ending at the end of the day fixed under section 8(1)(a)
28 or (b) as the day on which the amendment reference is to
29 terminate,

30 but not longer.

1 **7. Amendment of Commonwealth law**

2 It is the intention of the Parliament of the State that —

- 3 (a) the national business names legislation may be expressly
4 amended, or have its operation otherwise affected, at
5 any time by provisions of Commonwealth Acts the
6 operation of which is based on legislative powers that
7 the Parliament of the Commonwealth has apart from a
8 reference of any matters for the purposes of
9 section 51(xxxvii) of the Constitution of the
10 Commonwealth; and
- 11 (b) the national business names legislation may have its
12 operation affected, otherwise than by express
13 amendment, at any time by provisions of national
14 business names instruments.

15 **8. Termination of adoption and amendment reference**

16 (1) The Governor may, at any time, by proclamation published in
17 the *Gazette*, fix a day as the day on which —

- 18 (a) the adoption and the amendment reference are to
19 terminate; or
- 20 (b) the amendment reference is to terminate; or
- 21 (c) the adoption is to terminate (if the amendment reference
22 has been previously terminated).

23 (2) A day fixed under subsection (1) must be no earlier than the
24 first day after the end of the period of 6 months beginning with
25 the day on which the proclamation is published.

26 (3) The Governor may, by proclamation published in the *Gazette*,
27 revoke a proclamation published under subsection (1).

28 (4) A revoking proclamation has effect only if published before the
29 day fixed under subsection (1).

s. 9

- 1 (5) If a revoking proclamation has effect the revoked proclamation
2 is taken, for the purposes of each or either of sections 5 and 6,
3 never to have been published but the revocation does not
4 prevent publication of a further proclamation under
5 subsection (1).
- 6 (6) A proclamation cannot be made under subsection (1) unless a
7 draft of the proclamation has first been approved by a resolution
8 passed by both Houses of the Parliament of the State.
- 9 **9. Effect of termination of amendment reference before**
10 **termination of adoption**
- 11 (1) In this section —
12 *existing legislation* means the national business names
13 legislation as —
14 (a) amended by laws made under the amendment reference
15 that have come into operation before the termination; or
16 (b) amended or affected by provisions referred to in
17 section 7(a) or (b) that have come into operation before
18 the termination,
19 and as in operation immediately before the termination;
20 *termination* means the termination of the amendment reference.
- 21 (2) A reference in this section to provisions referred to in
22 section 7(b) includes a reference to national business names
23 instruments made to carry out or give effect to the national
24 business names legislation as amended by laws made under the
25 amendment reference.
- 26 (3) It is the intention of the Parliament of the State that, if the
27 amendment reference terminates before the adoption terminates,
28 the termination of the amendment reference does not affect —
29 (a) laws made under the amendment reference before the
30 termination; or

- 1 (b) the continued operation in the State of the existing
2 legislation or of the existing legislation as —
3 (i) amended after the termination by laws referred to
4 in paragraph (a) that come into operation after
5 the termination; or
6 (ii) amended or affected after the termination by
7 provisions referred to in section 7(a) or (b).
- 8 (4) Accordingly, the amendment reference continues to have effect
9 for the purposes of subsection (3) unless the adoption is
10 terminated.
- 11 (5) Subsection (3) or (4) does not apply to or in relation to an
12 amendment of the national business names legislation that is
13 excluded from the operation of this section by the proclamation
14 that terminates the amendment reference.

15 **10. Regulations**

16 The Governor may make regulations prescribing all matters that
17 are required or permitted by this Act to be prescribed, or are
18 necessary or convenient to be prescribed for giving effect to the
19 purposes of this Act.

20 **11. Regulations for purposes of *Business Names Registration***
21 ***Act 2011 (Commonwealth) s. 13 and 14***

- 22 (1) The regulations may declare a matter to be an excluded matter
23 for the purposes of the *Business Names Registration Act 2011*
24 (Commonwealth) section 13 in relation to —
25 (a) the whole of the national business names legislation; or
26 (b) a specified provision of the national business names
27 legislation; or
28 (c) the national business names legislation other than a
29 specified provision; or
30 (d) the national business names legislation otherwise than to
31 a specified extent.

s. 12

1 (2) The regulations may declare a provision of a law of the State to
2 be a business names legislation displacement provision for the
3 purposes of the *Business Names Registration Act 2011*
4 (Commonwealth) section 14 (either generally or specifically in
5 relation to a provision of the national business names
6 legislation).

7 **12. Transitional regulations**

8 (1) In this section —
9 *commencement day* means the day on which section 3 comes
10 into operation;
11 *Gazettal day*, in relation to transitional regulations, means the
12 day on which the regulations are published in the *Gazette*;
13 *specified* means specified or described in transitional
14 regulations;
15 *transitional regulations* means regulations made for the
16 purposes of subsection (2).

17 (2) The regulations may deal with all matters of a savings or
18 transitional nature arising as a result of the enactment of —
19 (a) this Act; or
20 (b) the national business names legislation or any Act of the
21 Commonwealth that amends the national business
22 names legislation.

23 (3) If transitional regulations provide that a specified state of affairs
24 is taken to have existed, or not to have existed, on and from a
25 day that is earlier than the *Gazettal day* but not earlier than the
26 *commencement day*, the regulations have effect according to
27 their terms.

28 (4) If transitional regulations contain a provision referred to in
29 subsection (3), the provision does not operate so as —
30 (a) to affect, in a manner prejudicial to any person (other
31 than the State or an authority of the State), the rights of
32 that person existing before the *Gazettal day*; or

- 1 (b) to impose liabilities on any person (other than the State
2 or an authority of the State) in respect of anything done
3 or omitted to be done before the Gazettal day.
- 4 (5) Transitional regulations cannot be made after the end of the
5 period of 12 months beginning on the commencement day.

1 **Part 3 — Business Names Act 1962 amended**

2 **13. Act amended**

3 This Part amends the *Business Names Act 1962*.

4 **14. Section 3A inserted**

5 After section 3 insert:

6

7 **3A. Expiry of Act**

8 (1) This Act expires on a day fixed by proclamation.

9 (2) A proclamation cannot be made under subsection (1)
10 unless the Commissioner has given the Minister a
11 certificate signed by the Commissioner stating that the
12 operation of this Act is no longer necessary.

13

14 **15. Section 4 amended**

15 In section 4(1) insert in alphabetical order:

16

17 *ASIC* means the Australian Securities and Investments
18 Commission of the Commonwealth;

19 *change-over day* has the meaning given in the
20 Commonwealth Transitional Act section 4(1);

21 *Commonwealth Transitional Act* means the *Business*
22 *Names Registration (Transitional and Consequential*
23 *Provisions) Act 2011* (Commonwealth);

24 *national business names legislation* means —

25 (a) the *Business Names Registration Act 2011*
26 (Commonwealth); and

27 (b) the Commonwealth Transitional Act;

28

1 **16. Section 4A amended**

2 (1) In section 4A(1) delete “the Australian Securities and
3 Investments Commission” and insert:

4
5 ASIC

6
7 (2) In section 4A(2):

8 (a) in paragraph (a) delete “the Australian Securities and
9 Investments Commission; or” and insert:

10
11 ASIC; or

12
13 (b) in paragraph (b) delete “the Australian Securities and
14 Investments Commission.” and insert:

15
16 ASIC.

17
18 (3) In section 4A(3) delete “the Australian Securities and
19 Investments Commission” and insert:

20
21 ASIC

22
23 (4) In section 4A(4) delete “The Australian Securities and
24 Investments Commission” and insert:

25
26 ASIC

27

s. 17

1 **17. Sections 4B and 4C inserted**

2 After section 4A insert:

3

4 **4B. Commissioner may act for purposes of national**
5 **business names legislation**

6 (1) In this section —

7 ***business names information*** means information
8 obtained by the Commissioner in connection with the
9 administration or enforcement of this Act.

10 (2) The Commissioner may, on behalf of the State —

11 (a) give ASIC notifications under the
12 Commonwealth Transitional Act Schedule 1;
13 and

14 (b) do any other thing that is required to be done by
15 the State to facilitate the transition to the
16 national business names legislation.

17 (3) Without limiting subsection (2), the Commissioner
18 may, under the Commonwealth Transitional Act
19 Schedule 1 Part 2 —

20 (a) give ASIC notification that a business name is
21 to be held for the purposes of resolving
22 outstanding matters in relation to the business
23 name; and

24 (b) if the Commissioner is satisfied that all
25 outstanding matters in relation to the business
26 name have been finally resolved, give the
27 appropriate notification to ASIC.

28 (4) Without limiting subsection (2) or (3), the
29 Commissioner may —

30 (a) disclose to ASIC business names information;
31 and

- 1 (b) give to ASIC copies of records, containing
2 business names information, that are in the
3 Commissioner's possession or under the
4 Commissioner's control.
- 5 (5) The Commissioner may —
6 (a) give notifications under subsection (2) or (3); or
7 (b) disclose business names information, or give a
8 copy of a record, under subsection (4),
9 in whatever form the Commissioner considers
10 appropriate (which may include by means of electronic
11 data or in a form appropriate for the purposes of the
12 national business names legislation).
- 13 (6) If anything that this section authorises the
14 Commissioner to do would be contrary to any
15 enactment relating to secrecy or confidentiality, this
16 section prevails.
- 17 (7) Without limiting section 31C, the doing of anything in
18 good faith under this section —
19 (a) does not result in any person incurring civil or
20 criminal liability; and
21 (b) is not to be regarded as a breach of any duty of
22 confidentiality or secrecy imposed by law; and
23 (c) is not to be regarded as a breach of professional
24 ethics or standards or as unprofessional
25 conduct.
- 26 (8) In this section, a reference to the doing of anything
27 includes a reference to an omission to do anything.

28 **4C. Outstanding matters**

29 The outstanding matters for the purposes of which the
30 Commissioner may give ASIC notification under

s. 17

- 1 section 4B(3) to hold a business name include, but are
2 not limited to, the following —
- 3 (a) an application for the registration of a business
4 name that is made under section 7(1), but not
5 finally dealt with by the Commissioner, before
6 the change-over day;
 - 7 (b) an application for the consent of the Minister to
8 the registration of a business name that is made
9 under section 9(1), but not finally dealt with by
10 the Minister, before the change-over day;
 - 11 (c) a statement in respect of the renewal of the
12 registration of a business name that is lodged
13 under section 11(1), but not finally dealt with
14 by the Commissioner, before the change-over
15 day;
 - 16 (d) a statement that is lodged under section 12, but
17 not finally dealt with by the Commissioner,
18 before the change-over day;
 - 19 (e) a notice sent by the Commissioner under
20 section 10(1) before the change-over day that
21 specifies a period that expires on or after the
22 change-over day;
 - 23 (f) a notice sent by the Commissioner under
24 section 18(1) or (2) before the change-over day
25 in respect of which the one month period
26 referred to in section 19(1)(b) or (c) expires on
27 or after the change-over day;
 - 28 (g) an application for leave of the District Court
29 that is made under section 5A(3), but not finally
30 dealt with by the Court, before the change-over
31 day;
 - 32 (h) an application to the State Administrative
33 Tribunal that is made under section 19(3), but
34 not finally dealt with by the Tribunal, before
35 the change-over day;

- 1 (i) the right of a person to make an application
2 under section 9(1), for the consent of the
3 Minister to the registration of a business name,
4 on or after the change-over day;
- 5 (j) the right of a person to lodge a statement under
6 section 11(1), in respect of the renewal of the
7 registration of a business name, on or after the
8 change-over day;
- 9 (k) the right of a person to make an application to
10 the State Administrative Tribunal under
11 section 19(3) on or after the change-over day.
12

13 **18. Section 5 amended**

14 Before section 5(1) insert:
15

- 16 (1A) Subsection (1) does not apply to an act or omission that
17 occurs on or after the change-over day.
- 18 (1B) Despite subsection (1A) and *The Criminal Code*
19 section 11, a person may be punished on or after the
20 change-over day for an offence committed under
21 subsection (1) before the change-over day.
22

23 **19. Section 5A amended**

24 (1) After section 5A(1) insert:
25

- 26 (2A) Subsection (2) does not apply to the carrying on of
27 business on or after the change-over day.
- 28 (2B) Despite subsection (2A) and *The Criminal Code*
29 section 11, a person may be punished on or after the
30 change-over day for an offence committed under
31 subsection (2) before the change-over day.
32

s. 20

- 1 (2) After section 5A(3) insert:
2
- 3 (4A) An application cannot be made under subsection (3) on
4 or after the change-over day.
- 5 (4B) If an application made under subsection (3) is not
6 finally dealt with by the District Court before the
7 change-over day, on or after the change-over day the
8 Court may decide whether, had the application been
9 finally dealt with by the Court before the change-over
10 day, the Court would have granted leave under this
11 section.
12

13 **20. Section 6 amended**

14 Before section 6(1) insert:
15

- 16 (1A) This section does not apply on or after the change-over
17 day.
18

19 **21. Section 7 amended**

20 (1) Before section 7(1) insert:
21

- 22 (1A) An application cannot be made under subsection (1) on
23 or after the change-over day.
24

25 (2) In section 7(3) delete “name,” and insert:
26

27 name, if the statement is finally dealt with by the
28 Commissioner before the change-over day,
29

- 1 (3) After section 7(3) insert:
2
- 3 (4A) If an application made under subsection (1) for the
4 registration of a business name is not finally dealt with
5 by the Commissioner before the change-over day, the
6 Commissioner may, on or after the change-over day,
7 decide whether, had the application been finally dealt
8 with before the change-over day, the Commissioner
9 would have registered the business name.
10
- 11 (4) In section 7(4) delete “business name,” and insert:
12
- 13 business name before the change-over day,
14
- 15 (5) In section 7(5):
16 (a) in paragraph (a) delete “may” and insert:
17
- 18 may, before the change-over day,
19
- 20 (b) in paragraph (b) delete “place, the Commissioner shall”
21 and insert:
22
- 23 place and the statement lodged under section 12(1) is
24 finally dealt with by the Commissioner before the
25 change-over day, the Commissioner shall, before the
26 change-over day,
27

s. 22

1 **22. Section 9 amended**

2 (1) Before section 9(1) insert:

3

4 (1A) An application for the consent of the Minister under
5 subsection (1) to the registration of a business name
6 cannot be made —

7 (a) in the case of a decision of the Commissioner,
8 made before the change-over day, that the
9 business name may be registered only with the
10 consent of the Minister — after the end of
11 2 months after the change-over day; or

12 (b) in the case of a decision of the Commissioner,
13 made on or after the change-over day as
14 provided for by section 7(4A), that before the
15 change-over day the Commissioner would have
16 registered the business name only with the
17 consent of the Minister — more than 28 days
18 after the Commissioner’s decision.

19

20 (2) After section 9(1) insert:

21

22 (2A) Subsection (2B) applies if —

23 (a) an application is made under subsection (1), but
24 not finally dealt with by the Minister, before the
25 change-over day; or

26 (b) an application is made under subsection (1) on
27 or after the change-over day in accordance with
28 subsection (1A).

29 (2B) On or after the change-over day, the Minister may
30 decide whether, had the application for consent under
31 subsection (1) been made and finally dealt with by the
32 Minister before the change-over day, the Minister

1 would have consented to the registration of the
2 business name to which the application relates.
3

4 **23. Section 10 amended**

5 (1) In section 10(1):

6 (a) delete “may send” and insert:

7
8 may, before the change-over day, send
9

10 (b) delete “and upon” and insert:

11
12 and, if the period specified in the notice expires before
13 the change-over day, upon
14

15 (2) After section 10(1) insert:

16
17 (2A) Subsection (2B) applies if, before the change-over day,
18 the Commissioner sends a notice under subsection (1),
19 in respect of a business name, that specifies a period
20 that expires on or after the change-over day.

21 (2B) Upon the expiration of the period specified in the
22 notice, the Commissioner may decide whether, had the
23 period specified in the notice expired before the
24 change-over day, the Commissioner would have
25 cancelled the registration of the business name under
26 subsection (1).
27

28 (3) In section 10(2) after “subsection (1)” insert:

29
30 or (2B)
31

s. 24

1 (4) In section 10(4) delete “subsection (1).” and insert:

2

3 subsection (1) or would have been cancelled under
4 subsection (2B).

5

6 **24. Section 11 amended**

7 (1) Before section 11(1) insert:

8

9 (1A) A statement cannot be lodged under subsection (1) in
10 respect of the registration of a business name that
11 expires on or after the change-over day.

12 (1B) If the registration of a business name expires before the
13 change-over day, the fact that the period of one month
14 after the expiry of the registration ends on or after the
15 change-over day does not prevent a statement being
16 lodged under subsection (1) at any time within that
17 period.

18

19 (2) After section 11(1a) insert:

20

21 (2A) Subsection (2B) applies if —

22 (a) a statement is lodged under subsection (1), but
23 not finally dealt with by the Commissioner,
24 before the change-over day; or

25 (b) a statement is lodged under subsection (1) on or
26 after the change-over day.

27 (2B) The Commissioner may, on or after the change-over
28 day, decide whether, had the statement been lodged
29 and finally dealt with before the change-over day, the
30 Commissioner would have renewed the registration of
31 the business name under subsection (1).

32

1 (3) In section 11(2) delete “The” and insert:
2

3 If a statement lodged under subsection (1) is finally
4 dealt with by the Commissioner before the change-over
5 day, the
6

7 (4) After section 11(2) insert:
8

9 (3A) If a statement lodged under subsection (1) is dealt with
10 in accordance with subsection (2B), the previous
11 registration of the business name to which the
12 statement relates is to be taken to have remained in
13 force in respect of the period between when the
14 previous registration expired and the change-over day.
15

16 (5) In section 11(3) delete “The Commissioner shall before or after
17 the expiration of the registration of a business name, but not
18 earlier than one month before the expiration,” and insert:
19

20 In respect of the registration of a business name that
21 expires before the change-over day, the Commissioner
22 shall before or after the expiration of the registration of
23 the business name, but not earlier than one month
24 before the expiration (and in any case, before the
25 change-over day),
26

27 **25. Section 12 amended**

28 (1) Before section 12(1) insert:
29

30 (1A) Except as provided in subsection (1B), a statement
31 cannot be lodged under this section on or after the
32 change-over day.

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- 1 (1B) Subsection (1A) does not prevent a person from
2 lodging a statement under this section on or after the
3 change-over day if the statement is being lodged in
4 compliance with a notice issued by the Commissioner
5 under section 18(2) before the change-over day.
6
- 7 (2) After section 12(4) insert:
8
- 9 (5) Subsection (6) applies if —
10 (a) a statement in respect of a business name is
11 lodged under subsection (1), (2), (3) or (4), but
12 not finally dealt with by the Commissioner,
13 before the change-over day; or
14 (b) a statement in respect of a business name is
15 lodged under subsection (1), (2), (3) or (4) on
16 or after the change-over day as provided for by
17 subsection (1B).
- 18 (6) The Commissioner may, on or after the change-over
19 day, decide what particulars in respect of the business
20 name would have been incorporated with and formed
21 part of the register under section 6 had the statement
22 been finally dealt with by the Commissioner before the
23 change-over day.
24
- 25 (3) After section 12(8) insert:
26
- 27 (9A) If, but for subsection (1A), a statement could have been
28 lodged on or after the change-over day in accordance
29 with and within the time prescribed by subsection (1),
30 (2), (3) or (4), a person does not commit an offence
31 under subsection (8) by reason only that the person
32 does not lodge the statement.
33

1 **26. Section 13 amended**

2 After section 13(1) insert:

3

4 (2A) On or after the change-over day, the Commissioner
5 cannot issue a notice under subsection (1) except for
6 the purposes of ascertaining whether or not a person
7 did, or failed to do, anything before the change-over
8 day.

9

10 **27. Section 18 amended**

11 In section 18(1) and (2) delete “may send” and insert:

12

13 may, before the change-over day, send

14

15 **28. Section 19 amended**

16 (1) In section 19(1) delete “may cancel” and insert:

17

18 may, before the change-over day, cancel

19

20 (2) After section 19(1) insert:

21

22 (2A) Subsection (2B) applies if, before the change-over day,
23 the Commissioner sends a notice referred to in
24 subsection (1)(b) or (c) in respect of which the one
25 month period referred to in that provision expires on or
26 after the change-over day.

27 (2B) Upon the expiration of the one month period, the
28 Commissioner may decide whether, had the one month
29 period expired before the change-over day, the

s. 28

- 1 Commissioner would have cancelled the registration of
2 the business name under subsection (1).
- 3 (2C) The Commissioner cannot exercise the power under
4 subsection (2B) after the end of one month after the
5 change-over day.
6
- 7 (3) In section 19(2) after “him” insert:
8
9 under subsection (1)
10
- 11 (4) In section 19(3):
12 (a) delete “this section,” and insert:
13
14 subsection (1) or the Commissioner decides under
15 subsection (2B) that the Commissioner would have
16 cancelled the registration of a business name,
17
- 18 (b) after “cancellation” insert:
19
20 or, in the case of a decision of the Commissioner under
21 subsection (2B), a person in relation to whom the
22 business name was registered immediately before the
23 change-over day,
24
- 25 (c) delete “name.” and insert:
26
27 name or for a review of the Commissioner’s decision
28 under subsection (2B) (as the case requires).
29

- 1 (5) Delete section 19(4) and insert:
2
- 3 (4) An application to the State Administrative Tribunal
4 under subsection (3) cannot be made —
5 (a) in the case of a decision of the Commissioner
6 under subsection (1) made before the
7 change-over day — after the end of 2 months
8 after the change-over day; or
9 (b) in the case of a decision of the Commissioner
10 under subsection (2B) made on or after the
11 change-over day — more than 28 days after the
12 Commissioner’s decision.
13
- 14 (6) In section 19(5):
15 (a) delete “If” and insert:
16
17 If, before the change-over day,
18
19 (b) delete “name,” and insert:
20
21 name under subsection (1),
22
23 (c) delete “him of an office copy of the order, shall” and
24 insert:
25
26 him, before the change-over day, of an office copy of
27 the order shall, before the change-over day,
28

s. 29

1 **29. Section 21 amended**

2 In section 21(1) and (4) delete “may” and insert:

3

4 may, before the change-over day,

5

6 **30. Section 22 amended**

7 (1) At the beginning of section 22 insert:

8

9 (1) This section does not apply on or after the day after the
10 end of the period of 7 years beginning on the
11 change-over day.

12

13 (2) In section 22 delete “A person” and insert:

14

15 (2) A person

16

17 **31. Section 23 amended**

18 Before section 23(1) insert:

19

20 (1A) A request cannot be made under subsection (1) on or
21 after the change-over day.

22

23 **32. Section 24 amended**

24 (1) In section 24 delete “A document” and insert:

25

26 (1) A document

27

1 (2) At the end of section 24 insert:

2

3 (2) A copy of an entry in the Commonwealth register,
4 provided by ASIC under the *Business Names*
5 *Registration Act 2011* (Commonwealth) section 60, in
6 relation to a business name that was registered under
7 this Act is admissible in proceedings relating to a
8 matter arising before the change-over day and is
9 evidence of the matters stated in the entry.

10 (3) In subsection (2) —

11 *Commonwealth register* means the Business Names
12 Register established and maintained under the *Business*
13 *Names Registration Act 2011* (Commonwealth)
14 section 22.

15

16 **33. Section 25 deleted**

17 Delete section 25.

18 **34. Section 28 amended**

19 In section 28(3) delete “time.” and insert:

20

21 time but in any case not more than 3 years after the
22 change-over day.

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Part 4 — Other Acts amended

Division 1 — *Auction Sales Act 1973* amended

35. Act amended

This Division amends the *Auction Sales Act 1973*.

36. Section 4 amended

In section 4 in the definition of *firm* delete “*Business Names Act 1962*,” and insert:

Business Names Registration Act 2011 (Commonwealth);

Division 2 — *Employment Agents Act 1976* amended

37. Act amended

This Division amends the *Employment Agents Act 1976*.

38. Section 4 amended

In section 4(1) in the definition of *firm* delete “*Business Names Act 1962*,” and insert:

Business Names Registration Act 2011 (Commonwealth),

Division 3 — *Legal Profession Act 2008* amended

39. Act amended

This Division amends the *Legal Profession Act 2008*.

1 **40. Section 157 amended**

2 In section 157(4) delete “the law of” and insert:

3

4 the law applicable in

5

6 **Division 4 — *Settlement Agents Act 1981* amended**

7 **41. Act amended**

8 This Division amends the *Settlement Agents Act 1981*.

9 **42. Schedule 2 clause 2 amended**

10 In Schedule 2 clause 2(h) delete “an application for transfer of a
11 business name under the *Business Names Act 1962*,” and insert:

12

13 any applications necessary under the *Business*
14 *Names Registration Act 2011* (Commonwealth) to
15 effect the transfer of a business name under that
16 Act;

17

18 **Division 5 — *Travel Agents Act 1985* amended**

19 **43. Act amended**

20 This Division amends the *Travel Agents Act 1985*.

21 **44. Section 14 amended**

22 In section 14(1) delete “*Business Names Act 1962*,” and insert:

23

24 *Business Names Registration Act 2011* (Commonwealth),

25

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Defined Terms

Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined Term	Provision(s)
adoption	3
amendment reference	3
business name	3
commencement day	12(1)
continuing business names matter	3
entity	3
exemption provision	3
existing legislation	9(1)
express amendment.....	3
Gazettal day	12(1)
government body	3
national business names instrument.....	3
national business names legislation	3
notified State register	3
notified State/Territory register	3
registration	3
specified.....	12(1)
State law	3
taxes.....	3
termination.....	9(1)
transitional regulations.....	12(1)