





# **Business Names Registration (Transitional and Consequential Provisions) Act 2011**

**No. 127, 2011**

**An Act to deal with transitional and consequential  
matters in connection with the *Business Names  
Registration Act 2011*, and for related purposes**

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



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**An Act to deal with transitional and consequential  
matters in connection with the *Business Names  
Registration Act 2011*, and for related purposes**

*[Assented to 3 November 2011]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Business Names Registration  
(Transitional and Consequential Provisions) Act 2011*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	3 November 2011
2. Section 4	At the same time as section 3 of the <i>Business Names Registration Act 2011</i> commences.	
3. Schedule 1	At the same time as section 3 of the <i>Business Names Registration Act 2011</i> commences.	
4. Schedule 2, Part 1	At the same time as section 3 of the <i>Business Names Registration Act 2011</i> commences.	
5. Schedule 2, Part 2	On the first anniversary of the commencement of Part 2 of the <i>Business Names Registration Act 2011</i> .	

Note: This table relates only to the provisions of this Act as originally enacted.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.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## 4 Dictionary

(1) In this Act:

***Business Names Registration Act*** means the *Business Names Registration Act 2011*, and includes instruments made under that Act.

***change-over day*** means the day on which Part 2 of the Business Names Registration Act commences.

***person responsible for registration in a State or Territory*** means:

- (a) in the case of New South Wales—the Director-General as defined for the purposes of the *Business Names Act 2002* of New South Wales; and
- (b) in the case of Victoria—the Director within the meaning of the *Fair Trading Act 1999* of Victoria; and
- (c) in the case of Queensland—a registrar of business names under the *Business Names Act 1962* of Queensland; and
- (d) in the case of Western Australia—the person for the time being designated as the Commissioner under section 4AA of the *Business Names Act 1962* of Western Australia; and
- (e) in the case of South Australia—the Corporate Affairs Commission of South Australia established by Part 13 of the *Companies Act 1962* of South Australia; and
- (f) in the case of Tasmania—the Commissioner for Corporate Affairs holding office under section 4 of the *Commissioner for Corporate Affairs Act 1980* of Tasmania, and includes any person holding that office in an acting capacity; and
- (g) in the case of the Australian Capital Territory—the Registrar-General under the *Registrar-General Act 1993* of the Australian Capital Territory; and
- (h) in the case of the Northern Territory—the person holding or occupying the office of Commissioner of Consumer Affairs under the *Consumer Affairs and Fair Trading Act* of the Northern Territory.

***registration law***, in relation to a State or Territory, means:

- (a) in the case of New South Wales—the *Business Names Act 2002* of New South Wales; and

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- (b) in the case of Victoria—the *Business Names Act 1962* of Victoria; and
  - (c) in the case of Queensland—the *Business Names Act 1962* of Queensland; and
  - (d) in the case of Western Australia—the *Business Names Act 1962* of Western Australia; and
  - (e) in the case of South Australia—the *Business Names Act 1996* of South Australia; and
  - (f) in the case of Tasmania—the *Business Names Act 1962* of Tasmania; and
  - (g) in the case of the Australian Capital Territory—the *Business Names Act 1963* of the Australian Capital Territory; and
  - (h) in the case of the Northern Territory—the *Business Names Act 2007* of the Northern Territory.

*this Act* includes instruments made under this Act.

- (2) An expression, other than *this Act*, that is defined in the Business Names Registration Act has the same meaning in this Act as in that.

## **Schedule 1—Transitional provisions**

### **Part 1—Business names registered on change-over day**

#### **1 Application of this Part**

- (1) This Part applies if a referring/adopting State or an affected Territory notifies ASIC in accordance with subitems (2) and (3) that:
  - (a) a business name is registered under the registration law of the State or Territory in relation to a person; and
  - (b) the business name is to be registered on the Business Names Register.
- (2) The notification must be given:
  - (a) in electronic form, or any other form agreed on by the State or Territory and ASIC; and
  - (b) before the change-over day.
- (3) The notification must:
  - (a) include details of the person; and
  - (b) state the period for which the business name is registered in relation to the person under the registration law of the State or Territory; and
  - (c) if the business name is also registered by the State or Territory in relation to other persons:
    - (i) include details of those other persons; and
    - (ii) state the period for which the business name is registered in relation to each of those persons under the registration law of the State or Territory.
- (4) A State or Territory satisfies the requirement in subitem (3) if the State or Territory gives ASIC an electronic copy of the register of business names maintained by the State or Territory under the registration law of the State or Territory.

#### **2 Business names registered in relation to a person trading alone before the change-over day**

- (1) This item applies if:
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**Schedule 1** Transitional provisions

**Part 1** Business names registered on change-over day

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- (a) ASIC is given notification in relation to a business name and a person under item 1; and
  - (b) the person carries on, or intends to carry on, a business alone under the business name (rather than in association with other persons).
- (2) On the change-over day, ASIC must register the business name to the person by entering in the Business Names Register:
  - (a) details sufficient to identify the person including the person's ABN (if ASIC has that information); and
  - (b) the business name; and
  - (c) the address of each principal place of business of which ASIC is aware; and
  - (d) each address for service of documents of which ASIC is aware; and
  - (e) the period for which the business name is registered.
- (3) The period for which the business name is registered is the period:
  - (a) beginning at the start of the change-over day; and
  - (b) ending on the last day on which registration of the business name in relation to the person would have expired under the registration law of a referring/adopting State or an affected Territory in which the business name was registered in relation to the person immediately before the change-over day.
- (4) The Business Names Register may include any other details prescribed in relation to registrations under this item.

**3 Business names registered in relation to a group of persons before the change-over day**

- (1) This item applies if:
    - (a) ASIC is given notification in relation to a business name and a person under item 1; and
    - (b) the person carries on a business, or intends to carry on a business, under the name in association with one or more other persons.
  - (2) On the change-over day, ASIC must register the business name to:
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- (a) if the group of persons carrying on the business, or intending to carry on the business, has formed an entity to do so—the entity; or
    - (b) if the group of persons carrying on the business, or intending to carry on the business, has not formed an entity to do so—the group of persons.
  - (3) If the business name is registered to a group of persons under paragraph (2)(b):
    - (a) each of those persons is a *joint venture entity* for the purposes of section 87 of the Business Names Registration Act; and
    - (b) the group is a *joint venture* for the purposes of section 87 of the Business Names Registration Act.
- Note: Section 87 of the Business Names Registration Act sets out rules for treating joint ventures in the same way as entities.
- (4) ASIC registers the business name by entering in the Business Names Register:
    - (a) details sufficient to identify the entity or group of persons, including (if ASIC has the information):
      - (i) in a case where the business name is registered under paragraph (2)(a)—the entity’s ABN; and
      - (ii) in a case where the business name is registered under paragraph (2)(b)—the ABN of each person within the group; and
    - (b) the business name; and
    - (c) the address of each principal place of business of which ASIC is aware; and
    - (d) each address for service of documents of which ASIC is aware; and
    - (e) the period for which the business name is registered.
  - (5) The period for which the business name is registered is the period:
    - (a) beginning at the start of the change-over day; and
    - (b) ending on the last day on which registration of the business name to any member of the entity or group would have expired under the registration law of a referring/adopting State or an affected Territory in which the business name was

**Schedule 1** Transitional provisions

**Part 1** Business names registered on change-over day

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registered in relation to the member immediately before the change-over day.

- (6) The Business Names Register may include any other details prescribed in relation to registrations under this item.

## **Part 2—Business names held on change-over day to resolve outstanding matters**

### **4 Application**

- (1) This Part applies if:
  - (a) a referring/adopting State or an affected Territory notifies ASIC in accordance with subitem (2) that a business name is to be held; and
  - (b) the notification that the name is to be held is given for the purposes of resolving outstanding matters under the law of the State or Territory.
- (2) The notification must be given:
  - (a) in electronic form; and
  - (b) before the change-over day.

### **5 Business name held during grace period for renewal**

- (1) ASIC must hold the business name until the business name is registered under item 7 or ASIC ceases to hold the business name under item 8 or 9.
- (2) An entity does not commit an offence under Part 2 of the Business Names Registration Act while the business name is held under subitem (1).

### **6 State or Territory may notify ASIC that registration required**

- (1) Item 7 applies if a State or Territory that has given ASIC notification under item 4 notifies ASIC in accordance with subitems (2) and (3) that the business name is to be registered on the Business Names Register.
- (2) The notification must be given in electronic form.
- (3) The notification must:
  - (a) either:
    - (i) where a business is carried on, or is intended to be carried on, under the business name by a person alone—give details of that person; or

- (ii) where a business is carried on, or is intended to be carried on, under the business name by a group of persons—give details of each of those persons; and
- (b) nominate the period for which the business name is to be registered.

## 7 Registration

- (1) ASIC must register the business name:
    - (a) in a case where a business is carried on, or is intended to be carried on, under the business name by a person alone—to the person; or
    - (b) in a case where a business is carried on, or is intended to be carried on, under the business name by a group of persons:
      - (i) if the group of persons has formed an entity to do so—to the entity; or
      - (ii) if the group of persons has not formed an entity to do so—to the group of persons.
  - (2) If the business name is registered to a group of persons under subparagraph (1)(b)(ii):
    - (a) each of those persons is a *joint venture entity* for the purposes of section 87 of the Business Names Registration Act; and
    - (b) the group is a *joint venture* for the purposes of section 87 of the Business Names Registration Act.
- Note: Section 87 of the Business Names Registration Act sets out rules for treating joint ventures in the same way as entities.
- (3) ASIC registers the business name by entering in the Business Names Register:
    - (a) details sufficient to identify the entity or group of persons to whom the business name is registered, including (if ASIC has the information):
      - (i) in a case where the business name is registered under paragraph (1)(a)—the person's ABN; and
      - (ii) in a case where the business name is registered under subparagraph (1)(b)(i)—the entity's ABN; and
      - (iii) in a case where the business name is registered under subparagraph (1)(b)(ii)—the ABN of each person within the group; and
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- (b) the business name; and
  - (c) the address of each principal place of business of which ASIC is aware; and
  - (d) each address for service of documents of which ASIC is aware; and
  - (e) the period for which the business name is registered.
- (4) The period for which the business name is registered is the period nominated by the State or Territory under paragraph 6(3)(b).
- (5) If a business name is registered as a result of a notice given under item 6 after the period of 4 months beginning on the change-over day has elapsed, ASIC must notify the entity to whom the business name is registered (including a group of persons that is treated as an entity because it is a joint venture for the purposes of section 87 of the Business Names Registration Act) in writing of the registration.
- (6) This item does not apply if, because of:
- (a) a previous application of this item; or
  - (b) another provision of this Act; or
  - (c) a provision of the Business Names Registration Act;
- the business name is already registered to the entity to whom it would be registered under this item (including a group of persons that is treated as an entity because it is a joint venture for the purposes of section 87 of the Business Names Registration Act).

## **8 ASIC must cease to hold name if given notice by all relevant States and Territories**

- (1) If all of the States and Territories who have given ASIC notification under item 4 to hold a business name give ASIC notification in accordance with subitem (2) that ASIC is to cease to hold the business name, ASIC must cease to hold the business name.
- (2) The notification must be given in electronic form.

## **9 ASIC may request update on names held**

- (1) ASIC may, by notice in accordance with subitem (2), request each State or Territory that has given ASIC notification under item 4 in relation to a business name to inform ASIC whether the business name should continue to be held for the purposes of resolving outstanding matters.

**Schedule 1** Transitional provisions

**Part 2** Business names held on change-over day to resolve outstanding matters

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- (2) A notice under subitem (1):
  - (a) must be given in electronic form; and
  - (b) may be given no earlier than 3 months after the change-over day.
- (3) The notice may nominate a period of no less than 28 days (beginning on the day on which the notice is given) within which the State or Territory should give the information to ASIC.
- (4) ASIC may cease to hold the business name if none of the States or Territories to whom notice is given under subitem (1) inform ASIC electronically within the nominated period for that State or Territory that ASIC is to continue to hold the business name.
- (5) To avoid doubt, ASIC may exercise its powers in relation to a business name under this item more than once.
- (6) If ASIC ceases to hold a business name, it must notify the State or Territory of that fact.

**10 Regulations for the purposes of resolving outstanding matters**

- (1) The Governor-General may make regulations to deal with business names in relation to which outstanding matters under the law of a State or Territory are to be resolved.
- (2) To avoid doubt, regulations made under subitem (1) must not direct a State or Territory on how outstanding matters are to be resolved.
- (3) Without limiting subitem (1), this Act and the Business Names Registration Act have effect subject to any modifications made by the regulations to deal with business names in relation to which outstanding matters under the law of a State or Territory are to be resolved.
- (4) In this item:  
*modifications* include additions, omissions and substitutions.

## **Part 3—Entities disqualified on registration under this Act**

### **11 Entities disqualified on registration under this Act**

- (1) An entity to whom a business name is registered under this Act must notify ASIC if the entity is disqualified on the day on which it is registered (the *registration day*).
- (2) The notice:
  - (a) must be in the prescribed form; and
  - (b) must be lodged in the prescribed manner; and
  - (c) must be lodged within a period of 28 days beginning on:
    - (i) where the business name is registered under item 2 or 3—the change-over day; or
    - (ii) where the business name is registered under another item—on the day on which notice of the registration is given to the entity by ASIC under that item.
- (3) If a business name is registered to an entity under this Act, but the entity is disqualified on the registration day:
  - (a) section 21 of the Business Names Registration Act does not apply in relation to that disqualification; and
  - (b) section 44 of the Business Names Registration Act does not apply in relation to that disqualification.
- (4) The Minister may determine in writing that the registration of the business name to the entity is to be cancelled, if the Minister is satisfied that, because of:
  - (a) the seriousness of an offence on the basis of which the entity is disqualified; or
  - (b) the number of offences on the basis of which the entity is disqualified;allowing the entity to carry on a business under a business name poses a serious risk to consumers.
- (5) The Minister must not make a determination under subitem (4) if:

**Schedule 1** Transitional provisions

**Part 3** Entities disqualified on registration under this Act

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- (a) in a case where the business name was registered under a registration law of a referring/adopting State or an affected Territory in relation to a person who carried on a business alone under the name (rather than in association with other persons)—that person was registered under that law because leave was granted by a relevant court; or
- (b) in a case where the business name was registered under a registration law of a referring/adopting State or an affected Territory in relation to a person who carried on a business under the name in association with one or more other persons—each person who was registered under that law was registered either because leave was granted by a relevant court or because such leave was not necessary.

Note: Section 54 of the Business Names Registration Bill provides that a business name is held, and the entity does not commit an offence if the entity carries on a business under it, during the review period in relation to the cancellation.

- (6) For the purposes of subitem (5), *leave is granted by a relevant court* if:
    - (a) where the business name was registered under the *Business Names Act 2002* of New South Wales—leave to do so was granted by the District Court as mentioned in section 8 of that Act; or
    - (b) where the business name was registered under the *Business Names Act 1962* of Victoria—leave to carry on business under a business name was granted by the County Court as mentioned in section 5A of that Act, or by another court on appeal; or
    - (c) where the business name was registered under the *Business Names Act 1962* of Western Australia—leave to carry on a business under a business name was granted by The District Court of Western Australia as mentioned in section 5A of that Act, or by another court on appeal; or
    - (d) where the business name was registered under the *Business Names Act 1996* of South Australia—permission to carry on business under a business name was obtained from the District Court as mentioned in section 17 of that Act, or from another court on appeal; or
    - (e) where the business name was registered under the *Business Names Act 1962* of Tasmania—leave to carry on a business under a business name was granted by a magistrate as mentioned in section 5A of that Act, or by a court on appeal.
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- (7) A determination under subitem (4) is not a legislative instrument.

## **Part 4—Information-gathering for transitional purposes**

### **12 Interaction with the Australian Business Register**

- (1) ASIC may disclose information to the Registrar of the Australian Business Register for the purposes of obtaining the assistance of the Registrar:
  - (a) to establish whether a person, or a group of persons, to whom a business name is registered under the registration law of a referring/adopting State or an affected Territory is an entity and, if so, that entity's ABN; and
  - (b) to obtain details of the business names that are listed on the Australian Business Register as registered for an entity under the law of a referring/adopting State or an affected Territory; and
  - (c) to obtain details of the business names that are listed on the Australian Business Register as not registered for an entity under the law of a referring/adopting State or an affected Territory but used for business purposes by the entity.
- (2) ASIC may record and use information disclosed to ASIC by the Registrar of the Australian Business Register for the purposes of making a decision under any of the following provisions:
  - (a) paragraph 2(1)(b);
  - (b) paragraph 3(1)(b);
  - (c) paragraph 7(1)(a);
  - (d) paragraph 7(1)(b);
  - (e) paragraph 16(1)(b).

Note: ASIC may also use its power under section 37 of the Business Names Registration Act to request a person to give ASIC information.

### **13 ASIC may disclose information to States and Territories for transitional purposes**

ASIC may disclose information to a referring/adopting State or an affected Territory for the purposes of obtaining assistance from the State or Territory:

- (a) to ensure that a business name is registered to the correct entity under this Act; and
- (b) to ensure that details entered on the Business Names Register in relation to a registration under this Act are correct.

#### **14 ASIC may use information disclosed to it by States and Territories in making decisions**

ASIC may record and use information disclosed to ASIC by a referring/adopting State or an affected Territory (whether under item 13 or otherwise) for the purposes of making a decision under any of the following provisions:

- (a) paragraph 2(1)(b);
- (b) paragraph 3(1)(b);
- (c) paragraph 7(1)(a);
- (d) paragraph 7(1)(b);
- (e) paragraph 16(1)(b).

Note: ASIC may also use its power under section 37 of the Business Names Registration Act to request a person to give ASIC information.

#### **15 ASIC may rely on information disclosed by States and Territories and by the Registrar of the Australian Business Register**

In exercising powers or performing functions or duties under this Act, ASIC may rely on information disclosed to it by:

- (a) a State or Territory; or
- (b) the Registrar of Australian Business Register.

#### **16 Correcting the Business Names Register where information available on transition deficient**

- (1) This item applies if:
  - (a) a business name is registered under this Act to an entity or entities; and
  - (b) ASIC is satisfied that, because of a deficiency in the information available to ASIC before registration:
    - (i) the business name has not been registered to the correct entity or entities; or
    - (ii) a detail entered on the Business Names Register in relation to the registration under this Act is incorrect.

**Schedule 1** Transitional provisions

**Part 4** Information-gathering for transitional purposes

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- (2) ASIC must correct the Business Names Register.
- (3) Without limiting subitem (2), ASIC may, for the purposes of correcting the Business Names Register under that subitem:
  - (a) add one or more registrations; or
  - (b) remove one or more registrations; or
  - (c) change the details entered on the Business Names Register in relation to one or more registrations.
- (4) If ASIC corrects the Business Names Register, it must give notice of the correction made to:
  - (a) each entity to whom the business name was registered before the correction; and
  - (b) each entity to whom the business name is registered after the correction; and
  - (c) if a detail in relation to a person is changed and that person would not receive notice under paragraph (a) or (b)—that person.

**17 Nominating a principal place of business and address for service**

- (1) If a business name is registered to an entity under this Act:
  - (a) in a case where more than one principal place of business is entered on the Business Names Register in relation to the registration—ASIC may request the entity to nominate a single principal place of business to be entered on the Business Names Register; and
  - (b) in a case where more than one address for service is entered on the Business Names Register in relation to the registration—ASIC may request the entity to nominate a single address for service to be entered on the Business Names Register.
- (2) ASIC's request must:
  - (a) be in writing; and
  - (b) specify the period, of no less than 28 days beginning on the day on which the notice is given, within which the nomination is to be lodged with ASIC (the ***nomination period***).

The request is not a legislative instrument.

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- (3) The nomination:
  - (a) must be in the prescribed form; and
  - (b) must be lodged with ASIC in the prescribed manner.
  
- (4) If the nomination is not lodged with ASIC within the nomination period:
  - (a) where more than one principal place of business is entered on the Business Names Register in relation to the registration—ASIC may select from those a place to be entered on the Business Names Register as the principal place of business; and
  - (b) where more than one address for service is entered on the Business Names Register in relation to the registration—ASIC may select from those an address to be entered on the Business Names Register as the address for service.

## **Part 5—Distinguishing grandfathered business names that are identical or nearly identical**

### **18 Distinguishing words and expressions**

- (1) This item applies if 2 or more business names that are identical or nearly identical are registered under this Act.
- (2) This item also applies if one or more of the business names is subsequently registered under the Business Names Registration Act under an application to which an entity to whom the business name was previously registered has consented by notice under section 31 of that Act.
- (3) ASIC may, by notice in writing given to each entity to whom one of the business names is registered, nominate a word or expression to be entered on the Business Names Register for the business name registered to that entity.
- (4) ASIC may only nominate a word or expression to an entity if the inclusion of the word or expression on the Business Names Register would assist in distinguishing a business or businesses carried on by the entity from a business or businesses carried on by another entity.
- (5) Without limiting subitem (4), a word or expression nominated by ASIC may be a word or expression identifying the location at which a business is or businesses are carried on by the entity under one or more of the business names.
- (6) If ASIC gives an entity a notice under subitem (3), the entity must, within 28 days after that notice is given:
  - (a) lodge a notice with ASIC accepting ASIC's nomination; or
  - (b) lodge a notice with ASIC objecting to ASIC's nomination and nominating an alternative word or expression.
- (7) A notice under paragraph (6)(a) or (b):
  - (a) must be in the prescribed form; and
  - (b) must be lodged in the prescribed manner.
- (8) If an entity fails to comply with subitem (6), the entity is taken to have lodged notice with ASIC accepting ASIC's nomination.

- (9) ASIC must accept the alternative word or expression nominated by the entity unless ASIC is reasonably satisfied that, if:
- (a) the word or expression were added to the business name; and
  - (b) the entity made application to register the business name as altered;
- the business name as altered would not be available to the entity under section 25 of the Business Names Registration Bill.
- (10) ASIC must:
- (a) notify the entity in writing whether it accepts or rejects the alternative word or expression; and
  - (b) if ASIC rejects the alternative, specify in the notice the word or expression that is to be entered on the Business Names Register under item 20.

### **19 Meaning of distinguishing word or expression**

A word or expression is the *distinguishing word or expression* that relates to a business carried on by an entity under a business name, if:

- (a) the word or expression is nominated by ASIC in relation to the business name by notice to the entity under subitem 18(3) and accepted by the entity under paragraph 18(6)(a); or
- (b) the word or expression is nominated by ASIC in relation to the business name by notice to the entity under subitem 18(3) and taken to have been accepted by the entity under subitem 18(8); or
- (c) the word or expression is nominated by the entity in relation to the business name by notice under paragraph 18(6)(b) and accepted by ASIC under subitem 18(9); or
- (d) in a case where an alternative word or expression is nominated in relation to the business name by the entity under paragraph 18(6)(b) and rejected by ASIC under subitem 18(9)—the word or expression is specified in the notice given by ASIC under subitem 18(10).

### **20 ASIC must enter distinguishing word or expression on the Business Names Register**

- (1) ASIC must enter the distinguishing word or expression that relates to a business or businesses carried on by an entity under a business name on the Business Names Register.

**Schedule 1** Transitional provisions

**Part 5** Distinguishing grandfathered business names that are identical or nearly identical

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- (2) However, the distinguishing word or expression does not form part of the business name.
- (3) ASIC may remove the entry from the register if ASIC is satisfied that the removal of the distinguishing word or expression would not lead to confusion about who is carrying on a business or businesses under the business name.
- (4) If ASIC removes the entry from the register, ASIC must notify the following entities of the removal:
  - (a) the entity to whom the business name is registered;
  - (b) each entity for whom ASIC has contact details to whom the business name, or a nearly identical business name, was formerly registered.
- (5) ASIC may also notify any other entity of the removal of the distinguishing word or expression if ASIC is satisfied that the entity's interests might be affected by the removal.

**21 Name not available if identical or nearly identical to existing name accompanied by distinguishing word or expression**

If a distinguishing word or expression is entered on the Business Names Register in relation to a business name registered to an entity, a name that is identical or nearly identical to any combination of the distinguishing word or expression and that business name is not *available* to any other entity.

## **Part 6—Aligning registration periods**

### **22 Aligning registration periods**

- (1) This item applies in relation to the first renewal after the day on which the business name is first registered to an entity under this Act.
- (2) ASIC must determine an alternative registration period for the renewal of the registration of the business name to the entity if:
  - (a) the entity lodges a request with ASIC, in the prescribed form and manner, to have the alternative registration period determined; and
  - (b) the alternative registration period requested is:
    - (i) if the registration period on renewal would otherwise have been 1 year—of not more than 18 months; and
    - (ii) if the registration period on renewal would otherwise have been 3 years—of not more than 3 years and 6 months.
- (3) A determination under subitem (2) must be in writing, but is not a legislative instrument.

## Part 7—Other obligations to give information to ASIC

### 23 Notifying ASIC of bankruptcy, insolvency etc.

- (1) A person who is a debtor representative of an entity immediately before the day on which a business name is first registered to the entity under this Act (the *registration day*) is taken to satisfy section 38 of the Business Names Registration Act if:
- (a) the person has, before the registration day, given a person responsible for registration in a referring/adopting State or an affected Territory notice:
    - (i) that the person is appointed or authorised to act as a debtor representative of the entity; and
    - (ii) identifying who (if anyone) will carry on a business under the business name while that person is appointed or authorised; or
  - (b) the person lodges with ASIC notice of the person's appointment or authorisation in accordance with paragraphs 38(2)(b) to (d) of that Act within the period of 28 days beginning on the registration day.
- (2) In this item:
- debtor representative* has the same meaning as in section 38 of the Business Names Registration Act.

### 24 Notifying ASIC of death of an entity that is an individual

A person who is the legal personal representative in relation to a deceased estate of an individual immediately before the day on which a business name is first registered to the individual under this Act (the *registration day*) is taken to satisfy subsection 39(1) of the Business Names Registration Act if:

- (a) the person has, before the registration day, given a person responsible for registration in a referring/adopting State or an affected Territory notice that one of the following is granted to the person:
  - (i) probate of the will of the deceased;
  - (ii) letters of administration of the estate of the deceased;
  - (iii) any other similar grant; or

- (b) the person lodges with ASIC notice of the relevant grant in accordance with subsection 39(2) of that Act within the period of 28 days beginning on the registration day.

## Part 8—Preserving exemptions and protecting information

### 25 Exemptions

(1) An entity is exempt from the requirement under section 19 of the Business Names Registration Act to include a name or the entity's ABN in a written communication in connection with a business carried on under a business name, if the entity is, immediately before the change-over day, subject to an exemption under the registration law of a State or Territory to include that information in such a communication.

(2) Subsection 19(1) of the Business Names Registration Act does not apply to the entity in relation to the communication.

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

(3) An entity is exempt from the requirement under section 20 of the Business Names Registration Act to display a name at a place, if the entity is, immediately before the change-over day, subject to an exemption from a requirement under the registration law of a State or Territory to display the name at the place.

(4) Subsection 20(1) of the Business Names Registration Act does not apply to the entity in relation to the display of the name at the place.

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

### 26 Protecting information

(1) Despite section 60 of the Business Names Registration Act, a person may not obtain information from ASIC by application under that section if, immediately before the change-over day and under the registration law of a State or Territory, that information would not have been available to that person.

(2) Despite section 61 of the Business Names Registration Act, ASIC must not make information publicly available if, immediately before the change-over day and under the registration law of a State or Territory, the information could not have been made publicly available.

## Part 9—Review

### 27 Reviewable decisions

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

<b>Reviewable decisions</b>			
<b>Item</b>	<b>Column 1 Decision</b>	<b>Column 2 Provision</b>	<b>Column 3 Who may seek review</b>
1	That a person carries on, or intends to carry on, a business alone under a business name (rather than in association with other persons)	Paragraph 2(1)(b) or 7(1)(a) of this Schedule	A person to whom the business name was registered under the law of a State or Territory immediately before the change-over day
2	That a person carries on, or intends to carry on, a business under a business name in association with one or more other persons	Paragraph 3(1)(b) or 7(1)(b) of this Schedule	A person to whom the business name was registered under the law of a State or Territory immediately before the change-over day
3	Rejection of an alternative word or expression to distinguish an entity	Subitem 18(9) of this Schedule	The entity
4	Specifying a word or expression to distinguish an entity	Paragraph 18(10)(b) of this Schedule	The entity
5	Removing a word or expression to distinguish an entity on the Business Names Register	Subitem 20(3) of this Schedule	The entity

### 28 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) The application:
    - (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 within 28 days after the entity is notified of the decision.
  - (5) Despite subitem (4), an application for review 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 subitem (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.
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- (9) For the purposes of item 29, if an entity gives notice under subitem (8) of this item, the review body is taken to have refused the entity's application on the day on which the notice is given.

## **29 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 item 28.
- (2) The application may be made by any entity who could have lodged an application under subitem 28(1) in relation to the decision in relation to which the decision under item 28 was made or taken to have been made.
- (3) An application may be made to the Administrative Appeals Tribunal for review of a decision made personally by the Minister to cancel the registration of a business name to an entity under subitem 11(4).
- (4) The application may be made by the entity.

## Part 10—Miscellaneous

### 30 Restricted words and expressions

Section 46 of the Business Names Registration Act does not apply in relation to a business name that includes a restricted word or expression, if the business name is registered under this Act.

### 31 Limit on exercise of powers to require information

- (1) This item applies if a business name is registered to an entity under this Act and no other business name is registered to the entity under the Business Names Registration Act.
- (2) ASIC must not exercise its powers under this Act or the Business Names Registration Act to require the entity to give ASIC any of the following information:
  - (a) the entity's ABN;
  - (b) if the entity is an individual—the entity's date or place of birth.

### 32 Availability test does not apply to registrations under this Act

To avoid doubt, ASIC may not exercise its power under section 43 of the Business Names Registration Act to cancel the registration of a business name that is registered to an entity under this Act on the basis that the business name was not available to the entity at the time of registration.

### 33 Regulations

- (1) 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.
- (2) Without limiting subitem (1), regulations may provide for information of a prescribed kind to be entered on the Business Names Register if:

- (a) the information is obtained by a referring/adopting State or an affected Territory under the registration law of that State or Territory before the change-over day; and
- (b) the information is not otherwise entered, or would not otherwise be entered, on the Business Names Register under a provision of this Act or the Business Names Registration Act.

## Schedule 2—Consequential amendments

### Part 1—Amendments commencing on change-over day

#### *A New Tax System (Australian Business Number) Act 1999*

##### **1 Paragraph 26(3)(d)**

Repeal the paragraph, substitute:

(d) either:

- (i) any business name registered to the entity on the Business Names Register established and maintained under section 22 of the *Business Names Registration Act 2011*; or
- (ii) if a business name is not registered to the entity—a name used for business purposes by the entity that appeared in the entry relating to the entity in the \*Australian Business Register immediately before Part 2 of the *Business Names Registration Act 2011* commences;

#### *ANL Act 1956*

##### **2 Section 51**

Repeal the section.

##### **3 Section 55**

Repeal the section, substitute:

##### **55 Registration on Business Names Register**

This Part does not prevent a protected body from registering a name on the Business Names Register established and maintained under section 22 of the *Business Names Registration Act 2011*.

***Australian Securities and Investments Commission Act 2001***

**4 At the end of subsection 12A(1)**

Add:

- ; (k) the *Business Names Registration Act 2011*;
- (l) the *Business Names Registration (Transitional and Consequential Provisions) Act 2011*.

**5 After subsection 127(3)**

Insert:

- (3A) Using or disclosing information in accordance with the consent of the person who provided the information is authorised use and disclosure of the information.

**6 At the end of subsection 136(2)**

Add:

- ; (j) information about the operation of the *Business Names Registration Act 2011* including:
  - (i) details of the level of access to the Business Names Register using the internet and other facilities; and
  - (ii) the timeliness with which ASIC carries out its duties, functions and powers under the Act; and
  - (iii) the cost of registration of a business name under the Act.

**7 At the end of section 136**

Add:

*Annual report to be sent to the Attorney-General of each State and Territory*

- (4) The Minister must cause a copy of each annual report to be sent to the Attorney-General of each State and Territory as soon as practical after the Minister receives the report.

***Bank Integration Act 1991***

**8 Paragraph 18(2)(b)**

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**Schedule 2** Consequential amendments

**Part 1** Amendments commencing on change-over day

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Omit “under a law or a State or Territory”, substitute “on the Business Names Register established and maintained under section 22 of the *Business Names Registration Act 2011*”.

**9 Subsection 18(3)**

Repeal the subsection.

***Corporations (Aboriginal and Torres Strait Islander) Act 2006***

**10 Paragraph 85-5(1)(b)**

Omit “included on the national business names register”, substitute “held or registered on the Business Names Register”.

**11 Subparagraph 85-5(2)(a)(v)**

Omit “included on the national business names register”, substitute “held or registered on Business Names Register”.

**12 Section 700-1**

Insert:

***Business Names Register*** means the Register established and maintained under section 22 of the *Business Names Registration Act 2011*.

**13 Section 700-1 (definition of *national business names register*)**

Repeal the definition.

***Corporations Act 2001***

**14 Section 9**

Insert:

***Business Names Register*** means the Register established and maintained under section 22 of the *Business Names Registration Act 2011*.

**15 Section 9 (definition of *national business names register*)**

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Repeal the definition.

**16 Paragraph 147(1)(b)**

Omit “included on the national business names register”, substitute “held or registered on the Business Names Register”.

**17 Subsection 147(5)**

Repeal the subsection.

**18 Paragraph 324BB(6)(a)**

Omit “under a law of a State or Territory relating to the registration of business names”, substitute “on the Business Names Register”.

**19 Paragraph 601DC(1)(b)**

Omit “included on the national business names register”, substitute “held or registered on the Business Names Register”.

**20 Subsection 601DD(3)**

Omit “the use of that name is authorised by a law of that State or Territory that deals with business names”, substitute “the name is registered to the body on the Business Names Register”.

***Defence Service Homes Act 1918***

**21 Paragraph 50A(2)(d)**

Repeal the paragraph, substitute:

- (d) uses as a business name (within the meaning of the *Business Names Registration Act 2011*) or part of a business name;

***Financial Transaction Reports Act 1988***

**22 Subsection 3(1) (subparagraph (c)(iv) of the definition of *account information*)**

Repeal the subparagraph, substitute:

- (iv) if the account is held in a business name registered on the Business Names Register—that fact and a copy of the entry in the Business Names Register obtained under section 60 of the *Business Names Registration Act 2011* relating to the

**Schedule 2** Consequential amendments

**Part 1** Amendments commencing on change-over day

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business name and containing the details referred to in paragraphs 33(1)(a), (b), (d) and (e) of that Act (identification details, business name, address for service and period of registration);

- (iva) if the account is held in a business name of which registration on the Business Names Register has been applied for but not yet obtained—that fact and a copy of the application;

**23 Subsection 3(1)**

Insert:

***Business Names Register*** means the Register established and maintained under section 22 of the *Business Names Registration Act 2011*.

***Olympic Insignia Protection Act 1987***

**24 Subsection 71(5)**

Repeal the subsection, substitute:

- (5) This Chapter does not apply to the use of a business name in connection with a business if:
- (a) the name was registered under a law of a State or Territory relating to business names immediately before 20 September 2001 in relation to the business; and
  - (b) the name is registered in relation to the business under a law of the Commonwealth or a State or Territory relating to business names.

***Qantas Sale Act 1992***

**25 Subsection 7(7) (definition of *registered business name*)**

After “under a law of a State or Territory that relates to the registration of business names”, substitute “on the Business Names Register established and maintained under section 22 of the *Business Names Registration Act 2011*”.

***Wine Australia Corporation Act 1980***

**26 Paragraphs 40DB(4)(c) and 40FB(3)(c)**

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After “Territory”, insert “or on the Business Names Register established and maintained under section 22 of the *Business Names Registration Act 2011*”.

**Part 2—Amendment commencing on first anniversary of change-over day**

***A New Tax System (Australian Business Number) Act 1999***

**27 Paragraph 26(3)(d)**

Repeal the paragraph, substitute:

- (d) any business name registered to the entity on the Business Names Register established and maintained under section 22 of the *Business Names Registration Act 2011*;

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