



Australian Capital Territory

# **Business Names Act 1963      No 12**

## **Republication No 6**

Republication date: 15 January 2002

Last amendment made by Act 2001 No 44

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Business Names Act 1963* as in force on 15 January 2002. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
12 September 2001



Australian Capital Territory

# Business Names Act 1963

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Australian Capital Territory

## **Business Names Act 1963**

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An Act to consolidate and amend the law relating to business names, and for other purposes

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## 1 Short title

This Act may be cited as the *Business Names Act 1963*.

## 4 Interpretation for Act

(1) In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

*business* includes trade and profession.

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

*carrying on business* includes establishing a place of business and soliciting or procuring any order from a person in the Territory and *to carry on business* has a corresponding meaning.

*christian name* includes any forename.

*corporation* means any body corporate formed or incorporated whether in the ACT or outside the ACT, and includes any company, recognised company or foreign company within the meaning of the Corporations Act, section 9.

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

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

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

*initial* includes a recognised abbreviation of a christian name.

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

***the register*** means the register of business names kept under this Act.

***the repealed Act*** means the *Business Names Ordinance 1956*.

***secretary***, in relation to a corporation, includes any person performing the duties of secretary of the corporation and, in relation to a corporation registered under the Corporations Law, part 4.1, division 2, includes the agent of the corporation appointed for the purpose of that division.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

- (2) For this Act, a person shall not be regarded as carrying on business within the ACT for the reason only that within the ACT he or she—
- (a) is or becomes a party to any action or suit or any administrative or arbitration proceeding, or effects settlement of an action, suit or proceeding or of any claim or dispute; or
  - (b) maintains any account at a bank, credit union or building society; or
  - (c) effects any sale through an independent contractor; or
  - (d) creates evidence of any debt or creates a charge on real or personal property; or
  - (e) secures or collects any of his or her debts or enforces his or her rights in regard to any securities relating to such debts; or
  - (f) conducts an isolated transaction that is completed within a period of 31 days, but not being 1 of a number of similar transactions repeated from time to time; or
  - (g) invests any of his or her funds or holds any property.
- (3) For this Act, a business name shall be deemed to be registered under this Act in relation to a person if it appears from the register that that person either alone or together with other persons is carrying on business under that name.

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

- (1) A person shall not, either alone or in association with other persons, carry on business in the Territory under a business name, unless—
- (a) the business name consists of the name of that person and the name of each other person (if any) in association with whom that person is so carrying on business, without any addition; or
  - (b) the business name is registered under this Act in relation to that person and each other person (if any) in association with whom that person is so carrying on business;

and, where the business name is so registered, the provisions of section 12 which are required to be complied with by or on behalf of the person or persons in relation to whom the name is registered have been complied with.

Maximum penalty: 50 penalty units.

- (2) For subsection (1), the name of a person consists of—
- (a) in the case of an individual—his or her full name, or his or her surname together with—
    - (i) his or her christian name or names; or
    - (ii) the initial or initials of his or her christian name or names; or
    - (iii) a combination of 1 or more of his or her christian names and the initial or initials of his or her remaining christian name or names; or
    - (iv) the christian name or names by which he or she is commonly known or the initial or initials by which he or she is commonly known or any combination of 1 or more of such names and such initials; or
  - (b) in the case of a corporation—the corporate name of the corporation.



- (3) The addition to a business name of words indicating that the business is carried on in succession to a former owner of the business shall, for subsection (1), be deemed not to be an addition to the business name.
- (4) Where a business is carried on by an official receiver, a trustee in bankruptcy or a trustee under a deed or scheme of arrangement entered into under a law of the Commonwealth relating to bankruptcy or by a receiver, manager or other person appointed by any court or under the powers contained in any instrument to carry on the business, the business shall, for this Act, be deemed to be carried on by the person who carried on the business immediately before the appointment of the receiver, trustee, manager or other person.
- (5) Notwithstanding anything in this Act, a contravention of or failure to comply with any provision thereof shall not operate to avoid any agreement, transaction, act or matter.

## **6 Register of business names**

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

## **7 Registration of business names**

- (1) An application for the registration of a business name shall be made by lodging with the registrar-general a statement which shall be signed by the person or persons carrying on or proposing to carry on business in the ACT under that name and shall set out—
- (a) the business name; and
  - (b) a concise description of the true nature of the business carried on or proposed to be carried on under that name by the applicant or applicants; and
  - (c) the address of each place in the ACT where the business is or is proposed to be carried on showing, if the business is or is proposed to be carried on at more than 1 place in the ACT, which of those places is the principal place of business; and
  - (d) the christian names and surname, any former christian names or surname and the usual place of residence of each applicant who is an individual and the corporate name and the place of the registered office in the ACT of each applicant which is a corporation; and
  - (e) the date or proposed date of commencement of the carrying on of business in the ACT under the business name by the applicant or applicants; and
  - (f) where the business name is a name adopted by the applicant or applicants in substitution for another name—that other name.

*Note 1* A fee may be determined under s 32 (Determination of fees) for this section.

*Note 2* If a form is approved under s 33 (Approved forms) for an application or certificate of registration under this section, the form must be used.

- (2) If any applicant is an infant, he or she shall be so described in the statement and the date of his or her birth shall be set out in the statement.

- (3) Subject to this Act, the registrar-general shall, upon the lodging of a statement under subsection (1) in relation to a business name, register the business name.
- (4) The registrar-general shall, upon registering a business name, issue a certificate of registration.
- (5) The registrar-general must, on application, issue a further certificate of registration.
- (6) A business name shall not be registered under this Act if the statement referred to in subsection (1) is lodged with the registrar-general on a date preceding by more than 2 months the date shown in the statement as the proposed date of commencement of carrying on business.
- (7) The registrar-general may refuse to register a business name if he or she is not satisfied that the particulars set out in the statement lodged under subsection (1) are correct.

## **8 Resident agent**

- (1) Where a business name is required to be registered under this Act and the person or all the persons carrying on or proposing to carry on business in the ACT under that name resides or reside outside the ACT, or has or have no fixed address or fixed addresses within the ACT, the statement referred to in section 7 (1), or in section 11 (1), as the case may be, shall—
  - (a) include the name and address of some person resident in the ACT who, in relation to the carrying on of business under that name—
    - (i) has consented in writing to be the resident agent of the person or persons for this Act; and
    - (ii) is authorised in writing by the person or persons to accept service on behalf of the person or persons of any notices for this Act and of any process; and

- (b) in addition, be signed by the person who has consented to be the resident agent.
- (2) The address shown in any statement lodged with the registrar-general under this Act as the address of the resident agent appointed for this Act by the person or persons in relation to whom a business name is registered shall, for the purpose of serving any notice or process on the person or persons under this Act, be deemed to be the address of a place where business is carried on by the person or persons under that name.

## **9 Restriction on registration of undesirable business names**

- (1) Except with the consent of the Minister, a business name shall not be registered under this Act if the business name is a name that is in the opinion of the registrar-general, undesirable or is a name or a name of a kind that the Australian Securities and Investments Commission has been directed, under the Corporations Law, section 367 not to accept for registration.
- (2) An application for the consent of the Minister under this section shall be lodged with the registrar-general.

*Note* A fee may be determined under s 32 (Determination of fees) for this section.

- (3) Where the Minister gives consent under this section to the registration of a business name, the registrar-general shall file the consent and shall, subject to this Act, register the business name.

## **10 Cancellation of undesirable business names**

- (1) If a business name which could not be registered under this Act without contravention of section 9 (1) is registered through inadvertence or otherwise, the registrar-general may send by post a notice addressed to the person or persons in relation to whom the name is so registered at the place shown in the register as the place where business is carried on under that name—

- (a) stating that the registrar-general proposes to cancel the registration of that name upon the expiration of such period (being a period of not less than 28 days) as is specified in the notice; and
- (b) setting out the registrar-general's reasons for the proposed cancellation;

and, upon the expiration of that period, the registrar-general may, if the notice has not been annulled under subsection (3), cancel the registration of that name.

- (2) The registrar-general shall not, except with the approval of the Minister, exercise his or her powers under subsection (1) with respect to a business name that is deemed to be registered under this Act by virtue of section 3 (5).
- (3) The Minister may, at any time before the expiration of the period specified in a notice given by the registrar-general under subsection (1), annul the notice.

## **11 Renewal of registration**

- (1) Subject to this Act, the registration of a business name remains in force for a period of 3 years, but the registration may from time to time be renewed by lodging with the registrar-general at any time within the period of 1 month before or after the expiry of the registration, a statement signed by the person or 1 of the persons in relation to whom the name is registered.

*Note 1* A fee may be determined under s 32 (Determination of fees) for this section.

*Note 2* If a form is approved under s 33 (Approved forms) for a statement, the form must be used.

- (2) Subject to this Act, the registration of a business name renewed under subsection (1) remains in force for a period of 3 years from the day on which the previous registration expires or has expired, as the case may be.

- (3) Subject to subsection (5), the registrar-general shall, before or after the expiration of the registration of a business name, but not earlier than 1 month before the expiration, send by post to the person or persons in relation to whom the business name is or was registered, at the place shown in the register as the place where business is carried on under that name, a notice of the date on which the registration is due to expire or has expired, as the case may be.
- (4) Where the registration of a business name has expired, the registrar-general shall not accept for registration from any person or persons, other than the person or persons in relation to whom the business name was registered, any business name that is identical with that business name or that, in the opinion of the registrar-general, so nearly resembles it as to be calculated to deceive, until the expiration of 1 month after the sending of the notice referred to in subsection (3) or the notice referred to in subsection (5) (b), as the case may be.
- (5) The following provisions shall apply in relation to a business name which is deemed to be registered under this Act by virtue of being registered or having been deemed to have been registered under the repealed Act:
  - (a) the registration of the business name shall, subject to this Act, remain in force until a date fixed by the registrar-general, notwithstanding anything to the contrary contained in subsection (1); and
  - (b) notice in writing of the date so fixed shall be posted by the registrar-general to the person or persons in relation to whom the business name is registered at the place shown in the register as the place where business is carried on under that name; and
  - (c) the date fixed by the registrar-general shall be a date not less than 1 month after the notice in writing has been sent by post to such person or persons; and

- (d) no such notice in writing shall be sent by the registrar-general until the expiration of a period of at least 3 years from the date upon which the name was registered or deemed to be registered under the repealed Act; and
- (e) the registrar-general shall not be required to send to the person or persons in relation to whom the business name is or was registered the notice referred to in subsection (3); and
- (f) subject to this subsection, the registration of the business name may be renewed in the manner prescribed by this section; and
- (g) after the renewal of the registration of the business name, the provisions of this subsection shall cease to apply in relation to the business name.

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

- (1) Where a business name is registered under this Act and a change occurs—
  - (a) which renders the description of the nature of the business lodged with the registrar-general insufficient to disclose the true nature of the business; or
  - (b) in relation to the place or places in the ACT at which business is carried on under that name or in the address of any such place; or
  - (c) in the registered particulars relating to the resident agent of the person or persons in relation to whom the name is registered;

there shall be lodged with the registrar-general within 14 days after the change, or within such further time as the registrar-general may, before the expiration of that period, allow, a statement, signed by the person or 1 of the persons in relation to whom the name is registered at the time of the change, notifying the registrar-general of particulars of and of the date of the change.

*Note 1* A fee may be determined under s 32 (Determination of fees) for this section.

*Note 2* If a form is approved under s 33 (Approved forms) for a statement, the form must be used.

- (2) Where a change occurs in the christian names or surname or the place of residence of any person, being an individual, in relation to whom a business name is registered under this Act, or in the corporate name or the place of the registered office in the ACT of a person, being a corporation, in relation to which a business name is registered under this Act, there shall be lodged with the registrar-general within 14 days after the change, or within such further time as the registrar-general may, before the expiration of that period, allow, a statement, signed by that person, notifying the registrar-general of particulars of and of the date of the change.
- (3) Where a business name is registered under this Act in relation to a person or persons and that person ceases, or all or any of those persons cease, to carry on business in the ACT under that name, there shall be lodged with the registrar-general within 14 days after the cessation, or within such further time as the registrar-general may, before the expiration of that period, allow, a statement, notifying the registrar-general of the cessation and of the date of the cessation, signed by each person who was carrying on business under that name immediately before the cessation or, in the case of a deceased person, by his or her personal representative.
- (4) Where, immediately after a cessation referred to in subsection (3), the person or all of the persons carrying on business under the business name is not or are not resident within the ACT or does not or do not have a fixed address or fixed addresses within the ACT, the statement referred to in that subsection shall—



- (a) include the name and address of some person resident in the ACT who, in relation to the carrying on of business under that name—
    - (i) has consented in writing to be the resident agent of the person or persons for this Act; and
    - (ii) is authorised in writing by the person or persons to accept service on behalf of the person or persons of any notices for this Act and of any process; and
  - (b) be signed by the person who has consented to be the resident agent.
- (5) Where a business name is registered under this Act in relation to a person or persons and another person or other persons commences or commence to carry on business in the ACT under that name in place of or in association with any person or persons in relation to whom the name is already registered, there shall be lodged with the registrar-general within 14 days after the commencement, or within such further time as the registrar-general may, before the expiration of that period, allow, a statement, notifying the registrar-general of the commencement and of the date of the commencement, signed by each person carrying on business under that name immediately after the commencement and setting out, in relation to each person required to sign the statement—
- (a) being an individual—the christian names and surname and any former christian names or surname and the usual place of residence of the individual and, where the individual is an infant, in addition to the particulars referred to in this paragraph, he or she shall be so described, and his or her date of birth set out, in the statement; or
  - (b) being a corporation—the corporate name and the place of the registered office in the ACT of the corporation.
- (6) Where, immediately after a commencement referred to in subsection (5), the person or all of the persons carrying on business under the business name is not or are not resident within the ACT or

does not or do not have a fixed address or fixed addresses within the ACT, the statement referred to in that subsection shall—

- (a) include the name and address of some person resident in the ACT who, in relation to the carrying on of business under that name—
    - (i) has consented in writing to be the resident agent of the person or persons for this Act; and
    - (ii) is authorised in writing by the person or persons to accept service on behalf of the person or persons of any notices for this Act and of any process; and
  - (b) in addition, be signed by the person who has consented to be the resident agent.
- (7) Where, while a person is the resident agent of a person or persons in relation to whom a business name is registered under this Act, the person or any 1 or more of the persons in relation to whom the name is registered commences or commence to reside within the ACT or acquire or acquires a fixed address or fixed addresses within the ACT, there shall be lodged with the registrar-general within 14 days after the person or persons so commenced to reside or acquired a fixed address or fixed addresses, or within such further time as the registrar-general may, before the expiration of that period, allow, a statement, signed by the person or 1 of the persons in relation to whom the business name is registered—
- (a) notifying the registrar-general that the person appointed to be the resident agent of the person or persons in relation to whom the business name is registered has ceased to be the resident agent of such person or persons; and
  - (b) setting out the name or names of the person or persons in relation to whom the business name is registered who has or have commenced to reside or has or have acquired a fixed address or fixed addresses within the ACT, and the usual place or places of residence or the fixed address or fixed addresses within the ACT of such person or persons.

- (8) Where, while a person is the resident agent of a person or persons in relation to whom a business name is registered under this Act, another person or other persons commences or commence to carry on business in the ACT under that name in place of or in association with any person or persons in relation to whom the name is already registered and that other person or 1 or more of those other persons resides or reside within the ACT or has or have a fixed address or fixed addresses within the ACT, there shall be lodged with the registrar-general within 14 days after the commencement, or within such further time as the registrar-general may, before the expiration of that period, allow, a statement, signed by the person or 1 of the persons carrying on business under that name after the commencement—
- (a) notifying the registrar-general that the person who was the resident agent of the person or persons in relation to whom the business name was registered immediately before the commencement is not or has ceased to be the resident agent of the person or persons carrying on business under that name immediately after the commencement; and
  - (b) setting out the name or names of that other person or those other persons who resides or reside within the ACT or has or have a fixed address or fixed addresses within the ACT, and the usual place or places of residence or the fixed address or fixed addresses within the ACT of that other person or those other persons.
- (9) Where a business name is registered under this Act and a person appointed to be the resident agent of the person or persons in relation to whom the name is registered ceases to reside within the Territory or ceases to be the resident agent of that person or those persons, there shall be lodged with the registrar-general within 14 days after the cessation, or within such further time as the registrar-general may, before the expiration of that period, allow, a statement, notifying the registrar-general of the name and address of some other person resident within the ACT who is appointed to be the resident agent of the person or persons in relation to whom the name

is registered in place of or in succession to the person who has ceased to be so resident or who has ceased to be the resident agent of that person or those persons, and of the date of the appointment—

- (a) signed by the person or 1 of the persons in relation to whom the name is registered and by the person so appointed; and
  - (b) showing that the person so appointed, in relation to the carrying on of business under that name—
    - (i) has consented in writing to be the resident agent of the person or persons for this Act; and
    - (ii) is authorised in writing by the person or persons to accept service on behalf of the person or persons of any notices for this Act and of any process.
- (10) Where a business name is registered under this Act and the person or all the persons in relation to whom the name is registered ceases or cease to reside within the ACT or to have a fixed address or fixed addresses within the ACT, there shall be lodged with the registrar-general within 14 days after that person or those persons has or have ceased to so reside or to have a fixed address or fixed addresses, or within such further time as the registrar-general may, before the expiration of that period, allow, a statement, notifying the registrar-general of the name and address of some other person resident in the ACT who is appointed to be the resident agent of the person or persons in relation to whom the name is registered, and of the date of the appointment—
- (a) signed by the person or 1 of the persons in relation to whom the name is registered and by the person so appointed; and
  - (b) showing that the person so appointed, in relation to the carrying on of business under that name—
    - (i) has consented in writing to be the resident agent of the person or persons for this Act; and

- (ii) is authorised in writing by the person or persons to accept service on behalf of the person or persons of any notices for this Act and of any process.
- (11) If a statement required by a provision of this section to be lodged with the registrar-general is not lodged in accordance with the provision or, if lodged, does not comply with the provision, each person required or authorised by the provision to sign the statement commits an offence, unless he or she proves that he or she took all reasonable steps to ensure compliance with the provision.  
Maximum penalty: 10 penalty units.
- (12) Where, by reason of a person commencing to carry on business under a business name registered under this Act a statement is lodged with the registrar-general in accordance with subsection (5), neither that person nor any other person shall be guilty of an offence against section 5 by reason only that, before the lodging of the statement, he or she carried on business under that name.
- (13) Any statement required to be lodged with the registrar-general under this section with respect to any matter may be combined with a statement required to be lodged under this section with respect to another matter.

### **13 Duty to furnish information**

- (1) The registrar-general may, by notice in writing, require any person to furnish within a period specified in the notice (being a period of not less than 28 days), or within such further period as the registrar-general may, before the expiration of that period, allow, such information as appears to the registrar-general to be necessary to enable him or her to ascertain whether or not a person—
  - (a) is carrying on business either alone or in association with other persons under a business name that is required to be registered under this Act; or
  - (b) has failed to lodge with the registrar-general a statement required to be lodged under this Act.

- (2) A person required under subsection (1) to furnish information to the registrar-general shall, within the period specified in the notice, or within such further period as the registrar-general has allowed, furnish such information as it is within his or her power to furnish and shall not furnish any information which to his or her knowledge is false in any material particular.

Maximum penalty:

- (a) for failing to so furnish information—50 penalty units; or  
(b) for furnishing false information—50 penalty units, imprisonment for 6 months or both.
- (3) A person shall not be excused from furnishing any information where required to do so under subsection (1) on the ground that the information might tend to incriminate him or her or make the person liable to a penalty but the information furnished by him or her shall not be admissible in evidence against the person in any proceedings civil or criminal.

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

Where a person carrying on business under a business name in contravention of section 5, or a person who, being required to lodge a statement under section 12 in relation to a business name, fails to lodge that statement, commences any suit or action in that business name or in respect of a cause of action arising out of any dealing in or under that business name, the court before which the suit or action is commenced may order the person to cease to contravene section 5 or to cause the statement to be lodged, as the case may be, and may stay all proceedings in the suit or action until the order is complied with or may allow the proceedings to be continued on an undertaking being given by the person that he or she will comply with the order within such time as is limited by the court.

## **15 Signing of statements**

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

## **16 Verification of particulars**

The registrar-general may in a particular case, if he or she thinks fit, refuse to accept a statement required to be lodged with the registrar-general under this Act unless the particulars set out in the statement are verified by a statutory declaration under the *Statutory Declarations Act 1959* (Cwlth) made by a person who signed the statement.

## **17 Penalty for false statement**

A person shall not sign or lodge with the registrar-general a statement made or purporting to be made for this Act which to his or her knowledge is false in any material particular and a person shall not authorise or permit the lodging with the registrar-general of such a statement which to his or her knowledge is false in any material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## **18 Notice of proposed cancellation**

- (1) Where the registrar-general has reasonable cause to believe that a person or persons in relation to whom a business name is registered under this Act is not or are not carrying on business in the ACT under that name, the registrar-general may send by post a notice addressed to the person or persons at the place shown in the register as the place where business is carried on under that name, enquiring whether the person is or the persons are carrying on business under the name and stating that, unless the registrar-general is satisfied within 1 month from the date of the notice that business is being carried on in the ACT by that person or those persons under that name, the registration of the business name may be cancelled.
- (2) Where the registrar-general has reasonable cause to believe that any provision of section 12 which is required to be complied with by or on behalf of the person or persons in relation to whom a business name is registered under this Act has not been complied with, the registrar-general may send by post a notice addressed to the person or persons at the place shown in the register as the place where business is carried on under that name stating that, unless within 1 month from the date of the notice that provision is complied with or the registrar-general is satisfied that there was in fact no failure to comply with the provision, the registration of the business name may be cancelled.



**19 Cancellation of registration**

- (1) The registrar-general may cancel the registration of a business name—
  - (a) if there is lodged with the registrar-general a statement under section 12 notifying the registrar-general that the person or all the persons in relation to whom the business name is registered has or have ceased to carry on business in the ACT under that name and it does not appear from that statement or another statement accompanying that statement that another person has or other persons have commenced to carry on business in the ACT under that name; or
  - (b) if the registrar-general has sent a notice to any person or persons in respect of the business name under section 18 (1) and that person does not, or those persons do not, satisfy the registrar-general within 1 month from the date of the notice that business is being carried on in the Territory by that person or those persons under that name; or
  - (c) if the registrar-general has sent a notice to any person or persons under section 18 (2) and within 1 month after the date of the notice the provision of section 12 to which the notice relates has not been complied with or the person does not or those persons do not satisfy the registrar-general that there was no failure to comply with the provision; or
  - (d) if the business name is registered in relation to a corporation only and the name of the corporation has been struck off any register of corporations kept under the Corporations Act or the corporation has been dissolved.
- (2) The registrar-general may, on any grounds which he or she thinks sufficient, revoke any cancellation by the registrar-general of the registration of a business name and, in that event, the business name shall be deemed to have continued to be registered as if the registration had not been cancelled.

- (3) Where the registration of a business name has been cancelled under this section, a person in relation to whom the business name was registered immediately before the cancellation may apply to the Supreme Court for an order directing the registrar-general to restore the registration of the business name.
- (4) On an application under subsection (3), the Supreme Court may, if it is satisfied that the applicant is carrying on business under the business name and that it is just and equitable so to do, make the order applied for upon such terms as the Court thinks fit.
- (5) Upon the making of an order by the Supreme Court under subsection (4), the business name shall be deemed to have continued to be registered as if the registration had not been cancelled and the registrar-general, upon the lodging with the registrar-general of an office copy of the order, shall make such entries and alterations in the register as the registrar-general considers necessary for the order.

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

Where a business name is registered under this Act—

- (a) a person or persons in relation to whom a business name is registered shall not issue or sign in connection with the carrying on of that business any business letter, statement of account, invoice, official notice, publication, order for goods or receipt unless the business name appears in legible characters on it; and
- (b) the business name shall at all times be displayed in a conspicuous position on the outside of every place at which business is carried on under that name; and
- (c) the certificate of registration of the business name shall at all times be exhibited in a conspicuous position at the place where business is carried on under that name or, if there is more than 1 such place, at the principal place where business is so carried on;

and, in the event of a contravention of this section, each person carrying on business under that name commits an offence, unless the person proves that he or she took all reasonable steps to ensure compliance with this section.

Maximum penalty: 5 penalty units.

## **21 Registrar-general may correct errors in register etc**

- (1) The registrar-general may, on such evidence as to him or her appears sufficient, correct any error in any entry in the register or in any certificate of registration of a business name.
- (2) When correcting an error under subsection (1), the registrar-general shall not erase or render illegible the original words and shall affix the date upon which the correction was made together with his or her initials.
- (3) Any entry or certificate corrected under this section shall have the same validity and effect as if the error had not been made.
- (4) The registrar-general may accept and register a statement lodged to correct any error in, or to supply any particular omitted from, a statement previously lodged and registered and, in that event, the statement previously lodged and that lodged under this subsection shall be read as one and shall both be incorporated with and form part of the register.

## **22 Inspection of statements**

A person may inspect any statement lodged with the registrar-general under this Act or filed under the repealed Act or any corresponding previous law of the Territory, which has not been destroyed in pursuance of section 25 and may make a copy of the statement or take extracts from it.

*Note* A fee may be determined under s 32 (Determination of fees) for this section.

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

- (1) The registrar-general shall, upon request in writing by any person, issue to that person—
  - (a) a copy of or extract from the register or a copy of or extract from a document forming part of the register certified under his or her official seal to be a true copy or extract; or
  - (b) a certificate under his or her official seal that a business name was or was not on a date or during a period specified in the certificate registered under this Act in relation to a person or that a firm, individual or corporation was or was not on a date or during a period specified in the certificate registered under the repealed Act or any corresponding previous law of the Territory.
- (2) The registrar-general shall not issue a copy, extract or certificate under subsection (1) in respect of a statement or notice which has been destroyed under section 25 or in respect of a date or a period ending on a date earlier by more than 12 years than the date of the receipt of the request.

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

A document purporting to be—

- (a) a certificate of registration issued under this Act; or
- (b) a copy of or extract from the register or a copy of or extract from a document forming part of the register issued under section 23 (1) (a); or
- (c) a certificate issued under section 23 (1) (b); or
- (d) a combination of 2 or more of the certificates, copies or extracts referred to in paragraphs (a), (b) and (c);

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

**25 Authority of registrar-general to destroy documents**

The registrar-general may, if in his or her opinion it is no longer necessary or desirable to retain them, destroy or dispose of any statement or notice lodged, filed, received or registered under this Act or under the repealed Act or any corresponding previous law of the Territory, where the registration of the business name or of the firm, individual or corporation, as the case may be, in respect of which the statement or notice was lodged, filed, received or registered has not been in force at any time during the preceding 12 years.

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

- (1) Where a person is or the members of a firm are carrying on business in the ACT under a business name registered or required to be registered under this Act, no person shall use or make reference to that business name in any invitation to the public or in any advertisement inviting the public to deposit money with or lend money to that person or firm or use or make reference to a business name in connection with any deposit or loan.

Maximum penalty: 50 penalty units.

- (2) This section does not apply to an invitation to the public made by a public company in conformity with the requirements of the Corporations Act.

**27 Proceedings against persons under a business name**

- (1) Proceedings may be taken and prosecuted in any court of competent jurisdiction against any person or persons in the business name under which the person is or the persons are carrying on business if that business name is not registered under this Act and the name shall, for the purpose of the proceedings, be a sufficient designation of the person or persons in all writs, summonses, complaints and other legal documents and instruments and any judgment obtained or order made in such proceedings may be enforced against that person or against those persons or any of those persons, as the case may be.

- (2) Nothing in this section shall be construed as exempting any person from compliance with any provision of this Act.

## **29 Offences committed by corporations**

Where a person commits an offence against this Act—

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

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

## **30 Evidentiary provisions**

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

## **31 Service of notices**

- (1) Where, by this Act, the registrar-general is required or permitted to send a notice to the person or persons in respect of whom the business name is registered at the place where business is carried on under a business name, the notice may be sent by post addressed to the business name—
- (a) at the place shown in the register as the place where business is so carried on;
  - (b) where more than 1 place is shown in the register as the place where business is carried on—
    - (i) at the place shown in the register as the principal place where business is so carried on; or

- 
- (ii) if no place is so shown as the principal place—at the place shown which appears first in the register as a place where the business is carried on; or
  - (c) if it appears from the register that there is, for this Act, a resident agent—at the place shown in the register as the address of the resident agent in the ACT.
- (2) Service of any communication, notice or process on any person or persons carrying on business under a business name registered under this Act—
- (a) by leaving it at the place where business is carried on by the person or persons with some other person apparently in the service of the person or persons and apparently of or above the age of 16 years; or
  - (b) where it appears from the register that there is a resident agent appointed for this Act by the person or persons, by leaving it with the resident agent or with some other person apparently in the service of the resident agent and apparently of or above the age of 16 years; or
  - (c) by sending it by registered post or as certified mail addressed to—
    - (i) the person or persons at the place where business is carried on by the person or persons; or
    - (ii) the resident agent, where it appears from the register that there is a resident agent appointed for this Act by the person or persons, at the place shown in the register as the address of the resident agent in the Territory;

shall be deemed to be personal service on the person or persons.

- (3) In subsection (2):

***the place where business is carried on*** means—

- (a) the place shown in the register as the place where business is carried on; or

- (b) where more than 1 place is shown in the register as the place where business is carried on—
  - (i) the place shown in the register as the principal place where business is so carried on; or
  - (ii) if no place is so shown as the principal place—at the place shown which appears first in the register as a place where the business is carried on.

### **32 Determination of fees**

- (1) The Minister may, in writing, determine fees for this Act.

#### **Examples of matters for which the Minister may determine fees**

- 1 Lodgment, or late lodgment, of any document, whether or not expressly provided for in this Act.
- 2 Issue or acceptance of any document or form (whether approved or otherwise) by the registrar-general in the exercise of a function of the registrar-general, whether or not the function is expressly provided for in this Act.
- 3 Inspection or search of the register or any document held by the registrar-general.
- 4 Production by the registrar-general of the register or any other document held by the registrar-general.
- 5 Anything else done by the registrar-general in the exercise of the registrar-general's functions under this Act.

*Note* The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

### **33 Approved forms**

- (1) The registrar-general may, in writing, approve forms for this Act.
- (2) If the registrar-general approves a form for a particular purpose, the approved form must be used for that purpose.



- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

### **34 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may make provision in relation to—
- (a) the duties of the registrar-general for this Act; and
  - (b) the conduct and regulation of registration under this Act.
- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

### 3 Legislation history

The *Business Names Act 1963* was originally the *Business Names Ordinance Act 1963*. It became an ACT Act on self-government (11 May 1989).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

#### Legislation before self-government

##### **Business Names Act 1963 No 12**

notified 23 May 1963  
commenced 1 October 1966 (s 2)

as amended by

##### **Business Names Ordinance 1966 No 15**

notified 15 September 1966  
commenced 1 October 1966 (s 2)

##### **Business Names (Amendment) Ordinance 1976 No 51**

notified 25 October 1976  
commenced 1 November 1976

##### **Ordinances Revision (Administrative Arrangements) Ordinance 1976 No 60**

notified 16 November 1976  
commenced 16 November 1976

##### **Ordinances Revision Ordinance 1978 No 46**

notified 28 December 1978  
commenced 28 December 1978

##### **Ordinances Revision (Companies Amendments) Ordinance 1982 No 38**

notified 30 June 1982  
commenced 1 July 1982

##### **Self-Government (Consequential Amendments) Ordinance 1989 No 38**

notified 10 May 1989  
s 1, s 2 commenced 10 May 1989 (s 2 (1))  
remainder commenced 11 May 1989 (s 2 (2) and Gaz 1989 No S164)

## Endnotes

4 Amendment history

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### Legislation after self-government

#### **Business Names (Amendment) Act 1990 No 27**

notified 24 August 1990 (Gaz 1990 No S57)  
ss 1-3 commenced 24 August 1990 (s 2 (1))  
remainder commenced 3 September 1990 (s 2 (2))

#### **Registrar-General (Consequential Provisions) Act 1993 No 64 sch 1**

notified 6 September 1993 (Gaz 1993 No S172)  
s 1, s 2 commenced 6 September 1993 (s 2 (1))  
sch 1 commenced 1 October 1993 (s 2 (2) and Gaz 1993 No S207)

#### **Business Names (Amendment) Act 1994 No 112**

notified 22 December 1994 (Gaz 1994 No S289)  
commenced 22 December 1994 (s 2)

#### **Statute Law Revision Act 1995 No 46 sch**

notified 18 December 1995 (Gaz 1995 No S306)  
commenced 18 December 1995 (s 2)

#### **Financial Institutions (Removal of Discrimination) Act 1997 No 88 sch**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch commenced 31 December 1997 (s 2 (2) and Gaz 1997 No S442)

#### **Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

#### **Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
sch 3 commenced 10 November 1999 (s 2)

#### **Legislation (Consequential Amendments) Act 2001 No 44 pt 48**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 48 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

## 4 Amendment history

### Commencement

s 2 om 2001 No 44 amdt 1.494

**Repeal, savings and transitional provisions**

s 3 am 1982 No 38; 1990 No 27 s 4; 1993 No 64 sch 1  
om 2001 No 44 amdt 1.494

**Interpretation**

s 4 am 1994 No 112 sch; 1997 No 88 sch; 2001 No 44 amdt 1.496  
def **approved form** ins 1990 No 27 s 5  
om 2001 No 44 amdt 1.495  
def **bank account** om 1997 No 88 sch  
def **Commission** ins 1982 No 38 s 4  
om 1990 No 27 s 5  
def **Companies Act** ins 1982 No 38 s 4  
def **corporation** am 1995 No 46 sch  
def **the Companies Ordinance** om 1982 No 38 s 4  
def **determined fee** ins 1994 No 112 s 4  
om 2001 No 44 amdt 1.495  
def **Registrar** ins 1990 No 27 s 5  
om 1993 No 64 sch 1  
def **secretary** am 1995 No 46 sch  
def **the Registrar** om 1982 No 38 s 4  
def **this Act** om 2001 No 44 amdt 1.495  
def **unauthorized name** sub 1982 No 38 s 4

**Registrar and other officers**

s 4AA ins 1990 No 27 s 6  
om 1993 No 64 sch 1

**Seal of office**

s 4AB ins 1990 No 27 s 6  
om 1993 No 64 sch 1

**Fees**

s 4A ins 1976 No 51  
am 1982 No 38; 1990 No 27 s 7; 1993 No 64 sch 1; 1994  
No 112 s 5, sch  
om 2001 No 44 amdt 1.497

**Certain business names to be registered**

s 5 am 1966 No 15; 1994 No 112 sch ; 1998 No 54 sch

**Register of business names**

s 6 am 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1

**Registration of business names**

s 7 am 1976 No 51; 1982 No 38; 1990 No 27 sch 1; 1993 No 64  
sch 1; 1994 No 112 s 6, sch; 2001 No 44 amdt 1.498-1.502

**Resident agent**

s 8 am 1982 No 38; 1990 No 27; 1993 No 64 sch 1; 1994  
No 112 sch

## Endnotes

### 4 Amendment history

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#### **Restriction on registration of undesirable business names**

s 9 am 1966 No 15; 1976 No 51; 1976 No 60; 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1; 1994 No 112 s 7; 1995 No 46 sch; 1999 No 66 sch 3; 2001 No 44 amdt 1.503-1.505; ss renum R6 LA

#### **Cancellation of undesirable business names**

s 10 am 1976 No 60; 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1; 1994 No 112 sch; 2001 No 44 amdt 1.506

#### **Renewal of registration**

s 11 am 1976 No 51; 1982 No 38; 1990 No 27; 1993 No 64 sch 1; 1994 No 112 s 8, sch; 2001 No 44 amdots 1.507-1.509

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

s 12 am 1966 No 15; 1976 No 51; 1978 No 46; 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1; 1994 No 112 s 9, sch; 1989 No 54 sch; 2001 No 44 amdots 1.510-1.512

#### **Duty to furnish information**

s 13 am 1966 No 15; 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1; 1994 No 112 sch; 1998 No 54 sch

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

s 14 am 1994 No 112 sch

#### **Signing of statements**

s 15 am 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1; 1994 No 112 sch

#### **Verification of particulars**

s 16 am 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1

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

s 17 am 1966 No 15; 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1; 1994 No 112 sch; 1998 No 54 sch

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

s 18 am 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1; 1994 No 112 sch

#### **Cancellation of registration**

s 19 am 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1; 1994 No 112 sch; 1995 No 46 sch

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

s 20 am 1966 No 15; 1994 No 112 sch; 1998 No 54 sch

#### **Registrar-general may correct errors in register etc**

s 21 am 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1; 1994 No 112 sch

**Inspection of statements**

s 22 am 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1; 1994 No 112 sch; 2001 No 44 amdt 1.513, amdt 1.514

**Certificates of registration or non-registration**

s 23 am 1976 No 51; 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1; 1994 No 112 sch

**Evidence of registration or non-registration**

s 24 am 1994 No 112 sch

**Authority of registrar-general to destroy documents**

s 25 am 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1; 1994 No 112 sch

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

s 26 am 1966 No 15; 1982 No 38; 1994 No 112 sch; 1995 No 46 sch; 1998 No 54 sch

**Default penalty**

s 28 am 1966 No 15; 1994 No 112 sch  
om 1998 No 54 sch

**Service of notices**

s 31 am 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1; 1994 No 112 sch

**Determination of fees**

s 32 orig s 32 om 1976 No 60  
ins 1990 No 27 s 8  
am 1993 No 64 sch 1  
sub 2001 No 44 amdt 1.515

**Approved forms**

s 33 am 1966 No 15; 1976 No 51; 1976 No 60, 1976; 1982 No 38; 1989 No 38; 1990 No 27 s 9; 1993 No 64 sch 1; 1994 No 112 sch; 1998 No 54 sch  
sub 2001 No 44 amdt 1.515

**Regulation-making power**

s 34 ins 2001 No 44 amdt 1.515

**Schedule**

sch ins 1976 No 51  
am 1982 No 38  
om 1990 No 27 s 10

## Endnotes

5 Earlier republications

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### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1990 No 27	30 April 1991
2	Act 1993 No 64	31 January 1994
3	Act 1994 No 112	31 January 1995
4	Act 1995 No 46	30 November 1996
5	Act 1998 No 54	31 January 1999



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