



Australian Capital Territory

# **Business Names Act 1963**

**A1963-12**

**Republication No 9**

**Effective: 11 January 2006 – 15 November 2006**

Republication date: 11 January 2006

Last amendment made by A2005-62  
(republication for amendments by A2005-60  
and A2005-62)

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Business Names Act 1963* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 11 January 2006. It also includes any amendment, repeal or expiry affecting the republished law to 11 January 2006.

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 is—

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



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 Name of Act**

This Act is the *Business Names Act 1963*.

**2 Dictionary**

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*carrying on business*—see section 4A.' means that the term 'carrying on business' is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

**3 Notes**

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

**4 Offences against Act—application of Criminal Code etc**

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2* *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

**4A Meaning of *carrying on business***

In this Act:

*carrying on business* includes establishing a place of business and soliciting orders for goods or services, but does not include—

- (a) taking or defending a legal proceeding; or
- (b) establishing or keeping an account with an authorised deposit-taking institution; or
- (c) making a purchase or sale through an independent contractor; or
- (d) creating evidence of a debt or a charge on property; or
- (e) collecting a debt, securing a debt or enforcing a security in relation to a debt; or
- (f) conducting an isolated transaction over not longer than 31 days; or
- (g) investing funds or holding property.

**4B When business name taken to be registered in relation to person**

For this Act, a business name is taken to be registered in relation to a person if it appears from the register that that person either alone or together with other people is carrying on business under that name.

**5 Certain business names to be registered**

- (1) A person must not, alone or with anyone else, carry on business in the ACT under a business name if—
  - (a) the business name is not registered under this Act for each person carrying on the business; or

(b) section 12 (Notification of changes in particulars relating to registered business names etc) has not been complied with.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) Subsection (1) does not apply if the business name consists of the name of each person carrying on the business, without any addition.
- (4) This section does not apply to a person if the person is carrying on business—
  - (a) under the proper name of the person and of each other person (if any) with whom the person is carrying on the business; or
  - (b) under a registered business name, or under a name mentioned in paragraph (a), to which are added words indicating that the business is being carried on in succession to a former owner of the business; or
  - (c) under an unregistered business name that contains foreign language characters and is also carrying on the business under a registered business name that is an English language equivalent of the unregistered business name.
- (5) For this section, a business carried on by a receiver, manager, administrator or trustee of a person is taken to be carried on by the person.
- (6) If a statement is lodged with the registrar-general under section 12 (5) (Notification of changes in particulars relating to registered business names etc) because a person starts carrying on business under a registered business name, neither the person nor anyone else commits an offence against this section only because the person carried on business under that business name before the statement was lodged.
- (7) Contravention of this section does not avoid any agreement, transaction, act or matter.



## **6 Register of business names**

- (1) The registrar-general must keep a register of business names registered under this Act in the form the registrar-general considers appropriate.
- (2) A statement lodged under this Act in relation to a business name registered under this Act, whether lodged before or after the registration, is, for this Act, taken to be incorporated with and to form part of the register.

## **7 Registration of business names**

- (1) An application for the registration of a business name must be made by lodging with the registrar-general a statement, signed by each of the people carrying on or proposing to carry on business in the ACT under that name, that sets 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 the business 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 the places is the principal place of business; and
  - (d) the proper name, and any former proper name and the proper address of each applicant; and
  - (e) the date or proposed date of starting to carry on business in the ACT under the business name by the applicant or applicants; and

- (f) if the business name is a name adopted by the applicant or applicants in substitution for another name—the 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 an applicant is a child, the application must state—
  - (a) that the applicant is a child; and
  - (b) the applicant's date of birth.
- (3) Subject to this Act, the registrar-general must, on the lodging of a statement under subsection (1) in relation to a business name, register the business name.
- (4) The registrar-general must, on 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 must not be registered under this Act if the statement under subsection (1) is lodged with the registrar-general more than 2 months before the date shown in the statement as the proposed date of starting to carry on business.
- (7) The registrar-general may refuse to register a business name if not satisfied that the particulars set out in the statement lodged under subsection (1) are correct.

## **8 Resident agent**

- (1) If a business name is required to be registered under this Act and the person or each person carrying on or proposing to carry on business in the ACT under the business name resides outside the ACT, or does not have a fixed address in the ACT, the statement mentioned in section 7 (1) or section 11 (1) must—

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- (a) include the name and address of a person resident in the ACT who, in relation to the carrying on of business under the business name—
- (i) has consented in writing to be the resident agent of the person or each of the people for this Act; and
  - (ii) is authorised in writing by the person or each of them to accept service on behalf of the person 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 each of the people in relation to whom a business name is registered is, for the purpose of serving any notice or process, is taken to be the address of a place where business is carried on by the person or each of them under the business name.

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

- (1) Except with the Minister's consent, a business name must not be registered under this Act if the business name is a name that is, in the registrar-general's opinion, undesirable or is a name or a name of a kind that the Australian Securities and Investments Commission has been directed, under the Corporations Act, section 147 not to accept for registration.
- (2) An application for the consent of the Minister under this section must be lodged with the registrar-general.

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

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

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

- (1) If a business name that 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 people 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 the business name—
  - (a) stating that the registrar-general proposes to cancel the registration of the business name at the end of the period (of not less than 28 days) stated in the notice; and
  - (b) setting out the registrar-general's reasons for the proposed cancellation.
- (2) After the end of that period, the registrar-general may, if the notice has not been annulled under subsection (3), cancel the registration of the business name.
- (3) The registrar-general must not, except with the Minister's approval, exercise a power under subsection (1) in relation to a business name that was taken to be registered under this Act on its commencement.
- (4) The Minister may, at any time before the end of the period stated 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 3 years, but the registration may from time to time be renewed by lodging with the registrar-general at any time within 1 month before or after the end of the registration, a statement signed by the person or 1 of the people 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 3 years from the day the previous registration ends or ended.
- (3) The registrar-general must, before or after the end of the registration of a business name, but not earlier than 1 month before the end of the registration, send by post to the person or people 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 the business name, a notice of the date the registration is to end or has ended.
- (4) If the registration of a business name has ended, the registrar-general must not accept for registration from anyone, other than the person or people in relation to whom the business name was registered, any business name that is identical to the business name or that, in the registrar-general's opinion, so nearly resembles it as to be calculated to deceive, until the end of 1 month after the sending of the notice mentioned in subsection (3).

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

- (1) If a business name is registered under this Act and a change happens—

- (a) that makes 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 where business is carried on under the business name or in the address of any such place; or
- (c) in the registered particulars relating to the resident agent of the person or people in relation to whom the name is registered;

there must be lodged with the registrar-general, within 14 days after the change happens (or any longer period that the registrar-general allows before the end of the 14-day period), a statement, signed by the person or 1 of the people 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) If the proper name or proper address of a person in relation to whom a business name is registered under this Act changes, a statement must be lodged with the registrar-general, not later than 14 days after the day the change happens (or any longer period that the registrar-general allows before the end of the 14-day period), that—
  - (a) is signed by the person; and
  - (b) tells the registrar-general the changed name or address and the date it changed.
- (3) If a business name is registered under this Act in relation to a person or people and the person, or all or any of the them, ceases to carry on business in the ACT under the business name, there must be lodged with the registrar-general, within 14 days after the cessation (or any longer period that the registrar-general allows before the end of the 14-day period), a statement, notifying the registrar-general of

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the cessation and of the date of the cessation, signed by each person who was carrying on business under the business name immediately before the cessation or, for a deceased person, by his or her personal representative.

- (4) If, immediately after a cessation mentioned in subsection (3), the person or each of the people carrying on business under the business name is not resident in the ACT or does not have a fixed address in the ACT, the statement mentioned in that subsection must—
- (a) include the name and address of a person resident in the ACT who, in relation to the carrying on of business under the business name—
    - (i) has consented in writing to be the resident agent of the person or each of the people for this Act; and
    - (ii) is authorised in writing by the person or each of them to accept service on behalf of the person 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) If a business name is registered under this Act in relation to a person or people and someone else commences to carry on business in the ACT under the business name in place of or in association with anyone in relation to whom the name is already registered, there must be lodged with the registrar-general, within 14 days after the commencement (or any longer period that the registrar-general allows before the end of the 14-day period), a statement, notifying the registrar-general of the commencement and of the date of the commencement, signed by each person carrying on business under the business name immediately after the commencement and setting out, in relation to each person required to sign the statement, the person's proper name and proper address and, if the person is a child, a statement to that effect and the person's date of birth.
- (6) If, immediately after a commencement mentioned in subsection (5), the person or each of the people carrying on business under the

business name is not resident in the ACT or does not have a fixed address in the ACT, the statement mentioned in that subsection must—

- (a) include the name and address of a person resident in the ACT who, in relation to the carrying on of business under the business name—
    - (i) has consented in writing to be the resident agent of the person or each of the people for this Act; and
    - (ii) is authorised in writing by the person or each of them to accept service on behalf of the person 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) If, while a person is the resident agent of the person or people in relation to whom a business name is registered under this Act, the person or any of the people in relation to whom the name is registered commences to reside in the ACT or acquires a fixed address in the ACT, there must be lodged with the registrar-general, within 14 days after the person commences to reside in the ACT or acquires a fixed address in the ACT (or any longer period that the registrar-general allows before the end of the 14-day period), a statement, signed by the person or 1 of the people 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 people in relation to whom the business name is registered has ceased to be the resident agent; and
  - (b) setting out the name of the person or each of the people in relation to whom the business name is registered who has commenced to reside in the ACT or has acquired a fixed address in the ACT, and the usual place of residence or fixed address of the person.



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- (8) If, while a person is the resident agent of the person or people in relation to whom a business name is registered under this Act, another person commences or other people commence to carry on business in the ACT under the business name in place of or in association with anyone in relation to whom the business name is already registered and the other person or any of the other people resides in the ACT or has a fixed address in the ACT, there must be lodged with the registrar-general, within 14 days after the commencement (or any longer period that the registrar-general allows before the end of the 14-day period), a statement, signed by the person or 1 of the people carrying on business under the business name after the commencement—
- (a) notifying the registrar-general that the person appointed the resident agent of the person or people in relation to whom the business name was registered immediately before the commencement has ceased to be the resident agent; and
  - (b) setting out the name of the other person or each of the other people who resides in the ACT or has a fixed address in the ACT, and the usual place of residence or fixed address of the person.
- (9) If a business name is registered under this Act and a person appointed the resident agent of the person or people in relation to whom the name is registered ceases to reside in the ACT or ceases to be the resident agent of the person or those people, there must be lodged with the registrar-general, within 14 days after the cessation (or any longer period that the registrar-general allows before the end of the 14-day period), a statement, notifying the registrar-general of the name and address of another person resident in the ACT who is appointed to be the resident agent of the person or people in relation to whom the business name is registered, and of the date of the appointment—
- (a) signed by the person or 1 of the people in relation to whom the name is registered and by the person appointed; and

- (b) showing that the person appointed, in relation to the carrying on of business under the business name—
  - (i) has consented in writing to be the resident agent of the person or each of the people for this Act; and
  - (ii) is authorised in writing by the person or each of them to accept service on behalf of the person of any notices for this Act and of any process.
- (10) If a business name is registered under this Act and the person or each of the people in relation to whom the name is registered ceases to reside in the ACT or to have a fixed address in the ACT, there must be lodged with the registrar-general, within 14 days after the person or each of them has ceases to reside in the ACT or to have a fixed address in the ACT (or any longer period that the registrar-general allows before the end of the 14-day period), a statement, notifying the registrar-general of the name and address of another person resident in the ACT who is appointed to be the resident agent of the person or people in relation to whom the name is registered, and of the date of the appointment—
  - (a) signed by the person or 1 of the people in relation to whom the name is registered and by the person appointed; and
  - (b) showing that the person appointed, in relation to the carrying on of business under the business name—
    - (i) has consented in writing to be the resident agent of the person or each of the people for this Act; and
    - (ii) is authorised in writing by the person or each of them to accept service on behalf of the person of any notices for this Act and of any process.

**12A Failing to lodge statements—offence**

- (1) A person commits an offence if—
  - (a) a statement is required by section 12 (Notification of changes in particulars relating to registered business names etc) to be lodged with the registrar-general; and
  - (b) the person is required or authorised by that section to sign the statement; and
  - (c) the statement—
    - (i) is not lodged in accordance with that section; or
    - (ii) does not comply with that section.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant took reasonable steps to comply with section 12.

**13 Duty to give information**

- (1) The registrar-general may, by written notice given to a person, require the person to give information the registrar-general reasonably needs to find out whether a person—
  - (a) is carrying on business, alone or with anyone else, 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) The information must be given within the period stated in the notice or, if the registrar-general allows a longer period, the longer period.
- (3) The period stated in the notice must be not less than 28 days after the day the notice is given to the person.

- (4) A person commits an offence if—
- (a) the person is required to give information to the registrar-general under subsection (1); and
  - (b) the person does not take all reasonable steps to comply with the requirement within the period applying under subsection (2).

Maximum penalty: 50 penalty units.

- (5) An offence against this section is a strict liability offence.
- (6) The person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to give the information.

*Note* The Legislation Act, s 171 deals with client legal privilege.

- (7) However, any information obtained, directly or indirectly, because of the giving of the information, is not admissible in evidence against the person in a criminal proceeding, other than a proceeding for—
- (a) an offence against this section; or
  - (b) any offence in relation to the falsity or the misleading nature of the information.

## **15 Signing of statements**

- (1) Any statement lodged with the registrar-general under this Act is taken to be signed by a person who is required to sign the statement if—
- (a) for an individual—it is signed on the person's behalf by a person authorised in writing to sign the statement; or
  - (b) for a corporation—it is signed by a director or manager or the secretary of the corporation.
- (2) Despite any other provision of this Act, if 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 the person, but a person is not relieved of the requirement to sign a statement and a statement not signed by anyone is not evidence relating to the person's interest in a business only because of its registration under this Act.

## **16 Verification of particulars**

The registrar-general may in a particular case, if the registrar-general considers it appropriate, 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.

## **18 Notice of proposed cancellation**

- (1) If the registrar-general has reasonable cause to believe that a person or people in relation to whom a business name is registered under this Act are not carrying on business in the ACT under the business name, the registrar-general may send by post a notice addressed to the person or people at the place shown in the register as the place where business is carried on under the business name, asking whether the person or people are carrying on business under the business 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 the person or those people under the business name, the registration of the business name may be cancelled.
- (2) If the registrar-general has reasonable cause to believe that any provision of section 12 that is required to be complied with by or on behalf of the person or people 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 people at the place shown in the register as the place where business is carried on under the business 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 each of the people in relation to whom the business name is registered has ceased to carry on business in the ACT under the business name and it does not appear from the statement or another statement accompanying the statement that someone else has started to carry on business in the ACT under the business name; or
  - (b) if the registrar-general has sent a notice under section 18 (1) in relation to the business name and the registrar-general is not satisfied within 1 month after the date of the notice that business is being carried on in the ACT under the business name by the person or people in relation to whom the business name is registered; or
  - (c) if the registrar-general has sent a notice 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 registrar-general is not satisfied that there was no failure to comply with the provision; or
  - (d) if the business name is registered in relation to a corporation only and the name of the corporation has been struck off any register of corporations kept under the Corporations Act or the corporation has been dissolved.
- (2) The registrar-general may, on any grounds that the registrar-general considers sufficient, revoke any cancellation by the registrar-general

of the registration of a business name and, in that event, the business name is taken to have continued to be registered as if the registration had not been cancelled.

- (3) If 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 on the conditions the court considers appropriate.
- (5) On the making of an order by the Supreme Court under subsection (4), the business name is taken to have continued to be registered as if the registration had not been cancelled and the registrar-general, on the lodging with the registrar-general of a sealed or stamped copy of the order, must make the entries and alterations in the register that the registrar-general considers necessary for the order.

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

- (1) A person commits an offence if—
  - (a) the person, alone or with anyone else, carries on business under a business name registered under this Act; and
  - (b) the person—
    - (i) issues or signs any document for the business that does not display the business name in legible characters; or
    - (ii) does not display the business name in a conspicuous place outside each place of business; or
    - (iii) does not display the certificate of registration of the business name in a conspicuous place at the place of

business or, if the business is carried on at more than 1 place, the main place of business.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant took reasonable steps to comply with this section.

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

- (1) The registrar-general may, on the evidence that appears sufficient to the registrar-general, correct any error in any entry in the register or in any certificate of registration of a business name.
- (2) In correcting an error under subsection (1), the registrar-general—
  - (a) must not erase the original words or make them illegible; and
  - (b) must initial and date the correction.
- (3) An entry or certificate corrected under this section is as valid 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 the statement lodged under this subsection are to be read as one and both form part of the register.

## **22 Inspection of statements**

A person may inspect any statement lodged with the registrar-general under this Act that has not been destroyed under 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 must on written request by anyone, issue to the 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 the registrar-general's official seal to be a true copy or extract; or
  - (b) a certificate under the registrar-general's official seal stating whether a business name was, on a day or during a period mentioned in the certificate, registered under this Act in relation to a person.
- (2) The registrar-general must not issue a copy, extract or certificate under subsection (1) in relation to a statement that has been destroyed under section 25 or in relation to a date or a period ending more than 12 years before 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 mentioned in paragraphs (a), (b) and (c);

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

**25 Registrar-general may destroy etc certain old documents**

The registrar-general may destroy or dispose of any document relating to a business name that has not been registered for at least 12 years.

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

- (1) A person commits an offence if—
- (a) a business is carried on in the ACT under a business name that is registered or required to be registered under this Act; and
  - (b) the person—
    - (i) uses or refers to the business name in an invitation to the public, or advertisement inviting the public, to deposit money with or lend money to the person who is carrying on the business; or
    - (ii) uses or refers to the business name in relation to any deposit or loan.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to an invitation to the public made by a public company in accordance with the Corporations Act.

**29 Offences committed by corporations**

If 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 the offence.

### 30 Evidentiary provisions

If, in any proceeding 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 people carrying on the business are, in the absence of proof to the contrary, taken to be carrying on the business under the business name.

### 31 Service of documents

- (1) Service of a process or other document on someone (the *proprietor*) who carries on business under a registered business name is taken to be personal service on the proprietor if—
  - (a) the document is left at a registered place of business of the proprietor with someone who appears to be at least 16 years old and to be employed at the place; or
  - (b) the document is given to a resident agent of the proprietor; or
  - (c) the document is left at the registered address of a resident agent of the proprietor with someone who appears to be at least 16 years old and to be employed at the address; or
  - (d) the document is sent by prepaid post, addressed to the proprietor, to a registered place of business of the proprietor; or
  - (e) the document is sent by prepaid post, addressed to a resident agent of the proprietor, to a registered address of the agent.
- (2) This section does not affect the operation of any other law that allows or requires service of a document otherwise than as provided in this section.

*Note* For how documents may otherwise be served, see the Legislation Act, pt 19.5.

(3) This section does not affect the power of a court or tribunal to allow or require service of a document otherwise than as provided in this section.

(4) In this section:

**registered address**, for a resident agent of the proprietor, means the place shown in the register as the address of the resident agent in the ACT.

**registered place of business**, of the proprietor, means—

- (a) the place shown in the register as the place where business is carried on under the business name; or
- (b) if more than 1 place is shown in the register as the place where business is carried on under the business name—
  - (i) the place shown in the register as the principal place where business is carried on under the business name; or
  - (ii) if no place is shown in the register as the principal place—the place that appears 1st in the register as a place where business is carried on under the business name.

**resident agent**, for the proprietor, means the person (if any) shown in the register as the resident agent of the proprietor.

## **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 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.

### **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.

*Note* For other provisions about forms, see the Legislation Act, s 255.

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

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

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

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

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

- (2) A regulation 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) A regulation may also prescribe offences for contraventions of a regulation and prescribe maximum penalties of not more than 10 penalty units for offences against a regulation.

## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- authorised deposit-taking institution
- function
- individual
- Minister (see s 162)
- proceeding
- property
- registrar-general
- the Territory.

*business* includes trade and profession.

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

*carrying on business*—see section 4A.

*foreign language character* includes any character or symbol that is not an English language letter, numeral or punctuation mark.

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

*process* includes any application, pleading, order or document in or relating to any legal proceedings.

*proper address* means—

- (a) for an individual—the individual’s usual home address; and
- (b) for a corporation—the address of the corporation’s registered office or, if the corporation does not have a registered office, its main place of business.

***proper name*** means—

(a) for an individual—

(i) the individual's full name; or

(ii) the individual's family name, together with the initials or abbreviations of 1 or more of the individual's given names; and

(b) for a corporation—the corporation's corporate name.

***registered business name*** means a business name registered under this Act.

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

***unregistered business name*** means a business name that is not registered under this Act.

## 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 and expiries 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 endnote.

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.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired



### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Business Names Ordinance 1963* (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

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 becoming Territory enactment

##### **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

## Endnotes

3 Legislation history

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

notified 30 June 1982  
commenced 1 July 1982

### **Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)  
s 1, s 2 commenced 10 May 1989 (s 2 (1))  
sch 1 commenced 11 May 1989 (s 2 (2)) and see Cwlth Gaz 1989 No S164)

## **Legislation after becoming Territory enactment**

### **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 see Gaz 2001 No S65)

**Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 2 pt 2.12**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 2 pt 2.12 commenced 9 April 2004 (s 2 (1))

**Criminal Code Harmonisation Act 2005 A2005-54 sch 1 pt 1.11**

notified LR 27 October 2005  
s 1, s 2 commenced 27 October 2005 (LA s 75 (1))  
sch 1 pt 1.11 commenced 24 November 2005 (s 2)

**Justice and Community Safety Legislation Amendment Act 2005 (No 4) A2005-60 sch 1 pt 1.2**

notified LR 1 December 2005  
s 1, s 2 taken to have commenced 23 November 2005 (LA s 75 (2))  
sch 1 pt 1.2 commenced 11 January 2006 (s 2 (1) (a) and see Statute Law Amendment Act 2005 (No 2) A2005-62, s 2 (1))

**Statute Law Amendment Act 2005 (No 2) A2005-62 sch 3 pt 3.3**

notified LR 21 December 2005  
s 1, s 2 commenced 21 December 2005 (LA s 75 (1))  
amdt 3.73, amdt 3.74, amdt 3.84, amdt 3.94 commenced 11 January 2006 (s 2 (2))  
sch 3 pt 3.3 remainder commenced 11 January 2006 (s 2 (1))

**4 Amendment history****Name of Act**

s 1 sub A2005-62 amdt 3.71

**Dictionary**

s 2 om 2001 No 44 amdt 1.494  
ins A2005-62 amdt 3.71

## Endnotes

### 4 Amendment history

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#### Notes

s 3 orig s 3 am ord 1982 No 38; 1990 No 27 s 4; 1993 No 64 sch 1  
om 2001 No 44 amdt 1.494  
prev s 3 ins ord 1976 No 51  
am ord 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  
(prev s 4A) ins A2005-54 amdt 1.67  
renum A2005-62 amdt 3.73

#### Offences against Act—application of Criminal Code etc

s 4 orig s 4 am 1994 No 112 sch; 1997 No 88 sch; 2001 No 44  
amdt 1.496  
om A2005-62 amdt 3.72  
(prev s 4B) ins A2005-54 amdt 1.67  
renum A2005-62 amdt 3.73  
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 **business** om A2005-62 amdt 3.72  
def **business name** om A2005-62 amdt 3.72  
def **carrying on business** om A2005-62 amdt 3.72  
def **christian name** om A2005-62 amdt 3.72  
def **Commission** ins ord 1982 No 38 s 4  
om 1990 No 27 s 5  
def **Companies Act** ins ord 1982 No 38 s 4  
def **corporation** am 1995 No 46 sch  
om A2005-62 amdt 3.72  
def **determined fee** ins 1994 No 112 s 4  
om 2001 No 44 amdt 1.495  
def **director** om A2005-62 amdt 3.72  
def **firm** om A2005-62 amdt 3.72  
def **individual** om A2005-62 amdt 3.72  
def **initial** om A2005-62 amdt 3.72  
def **process** om A2005-62 amdt 3.72  
def **Registrar** ins 1990 No 27 s 5  
om 1993 No 64 sch 1  
def **secretary** am 1995 No 46 sch  
om A2005-62 amdt 3.72  
def **the Companies Ordinance** om ord 1982 No 38 s 4  
def **the register** om A2005-62 amdt 3.72  
def **the repealed Act** om A2005-62 amdt 3.72  
def **the Registrar** om ord 1982 No 38 s 4  
def **this Act** om 2001 No 44 amdt 1.495  
def **unauthorized name** sub ord 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

**Meaning of *carrying on business***

s 4A orig s 4A renum as s 3  
ins A2005-62 amdt 3.72

**When business name taken to be registered in relation to person**

s 4B orig s 4B renum as s 4  
ins A2005-62 amdt 3.72

**Certain business names to be registered**

s 5 am ord 1966 No 15; 1994 No 112 sch ; 1998 No 54 sch;  
A2005-54 amdt 1.68, amdt 1.69; A2005-62 amdt 3.74

**Register of business names**

s 6 am ord 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1;  
A2005-62 amdt 3.75, amdt 3.76

**Registration of business names**

s 7 am ord 1976 No 51; ord 1982 No 38; 1990 No 27 sch 1; 1993  
No 64 sch 1; 1994 No 112 s 6, sch; 2001 No 44 amdts 1.498-  
1.502; A2005-62 amdt 3.77, amdt 3.78

**Resident agent**

s 8 am 198 No 38; 1990 No 27; 1993 No 64 sch 1; 1994  
No 112 sch; A2005-62 amdt 3.79

**Restriction on registration of undesirable business names**

s 9 am ord 1966 No 15; ord 1976 No 51; ord 1976 No 60; ord  
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  
amdts 1.503-1.505; ss renum R6 LA

**Cancellation of undesirable business names**

s 10 am ord 1976 No 60; ord 1982 No 38; 1990 No 27 sch 1; 1993  
No 64 sch 1; 1994 No 112 sch; 2001 No 44 amdt 1.506;  
A2005-62 amdt 3.80; ss renum R9 LA

**Renewal of registration**

s 11 am ord 1976 No 51; ord 1982 No 38; 1990 No 27; 1993 No 64  
sch 1; 1994 No 112 s 8, sch; 2001 No 44 amdts 1.507-1.509;  
A2005-62 amdt 3.81

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

s 12 am ord 1966 No 15; ord 1976 No 51; ord 1978 No 46;  
ord 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  
amdts 1.510-1.512; A2005-54 amdt 1.70, amdt 1.71;  
A2005-62 amdts 3.82-3.84; ss renum R9 LA

## Endnotes

### 4 Amendment history

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#### **Failing to lodge statements—offence**

s 12A ins A2005-54 amdt 1.72

#### **Duty to give information**

s 13 am ord 1966 No 15; ord 1982 No 38; 1990 No 27 sch 1; 1993  
No 64 sch 1; 1994 No 112 sch; 1998 No 54 sch  
sub A2005-54 amdt 1.73

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

s 14 am 1994 No 112 sch  
om A2005-62 amdt 3.85

#### **Signing of statements**

s 15 am ord 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1;  
1994 No 112 sch; A2005-62 amdt 3.86

#### **Verification of particulars**

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

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

s 17 am ord 1966 No 15; ord 1982 No 38; 1990 No 27 sch 1; 1993  
No 64 sch 1; 1994 No 112 sch; 1998 No 54 sch  
om A2004-15 amdt 2.29

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

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

#### **Cancellation of registration**

s 19 am ord 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1;  
1994 No 112 sch; 1995 No 46 sch; A2005-62 amdt 3.87

#### **Use and display of business name**

s 20 am ord 1966 No 15; 1994 No 112 sch; 1998 No 54 sch  
sub A2005-54 amdt 1.74

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

s 21 am ord 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1;  
1994 No 112 sch; A2005-62 amdt 3.88, amdt 3.89

#### **Inspection of statements**

s 22 am ord 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;  
A2005-62 amdt 3.90

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

s 23 am ord 1976 No 51; ord 1982 No 38; 1990 No 27 sch 1; 1993  
No 64 sch 1; 1994 No 112 sch; A2005-62 amdt 3.91,  
amdt 3.92

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

s 24 am 1994 No 112 sch

**Registrar-general may destroy etc certain old documents**

s 25 am ord 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1;  
1994 No 112 sch  
sub A2005-62 amdt 3.93

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

s 26 am ord 1966 No 15; ord 1982 No 38; 1994 No 112 sch; 1995  
No 46 sch; 1998 No 54 sch  
sub A2005-54 amdt 1.75  
am A2005-62 amdt 3.94

**Effect of certain contraventions of Business Names Act on legal proceedings**

s 27 hdg sub A2005-60 amdt 1.5  
s 27 sub A2005-62 amdt 3.95  
am A2005-60 amdts 1.6-1.8  
reloc to Court Procedures Act 2004 as s 140 by A2004-60  
amdt 1.9

**Default penalty**

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

**Evidentiary provisions**

s 30 am A2005-62 amdt 3.96

**Service of documents**

s 31 am ord 1982 No 38; 1990 No 27 sch 1; 1993 No 64 sch 1;  
1994 No 112 sch  
sub A2005-62 amdt 3.97

**Determination of fees**

s 32 orig s 32 om ord 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 ord 1966 No 15; ord 1976 No 51; ord 1976 No 60, 1976;  
ord 1982 No 38; ord 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 ord 1976 No 51  
am ord 1982 No 38  
om 1990 No 27 s 10

**Dictionary**

dict ins A2005-62 amdt 3.98

## Endnotes

### 5 Earlier republications

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def **business** ins A2005-62 amdt 3.98  
def **business name** ins A2005-62 amdt 3.98  
def **carrying on business** ins A2005-62 amdt 3.98  
def **foreign language character** ins A2005-62 amdt 3.98  
def **initial** ins A2005-62 amdt 3.98  
def **process** ins A2005-62 amdt 3.98  
def **proper address** ins A2005-62 amdt 3.98  
def **proper name** ins A2005-62 amdt 3.98  
def **registered business name** ins A2005-62 amdt 3.98  
def **the register** ins A2005-62 amdt 3.98  
def **unregistered business name** ins A2005-62 amdt 3.98

## 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. 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
6	A2001-44	15 January 2002
7	A2004-15	9 April 2004
8	A2005-54	24 November 2005

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