



Australian Capital Territory

# Business Names Registration (Transition to Commonwealth) Act 2012

A2012-2

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Australian Capital Territory

# **Business Names Registration (Transition to Commonwealth) Act 2012**

**A2012-2**

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An Act relating to business names to make provision consequent on the enactment by the Parliament of the Commonwealth of the *Business Names Registration Act 2011* (Cwlth)

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Business Names Registration (Transition to Commonwealth) Act 2012*.

### 2 Commencement

- (1) This Act (other than part 3, section 17 and schedule 2) commences on the day after this Act's notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) Part 3, section 17 and schedule 2 commence on the change-over day.

*Note* *Change-over day* is defined in the Commonwealth Transitional Act as the day the Commonwealth Act, pt 2 commences.

### 3 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 '*change-over day*—see the Commonwealth Transitional Act, section 4.' means that the term 'change-over day' is defined in that dictionary and the definition applies to this Act.

*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)).

**4 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.

**5 Expiry—Act**

This Act expires 2 years after the change-over day.

*Note* Pt 3 contains transitional provisions. Transitional provisions are kept with the original provisions for a limited time to ensure people are aware of them. However, the expiry of a transitional provision does not end its effect (see Legislation Act, s 88).

## Part 2 Giving information to the Commonwealth

### 6 Giving information to the Commonwealth

- (1) The registrar-general is authorised to—
  - (a) give the Commonwealth, the Commonwealth Minister, ASIC or an authorised officer of the Commonwealth the information recorded in, or concerning the use of, any register, book or index kept under the existing Act that the registrar-general considers appropriate to assist the Commonwealth in establishing or maintaining the Commonwealth business names register; and
  - (b) act on behalf of the Territory in connection with the Territory giving notices to ASIC under the Commonwealth Transitional Act, schedule 1; and
  - (c) give information about a business name recorded in the Territory register to a person in relation to whom the business name is registered to verify the information to assist the Commonwealth in establishing and maintaining the Commonwealth business names register.

*Note* A fee may be determined under s 15 for this provision.

- (2) The registrar-general may give the information in whatever form (including by means of electronic data or in a form approved for the Commonwealth Act) that the registrar-general considers appropriate.
- (3) This section has effect despite anything in another territory law.
- (4) In this section:

***Territory register*** means the register of business names kept by the registrar-general under the *Business Names Act 1963*.

## 7 Territory not liable—business names registration transitional matters

(1) The Territory, or an officer, employee or agent of the Territory, does not incur liability for an act or omission done honestly and without recklessness if the act or omission is a business names registration transitional matter or arises (directly or indirectly) from a business names registration transitional matter.

(2) In this section:

*business names registration transitional matter* means—

- (a) the giving of information to the Commonwealth, the Commonwealth Minister, ASIC or an authorised officer of the Commonwealth to assist the Commonwealth in establishing the Commonwealth business names register; or
- (b) a request to the director-general to give information to the Commonwealth, the Commonwealth Minister, ASIC or an authorised officer of the Commonwealth to assist the Commonwealth in establishing the Commonwealth business names register; or
- (c) the exercise of a function under, or the administration of, this Act.

## Part 3 Transitional

### 8 Applications for registration not decided before change-over day

- (1) This section applies if, before the change-over day—
  - (a) an application for registration of a business name is lodged with the registrar-general under the existing Act; and
  - (b) the registrar-general has not decided the application.
- (2) Despite its repeal, the existing Act, section 7 continues to apply to the application.
- (3) The registrar-general must—
  - (a) decide under the existing Act, section 7 to register the name or refuse to register the name; and
  - (b) notify ASIC of the registrar-general's decision.
- (4) Fees and charges that would have been payable under the existing Act, had it not been repealed, continue to be payable to the registrar-general in relation to an application for registration of a business name to which this section applies.

### 9 Renewals not completed before change-over day

- (1) This section applies if, before the change-over day—
  - (a) a business name registration is in force under the existing Act; and
  - (b) a statement is lodged with the registrar-general under the existing Act, section 11 to renew the registration; and
  - (c) the renewal is not completed by the registrar-general.



- (2) Despite its repeal, the existing Act, section 11 continues to apply to the renewal.
- (3) The registrar-general must notify ASIC of the renewal.
- (4) Fees and charges that would have been payable under the existing Act, had it not been repealed, continue to be payable to the registrar-general in relation to a renewal to which this section applies.

## **10 Renewals lodged after change-over day**

- (1) This section applies if—
  - (a) a business name registration is in force under the existing Act immediately before the change-over day; and
  - (b) a statement is lodged with the registrar-general under the existing Act, section 11 to renew the registration; and
  - (c) the statement is lodged not later than 1 month after the change-over day.
- (2) Despite its repeal, the existing Act, section 11 continues to apply to the renewal.
- (3) The registrar-general must notify ASIC of the renewal.
- (4) Fees and charges that would have been payable under the existing Act, had it not been repealed, continue to be payable to the registrar-general in relation to a renewal to which this section applies.

**11 Notification of changes of particulars lodged before change-over day**

- (1) This section applies if, before the change-over day—
  - (a) a statement is lodged with the registrar-general under the existing Act, section 12 to change particulars of a business name registration; and
  - (b) the registrar-general has not recorded the change set out in the statement.
- (2) The registrar-general must—
  - (a) record the change set out in the statement; and
  - (b) notify ASIC of the change.

**12 Preservation of rights for cancellation decisions**

- (1) This section applies if, before the change-over day, the registrar-general cancels the registration of a business name under the existing Act, section 19 (1).
- (2) Despite the repeal of the existing Act, section 19 (2), the registrar-general may, not later than 3 months after the change-over day, revoke the cancellation under the existing Act, section 19 (2).
- (3) If the registrar-general revokes the cancellation, the registrar-general must notify ASIC of the revocation.
- (4) If, before the change-over day, a person in relation to whom the business name was registered immediately before the cancellation applied to the Supreme Court for an order under the existing Act, section 19 (3), the Supreme Court may make an order directing the registrar-general to notify ASIC to restore the registration of the business name on the Commonwealth business names register.

- (5) Despite the repeal of the existing Act, a person in relation to whom the business name was registered immediately before the cancellation may, not later than 2 months after the change-over day, apply to the Supreme Court for an order directing the registrar-general to notify ASIC to restore the registration of the business name on the Commonwealth business names register.
- (6) On application under subsection (5), 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.

### **13 Transitional regulations**

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act or the new business names legislation.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

## Part 4 Miscellaneous

### 14 Determination of fees

- (1) The Minister may determine fees for this Act.
- (2) A determination is a disallowable instrument

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

### 15 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 declare a matter to be an excluded matter for the purposes of the Commonwealth Act, section 13 in relation to—
  - (a) the whole of the new business names legislation; or
  - (b) a specified provision of the new business names legislation; or
  - (c) the new business names legislation other than a specified provision; or
  - (d) the new business names legislation otherwise than to a specified extent.
- (3) A regulation may declare a specified provision of an Act or statutory rule to be a business names legislation displacement provision for the purposes of the Commonwealth Act, section 14 either generally or specifically in relation to a provision of the new business names legislation.

**16 Legislation amended—schs 1 and 2**

This Act amends the legislation mentioned in schedules 1 and 2.

**17 Legislation repealed**

- (1) The following legislation is repealed:
  - *Business Names Act 1963* (A1963-12)
  - *Business Names Regulation 1966* (SL1966-11).
- (2) All other legislative instruments under the *Business Names Act 1963* (A1963-12) are repealed.

## Schedule 1 Business Names Act 1963

(see s 16)

### [1.1] New section 7A

*insert*

#### 7A Registrar-general may refuse to accept applications for registration before change-over day

- (1) The registrar-general may refuse to accept an application for registration of a business name under section 7 if the registrar-general reasonably believes there is insufficient time to decide the application before the change-over day.

- (2) In this section:

*change-over day*—see the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* (Cwlth), section 4.

### [1.2] Section 11 (3)

*substitute*

- (3) The registrar-general must, before or after the end of the registration of a business name, give a person in relation to whom a business name is registered, a notice of the date the registration is to end but not earlier than 3 months before the day the registration is to end.

## **Schedule 2      Consequential amendments**

(see s 16)

### **Part 2.1                      Associations Incorporation Act 1991**

#### **[2.1]      New section 37 (5) (ba)**

*insert*

- (ba) a business name registered under the *Business Names Registration Act 2011* (Cwlth); or

### **Part 2.2                      Firearms Regulation 2008**

#### **[2.2]      Section 29 (a)**

*substitute*

- (a) a certified copy of the certificate of registration of the business name under the *Business Names Registration Act 2011* (Cwlth);

#### **[2.3]      Section 56 (2) (a)**

*substitute*

- (a) a certified copy of the certificate of registration of the business name under the *Business Names Registration Act 2011* (Cwlth);

#### **[2.4]      Section 61 (2) (a)**

*substitute*

- (a) a certified copy of the certificate of registration of the business name under the *Business Names Registration Act 2011* (Cwlth);

## Part 2.3 Gaming Machine Act 2004

### [2.5] Section 152 (3), definition of *registered business name*

*substitute*

*registered business name* means a business name registered under the *Business Names Registration Act 2011* (Cwlth).

## Part 2.4 Legal Aid Act 1977

### [2.6] Section 94 (2)

*substitute*

- (2) The commission is an excluded matter for the purposes of the *Business Names Registration Act 2011* (Cwlth), section 13 in relation to that Act and the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* (Cwlth).

## Part 2.5 Partnership Act 1963

### [2.7] Section 59 (2) and (3)

*substitute*

- (2) The commissioner for fair trading must not record a name in the register as the firm name of an incorporated limited partnership if the name is registered as a business name under the *Business Names Registration Act 2011* (Cwlth).



**[2.8] Section 63**

*substitute*

**63 Business Names Registration Act (Cwlth) not to apply**

An incorporated limited partnership registered under this part is an excluded matter for the purposes of the *Business Names Registration Act 2011* (Cwlth), section 13 in relation to that Act and the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* (Cwlth).

**Part 2.6 Sale of Motor Vehicles Act 1977**

**[2.9] Section 10 (1) (k)**

*omit*

*Business Names Act 1963*

*substitute*

*Business Names Registration Act 2011* (Cwlth)

**[2.10] Section 11 (1) (k)**

*omit*

*Business Names Act 1963*

*substitute*

*Business Names Registration Act 2011* (Cwlth)

## Dictionary

(see s 3)

*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:

- exercise
- function
- registrar-general.

**ASIC** means the Australian Securities and Investments Commission under the *Australian Securities and Investments Commission Act 2001* (Cwlth).

**authorised officer of the Commonwealth** means a person who exercises a function under the Commonwealth Act.

**change-over day**—see the Commonwealth Transitional Act, section 4.

*Note* **Change-over day** is defined in the Commonwealth Transitional Act as the day the Commonwealth Act, pt 2 commences.

**Commonwealth Act** means the *Business Names Registration Act 2011* (Cwlth).

**Commonwealth business names register** means the business names register under the Commonwealth Act, section 22.

**Commonwealth Minister**—see the Commonwealth Act, section 3.

**Commonwealth Transitional Act** means the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* (Cwlth).

**existing Act** means the *Business Names Act 1963*.

*new business names legislation* means—

- (a) the Commonwealth Act; and
- (b) the Commonwealth Transitional Act; and
- (c) the *Business Names Registration (Fees) Act 2011* (Cwlth).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 20 October 2011.

**2 Notification**

Notified under the Legislation Act on 28 February 2012.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Business Names Registration (Transition to Commonwealth) Bill 2012, which originated in the Legislative Assembly as the Business Names Registration (Transition to Commonwealth) Bill 2011 and was passed by the Assembly on 16 February 2012.

Clerk of the Legislative Assembly

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