



Australian Capital Territory

Business Names Registration (Transition to Commonwealth) Act 2012

A2012-2

Republication No 1

Effective: 29 February 2012 – 27 May 2012

Republication date: 29 February 2012

Act not amended

Not all provisions are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Business Names Registration (Transition to Commonwealth) Act 2012* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 29 February 2012. It also includes any commencement, repeal or expiry affecting this republished law.

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):

- 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 does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

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 the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

Business Names Registration (Transition to Commonwealth) Act 2012

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29/02/12

Business Names Registration (Transition to
Commonwealth) Act 2012
Effective: 29/02/12-27/05/12

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Australian Capital Territory

Business Names Registration (Transition to Commonwealth) Act 2012

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)

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.

U Part 3 Transitional

U 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.

U 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.

U 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.

U 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.

U 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.

U 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.

U 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.

U **Schedule 2 Consequential amendments**

(see s 16)

U **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

U **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);

U 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).

U 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).

U 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).

U 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).

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 not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

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

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

Endnotes

3 Legislation history

3 Legislation history

Business Names Registration (Transition to Commonwealth) Act 2012 A2012-2

notified LR 28 February 2012

s 1, s 2 commenced 28 February 2012 (LA s 75 (1))

pt 3, s 17 and sch 2 commence on the change-over day (s 2 (2))

remainder commenced 29 February 2012 (s 2 (1))

Note 1 **Change-over day** is defined in the Commonwealth Transitional Act as the day the Commonwealth Act, pt 2 commences.

Note 2 Act exp 2 years after the change-over day (s 5).

4 Amendment history

Business Names Act 1963

sch 1 om LA s 89 (3)

5 Uncommenced provisions

Part 3, section 17 and schedule 2 were uncommenced at the republication date but have been included in this republication with the symbol **U** immediately before the provision headings.

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