

2011

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

# Business Names Registration (Transition to Commonwealth) Bill 2011

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## **Business Names Registration (Transition to Commonwealth) Bill 2011**

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### **A Bill for**

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:

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J2011-520

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Business Names Registration (Transition to*  
4 *Commonwealth) Bill 2011*.

5 **2 Commencement**

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

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

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

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

14 **3 Dictionary**

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

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

19 For example, the signpost definition '*change-over day*—see the  
20 Commonwealth Transitional Act, section 4.' means that the term  
21 'change-over day' is defined in that dictionary and the definition applies  
22 to this Act.

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

1   **4**       **Notes**

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

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

5   **5**       **Expiry—Act**

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

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

1 **Part 2** **Giving information to the**  
2 **Commonwealth**

3 **6 Giving information to the Commonwealth**

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

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

- 21 (2) The registrar-general may give the information in whatever form  
22 (including by means of electronic data or in a form approved for the  
23 Commonwealth Act) that the registrar-general considers  
24 appropriate.
- 25 (3) This section has effect despite anything in another territory law.
- 26 (4) In this section:
- 27 ***Territory register*** means the register of business names kept by the  
28 registrar-general under the *Business Names Act 1963*.

- 1     **7     Territory not liable—business names registration**  
2     **transitional matters**
- 3     (1) The Territory, or an officer, employee or agent of the Territory, does  
4     not incur liability for an act or omission done honestly and without  
5     recklessness if the act or omission is a business names registration  
6     transitional matter or arises (directly or indirectly) from a business  
7     names registration transitional matter.
- 8     (2) In this section:
- 9     ***business names registration transitional matter*** means—
- 10     (a) the giving of information to the Commonwealth, the  
11     Commonwealth Minister, ASIC or an authorised officer of the  
12     Commonwealth to assist the Commonwealth in establishing  
13     the Commonwealth business names register; or
- 14     (b) a request to the director-general to give information to the  
15     Commonwealth, the Commonwealth Minister, ASIC or an  
16     authorised officer of the Commonwealth to assist the  
17     Commonwealth in establishing the Commonwealth business  
18     names register; or
- 19     (c) the exercise of a function under, or the administration of, this  
20     Act.

1 **Part 3 Transitional**

2 **8 Applications for registration not decided before**  
3 **change-over day**

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

18 **9 Renewals not completed before change-over day**

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



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

8 **10 Renewals lodged after change-over day**

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

- 1 **11 Notification of changes of particulars lodged before**  
2 **change-over day**
- 3 (1) This section applies if, before the change-over day—
- 4 (a) a statement is lodged with the registrar-general under the  
5 existing Act, section 12 to change particulars of a business  
6 name registration; and
- 7 (b) the registrar-general has not recorded the change set out in the  
8 statement.
- 9 (2) The registrar-general must—
- 10 (a) record the change set out in the statement; and  
11 (b) notify ASIC of the change.
- 12 **12 Preservation of rights for cancellation decisions**
- 13 (1) This section applies if, before the change-over day, the  
14 registrar-general cancels the registration of a business name under  
15 the existing Act, section 19 (1).
- 16 (2) Despite the repeal of the existing Act, section 19 (2), the  
17 registrar-general may, not later than 3 months after the change-over  
18 day, revoke the cancellation under the existing Act, section 19 (2).
- 19 (3) If the registrar-general revokes the cancellation, the registrar-general  
20 must notify ASIC of the revocation.
- 21 (4) If, before the change-over day, a person in relation to whom the  
22 business name was registered immediately before the cancellation  
23 applied to the Supreme Court for an order under the existing Act,  
24 section 19 (3), the Supreme Court may make an order directing the  
25 registrar-general to notify ASIC to restore the registration of the  
26 business name on the Commonwealth business names register.

- 1 (5) Despite the repeal of the existing Act, a person in relation to whom  
2 the business name was registered immediately before the  
3 cancellation may, not later than 2 months after the change-over day,  
4 apply to the Supreme Court for an order directing the  
5 registrar-general to notify ASIC to restore the registration of the  
6 business name on the Commonwealth business names register.
- 7 (6) On application under subsection (5), the Supreme Court may, if it is  
8 satisfied that the applicant is carrying on business under the business  
9 name and that it is just and equitable so to do, make the order  
10 applied for on the conditions the court considers appropriate.

11 **13 Transitional regulations**

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

1 **Part 4** **Miscellaneous**

2 **14** **Determination of fees**

3 (1) The Minister may determine fees for this Act.

4 (2) A determination is a disallowable instrument

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

7 **15** **Regulation-making power**

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

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

11 (2) A regulation may declare a matter to be an excluded matter for the  
12 purposes of the Commonwealth Act, section 13 in relation to—

13 (a) the whole of the new business names legislation; or

14 (b) a specified provision of the new business names legislation; or

15 (c) the new business names legislation other than a specified  
16 provision; or

17 (d) the new business names legislation otherwise than to a  
18 specified extent.

19 (3) A regulation may declare a specified provision of an Act or statutory  
20 rule to be a business names legislation displacement provision for  
21 the purposes of the Commonwealth Act, section 14 either generally  
22 or specifically in relation to a provision of the new business names  
23 legislation.

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

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

3   **17           Legislation repealed**

4           (1) The following legislation is repealed:

- 5               • *Business Names Act 1963* (A1963-12)  
6               • *Business Names Regulation 1966* (SL1966-11).

7           (2) All other legislative instruments under the Business Names Act  
8           1963 (A1963-12) are repealed.

1 **Schedule 1 Business Names Act 1963**

2 (see s 16)

3 **[1.1] New section 7A**

4 *insert*

5 **7A Registrar-general may refuse to accept applications for**  
6 **registration before change-over day**

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

11 (2) In this section:

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

15 **[1.2] Section 11 (3)**

16 *substitute*

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

1 **Schedule 2**                    **Consequential amendments**

2 (see s 16)

3 **Part 2.1**                        **Associations Incorporation Act**  
4 **1991**

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

6 *insert*

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

9 **Part 2.2**                        **Firearms Regulation 2008**

10 **[2.2]            Section 29 (a)**

11 *substitute*

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

15 **[2.3]            Section 56 (2) (a)**

16 *substitute*

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

20 **[2.4]            Section 61 (2) (a)**

21 *substitute*

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

1 **Part 2.3 Gaming Machine Act 2004**

2 **[2.5] Section 152 (3), definition of *registered business name***

3 *substitute*

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

6 **Part 2.4 Legal Aid Act 1977**

7 **[2.6] Section 94 (2)**

8 *substitute*

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

13 **Part 2.5 Partnership Act 1963**

14 **[2.7] Section 59 (2) and (3)**

15 *substitute*

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



1 **[2.8] Section 63**

2 *substitute*

3 **63 Business Names Registration Act (Cwlth) not to apply**

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

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

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

11 *omit*

12 *Business Names Act 1963*

13 *substitute*

14 *Business Names Registration Act 2011* (Cwlth)

15 **[2.10] Section 11 (1) (k)**

16 *omit*

17 *Business Names Act 1963*

18 *substitute*

19 *Business Names Registration Act 2011* (Cwlth)

## 1 Dictionary

2 (see s 3)

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

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

- 6 • exercise
- 7 • function
- 8 • registrar-general.

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

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

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

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

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

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

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

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

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

- 1            ***new business names legislation*** means—
- 2            (a) the Commonwealth Act; and
- 3            (b) the Commonwealth Transitional Act; and
- 4            (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      2011.
- 2      Notification**  
Notified under the Legislation Act on                              2011.
- 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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