

EXPLANATORY MEMORANDUM  
AUSTRALIAN CAPITAL TERRITORY  
BUSINESS NAMES ORDINANCE 1963

No. 12 of 1963

This draft Ordinance is designed to repeal and replace the present legislation of the Australian Capital Territory relating to business names.

2. The law relating to companies and business names affects the commercial community throughout Australia and, like the Companies Ordinance 1962 to which it is closely related, the draft Business Names Ordinance has been framed as a result of discussions held between the Commonwealth and State Attorneys-General with a view to achieving Australia-wide uniformity in legislation in this field.

3. The provisions of the uniform legislation relating to business names have been largely based upon the Business Names Ordinance at present in force in the Australian Capital Territory and, in consequence, the Ordinance now proposed for the Territory will effect few changes in the law there. Those provisions which do make changes of importance are explained below under the heading “New Provisions”.

4. The draft Ordinance contains the usual provisions of legislation of this kind. Persons who carry on business, either alone or in association with other persons, under a business name are required to register the name (section 5). The use of certain names is prohibited (section 9). The information contained in the register must be kept up to date by notifying the Registrar of changes (section 12). Where a business name is registered, it must appear on all documents used in the course of the business and it must be displayed at every place where the business is carried on (section 20). The certificate of registration must be exhibited at the principal place of business (section 20).

New provisions

5. An agent resident in the Territory must be appointed when the persons in respect of whom the name is registered are resident outside the Territory or have no fixed address within the Territory (section 8). This provision is considered important, particularly for Territories like the Northern Territory and the Australian Capital Territory, where business names are frequently registered in respect of persons who live outside the Territory.

6. Under the present Ordinance, business names must be re-registered every year. It is now proposed that they shall be re-registered every three years (section 11). The three-year period represents a compromise. Prior to the enactment of uniform legislation, Queensland had a one year period for many years, another State had a five-year period and a third had no requirement for re-registration. The object in

fixing the three-year period is to keep the register clean without placing an undue burden on those whose duty it is to re-register business names.

7. Section 13 confers on the Registrar power to require persons to furnish information relating to business names. Although this provision is new for the Territory, similar provisions exist in four of the States.
8. Section 26 provides that a business name shall not be used in any invitation to the public to deposit money with or lend money to the person or firm in respect of which the name is, or is required to be, registered and that no reference to a business name shall be made in connexion with any deposit or loan. This provision is founded on provisions in force in Victoria and South Australia. The object is to prevent persons carrying on business under a business name from issuing a document which appears to be a prospectus. Members of the public can be easily confused into thinking that a business name is the name of a public company and that accordingly such a prospectus has complied with the prospectus provisions of the Companies Acts or Ordinances. Invitations to the public of this nature should be strictly regulated by law and the business names legislation contains no regulatory provisions of this kind. Strict provisions of the kind are, of course, contained in company legislation and sub-section (2.) of section 26 expressly makes the section inapplicable to invitations made by companies in accordance with the Companies Ordinance 1962.
9. Several sections of the Ordinance prescribe penalties which are described as “default penalties”. Section 28 provides, in effect, that where a default penalty is prescribed in addition to an express monetary penalty, an additional, continuing, penalty of up to £10 a day may be imposed if the offence continues after a conviction. This additional penalty is provided for, in sections 5, 12(11.) and 20, to ensure prompt compliance with the Ordinance in cases where the interests of the public are directly affected.