

**2011**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**BUSINESS NAMES REGISTRATION (TRANSITION TO COMMONWEALTH)  
BILL 2011**

**EXPLANATORY STATEMENT**

**Presented by the  
Attorney-General  
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# **Business Names Registration (Transition to Commonwealth) Bill 2011**

## **Overview of Bill**

The Business Names Registration (Transition to Commonwealth) Bill 2011 repeals the *Business Names Act 1963* and puts in place transitional provisions to enable the transfer of the business names registration function to the Commonwealth.

On 13 April 2007, the Council of Australian Governments (COAG) agreed to establish a national business names registration scheme. On 2 July 2009, all States and Territories signed the Intergovernmental Agreement for Business Names endorsing a single national business names registration scheme. This Bill represents the ACT's part in implementing the Intergovernmental Agreement for Business Names.

The Bill does not disadvantage any ACT businesses as all currently registered business names will be automatically registered under the national system with the Australian Securities and Investments Commission (ASIC). The Bill allows the Office of Regulatory Services to provide ASIC with the details of the ACT business names register so the registrations of individual businesses will be carried over unchanged.

To ease the transition to the national system, the Bill preserves some of the arrangements under the *Business Names Act 1963* for a transition period. ACT businesses that hold names due for renewal at the time of the change-over to ASIC will still be able to renew the name with the Office of Regulatory Services up to one month after change-over day.

Clause 13 of the Bill preserves the right of individuals and businesses to challenge a decision by the Office of Regulatory Services to cancel a registration. Such a decision may be challenged in the Supreme Court up to two months after change-over day. The Office of Regulatory Services may revoke a cancellation decision up to three months after change-over day.

The Bill also allows the Office of Regulatory Services to process any applications for registration or renewal or notices of changed particulars that may have been lodged but not processed as at change-over day. To reduce the likelihood of this situation, Schedule 1 of the Bill amends the *Business Names Act 1963* so the Office of Regulatory Services can refuse to accept a new application if there is not sufficient time to process it before change-over day.

## Human rights and privacy implications

The Bill may engage the right to privacy under section 12 of the *Human Rights Act 2004*, as clause 7 of the Bill authorises the Office of Regulatory Services to transfer information relating to holders of ACT business names to ASIC. Section 12 of the *Human Rights Act 2004* provides:

### **12 Privacy and reputation**

Everyone has the right—

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- (b) not to have his or her reputation unlawfully attacked.

The engagement of the right to privacy may arise as the information to be transferred to ASIC by the Office of Regulatory Services includes the name, residential address and contact telephone number of each proprietor of a business that uses a business name.

It is necessary to assess whether this restriction on the right to privacy is reasonable in accordance with section 28 of the *Human Rights Act 2004*. Section 28 (2) of the Human Rights Act 2004 provides:

- (2) In deciding whether a limit is reasonable, all relevant factors must be considered, including the following:
  - (a) the nature of the right affected;
  - (b) the importance of the purpose of the limitation;
  - (c) the nature and extent of the limitation;
  - (d) the relationship between the limitation and its purpose;
  - (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

The purpose of providing the information is to allow ASIC to generate and maintain a comprehensive national business names register. The national business registration scheme would fail, to the disadvantage of ACT businesses, if ASIC was not provided with this information.

Any limitation on the right to privacy will be minimised as information held by ASIC will be subject to a number of protections contained in the Commonwealth regulations. For example, if the home address of an individual is provided the street name and number will not be released by ASIC. ASIC will also not make publicly available the date or place of birth of individuals. The storage and use of the information held by ASIC will be subject to the *Privacy Act 1988* (Cwth).

There are no less restrictive means available to achieve this purpose. It is necessary to provide personal information to ASIC in order to accurately identify the holder of each business name. It would not be possible to operate the national business names system without this information.

The information was originally provided to the Office of Regulatory Services by proprietors of ACT businesses for the purposes of registering a business name and enforcing the conditions of registration. These purposes will continue under the new national system.

Information that accurately identifies the holders of business names also serves an important consumer protection purpose. Limitations placed by clause 7 of the Bill on the right to privacy need to be balanced against the protection of consumers and other traders. Accordingly, the limitation placed by this Bill on the right to privacy is considered reasonable.

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

### **Outline of Provisions**

#### **PART 1 Preliminary**

##### **Clause 1 - Name of Act**

This clause names the Act as the *Business Names (Transition to Commonwealth) Act 2011*.

##### **Clause 2 - Commencement**

This clause notes that parts 1, 2 and 4 of the Act will commence on the day after the Act's notification day. These Parts relate to transitional matters that are relevant before change-over day. Parts 3 and 5 of the Act commence on change-over day, when responsibility for business names registration transfers to the Commonwealth.

##### **Clause 3 - Dictionary**

This clause says that the Dictionary is part of the Act.

##### **Clause 4 - Notes**

This clause says that notes in the Act are explanatory and not part of the Act.

##### **Clause 5 - Business Names Act amended – sch 1**

This clause states that the *Business Names Act 1963* is amended in accordance with schedule 1 of this Act.

##### **Clause 6 - Expiry**

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

#### **PART 2 Giving information to the Commonwealth**

##### **Clause 7 – Giving information to the Commonwealth**

This clause authorises the registrar-general to provide ACT business names records and information to ASIC for the purpose of generating the Commonwealth business names register. It also empowers the registrar-general to notify ASIC about matters referred to in the Commonwealth *Business Names Registration (Transitional and Consequential Provisions) Act 2011*.

The clause engages the right to privacy as it empowers the registrar-general to provide the personal information of ACT proprietors of businesses to ASIC. However, the limitation on the right to privacy will be minimised by certain provisions of the Commonwealth *Business Names Registration Act 2011* which restrict the types of information which ASIC may make public. The provision of information to ASIC is essential for the operation of the national business names registration scheme. In order to operate the register and fulfil the consumer protection purpose of business names registration, ASIC must be able to accurately identify each holder of a business name. As a result, the limitation on the right to privacy is reasonable.

##### **Clause 8 – Territory not liable—business names registration transitional matters**

This clause excludes liability that may arise from acts or omissions done honestly and without recklessness in connection with transitional matters.

## **PART 3 Savings and Transitional Provisions**

### **Clause 9 – Applications for registration not decided before change-over day**

This clause allows the registrar-general to deal with any applications for registration that have been lodged but not finally processed as at change-over day. Under this clause, the registrar-general may decide the application under the provisions of the repealed ACT business names legislation, charge the existing fees for the application and, once decided, notify ASIC of the outcome of the application.

### **Clause 10 – Renewals not completed before change-over day**

This clause applies to applications for renewal of a business name that are lodged but not processed by the registrar-general as at change-over day. The clause allows the registrar-general to process the renewal under the provisions of the repealed ACT business names legislation, charge the existing fees for the renewal and notify ASIC of the renewal.

### **Clause 11 – Renewals lodged after change-over day**

This clause allows the registrar-general to process applications for renewal that are lodged within one month after change-over day. The registrar-general will process the renewal according to the provisions of the repealed ACT business names legislation and will be able to charge the existing fees for processing the renewal. The clause also requires the registrar-general to notify ASIC of the renewal.

### **Clause 12 – Notification of changes of particulars lodged before change-over day**

This clause deals with notices of changed particulars that have been lodged but not processed prior to change-over day. It allows the registrar-general to process the notice and to tell ASIC about the changed particulars for the registration.

### **Clause 13 – Preservation of rights for cancellation decisions**

This clause preserves the right of a person to seek review of a decision by the registrar-general to cancel the registration of their business name, where the registration was cancelled prior to change-over day. The person's right to review is preserved for 2 months after change-over day. The clause allows the Supreme Court to direct the registrar-general to inform ASIC that the registration was incorrectly cancelled and should be reinstated.

This clause also allows for the registrar-general to decide to revoke a cancellation up to 3 months after change-over day, where the cancellation decision was made before change-over day.

### **Clause 14 – Transitional regulations**

This clause allows regulations to prescribe any matters that are necessary or convenient under this Act.

### **Clause 15 – Application of Legislation Act, s 88**

This clause specifies that section 88 of the *Legislation Act 2001* applies to this part.

## **PART 4                    Miscellaneous**

### **Clause 16 – Determination of fees**

This clause allows the Minister to determine fees for any actions or processes that are required under this Act.

### **Clause 17 – Regulation-making power**

This clause empowers the Executive to make regulations under this Act.

## **PART 5                    Legislation amended and repealed**

### **Clause 19 – Legislation amended—sch 2**

This clause states that this Act amends the legislation listed in schedule 2 to this Act.

### **Clause 20 – Legislation repealed**

This clause repeals the ACT *Business Names Act 1963* and associated subordinate legislation.

## **SCHEDULE 1        Business Names Act 1963**

### **Clause 1.1 – New section 7A**

This clause amends the existing ACT *Business Names Act 1963* to allow the registrar-general to refuse to accept applications for registration prior to change-over day when there is a reasonable belief that there will not be enough time to process the application prior to change-over day.

### **Clause 1.2 – Section 11(3)**

This clause amends the existing ACT *Business Names Act 1963* so the registrar-general may send reminder notices about renewal up to 3 months before the registration is due to expire. The extended period for reminder notices aims to prevent renewals being lodged after change-over day.

## **SCHEDULE 2        Other legislation amended**

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

#### **Clause 2.1 – New section 37(5)(ba)**

This clause ensures that ACT incorporated associations will not be issued names that are held by other businesses under the Commonwealth *Business Names Registration Act 2011*.

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

### **Clause 2.2 – Sections 29(a), 56(2)(a) and 61(2)(a)**

This clause replaces references to the ACT *Business Names Act 1963* with references to the Commonwealth *Business Names Registration Act 2011*.

## **Part 2.3 – Gaming Machine Act 2004**

### **Clause 2.3 – Section 152(3), meaning of *registered business name***

This clause updates the definition of the term ‘registered business name’ to mean a name registered under the *Business Names Registration Act 2011* (Cwth).

## **Part 2.4 – Legal Aid Act 1977**

### **Clause 2.4 – Section 94(2)**

This clause ensures that the *Business Names Registration Act 2011* (Cwth) does not apply to the Legal Aid Commission.

## **Part 2.5 – Partnership Act 1963**

### **Clause 2.5 – Section 59(2) and (3)**

This clause ensures that ACT incorporated limited partnerships are not issued with names that are registered to other businesses under the Commonwealth *Business Names Registration Act 2011*.

### **Clause 2.6 – Section 63**

This clause makes clear that ACT incorporated limited partnerships do not need to also register a business name under the Commonwealth *Business Names Registration Act 2011*.

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

### **Clause 2.7 – Section 10(k) and section 11(k)**

This clause replaces a reference to the ACT *Business Names Act 1963* with a reference to the Commonwealth *Business Names Registration Act 2011*.