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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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BUSINESS NAMES REGISTRATION (TRANSITIONAL AND CONSEQUENTIAL  
PROVISIONS) BILL 2011

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EXPLANATORY MEMORANDUM

(Circulated by the authority of the  
Minister for Small Business, Minister Assisting on Deregulation and Public Sector  
Superannuation, Minister Assisting the Minister for Tourism, Senator the Hon Nick  
Sherry)



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# Glossary

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The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ABN Act	A New Tax System (Australian Business Number) Act 1999
ABR	Australian Business Register
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
COAG	Council of Australian Governments
Corporations Act	<i>Corporations Act 2001</i>
National Business Name Registration Package	Business Names Registration Bill 2011, Business Names Registration (Transitional and Consequential Provisions) Bill 2011 and the Business Names Registration (Fees) Bill 2011 and other legislative instruments
Register	Business Names Register
Registration Bill	Business Names Registration Bill 2011
Registration System	National Business Name Registration System
Transitional Bill	Business Names Registration (Transitional and Consequential Provisions) Bill 2011



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## ***General outline and financial impact***

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### **Outline**

The Business Names Registration (Transitional and Consequential Provisions) Bill 2011 forms part of the National Business Names Registration Package which also includes the Business Names Registration Bill 2011 and the Business Names Registration (Fees) Bill 2011; and other legislative instruments including the Business Names (Availability of Name) Determination 2011.

This legislative package establishes a national business names registration system, a key regulatory reform initiative of the Council of Australian Governments.

The main purpose of business name registration is to protect consumers, by allowing them to identify the entity(s) behind a business (trading) name.

***Date of effect:*** The Transitional Bill commences at the same time as section 3 of the Registration Bill commences.

***Proposal announced:*** The proposal to transfer responsibility for business name registration to the Commonwealth was announced by COAG on 3 July 2008.

***Financial impact:*** The 2010-11 Budget allocated \$125.2m over four years to implement the Registration System. These funds were distributed between the Department of Innovation, Industry, Science and Research (DIISR), the Australian Securities and Investment Commission (ASIC) and the Australian Taxation Office (ATO). This amount is being fully offset in unspent funding.

The National Partnership Agreement to deliver a Seamless National Economy committed the Commonwealth and the States and Territories to delivering on agreed implementation milestones and deadlines, which are tied to reward payments under the National Partnership Agreement.

***Compliance cost impact:*** There is no net increase in compliance costs. The replacement of the existing State and Territory business names regimes with a single new Commonwealth business regime will result in a net reduction in compliance costs for businesses and those transacting with businesses.





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# **Chapter 1**

## ***Preliminary, dictionary and other matters***

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### **Outline of chapter**

- 1.1 Chapter 1 of this explanatory memorandum outlines:
- the preliminary matters such as the short title and commencement of the Business Names Registration (Transitional and Consequential Provisions) Bill (Transitional Bill); and
  - the definitions for the Transitional Bill.

### **Detailed explanation of new law**

1.2 The Transitional Bill commences on the day on which it receives Royal Assent. Section 4, Schedule 1 and Schedule 2, Part 1 commence at the same time as section 3 of the Registration Bill. *[Sections 2, 3]*

1.3 Schedule 2, Part 2 of the Transitional Bill commences on the first anniversary of the commencement of Part 2 of the Registration Bill. *[Sections 2, 3]*

1.4 Section 4 sets out a dictionary of terms utilised in the Transitional Bill. Other than those defined terms, terms used in the Bill (other than 'this Act') have the same meaning as in the Registration Bill. *[Section 4]*



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## **Chapter 2**

# ***Business names registered, and held, on change-over day and disqualified entities***

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### **Outline of chapter**

2.1 Chapter 2 of this explanatory memorandum relates to the registration of business names on the change-over day (the day on which Part 2 of the Registration Bill commences) and the holding of business names by the Australian Securities and Investments Commission (ASIC) on the change-over day to resolve outstanding matters.

### **Context of new law**

2.2 The Registration Bill establishes a National Business Names Registration System (Registration System). A national Business Names Register (Register) will be formed by the electronic transfer of existing State and Territory business names registers to ASIC. The Registration Bill and Transitional Bill are intended to provide an orderly and seamless transfer of the business names registers between the State and Territory Governments, and the Commonwealth Government. A similar transfer of company registers from the States and Territories to ASIC occurred prior to the establishment of the Corporations Act in 2001.

### **Summary of new law**

2.3 Parts 1 and 2 of Schedule 1 to the Transitional Bill provide for the notification and holding procedures for the transfer of registered business names by the State and Territory Governments to the Commonwealth Government (represented by ASIC).

### **Detailed explanation of new law**

#### ***Part 1 – Business names registered on change-over day***

2.4 If ASIC is given notification in relation to a business name and the person connected to that registered business name and that person carries on, or intends to carry on, a business alone under that business name, ASIC must register that business name to the person by registering the identifying details of that person, the business name, relevant addresses, the period of registration and any other prescribed details of that person on the Register. The registration period is from the change-

over day to the last day on which registration would have expired under the relevant registration law of the State or Territory where the business name was registered. *[Schedule 1, item 2]*

2.5 Notification must be given to ASIC in an electronic or other agreed form before the change-over day and it must:

- include details of the person;
- state the period of the existing registration under the relevant registration law of the State or Territory; and
- include details of any other persons who are registered under the business name and the period of that registration in relation to those persons. *[Schedule 1, item 1]*

2.6 For information about the production of documents in an electronic form as required under a Commonwealth law reference should be made to the *Electronic Transactions Act 1999*.

2.7 An identical procedure for the registration of a business name in relation to a group of persons before the change-over day is provided for in the Transitional Bill. Where the group of persons has formed an entity to carry on the business or intended business, the name is registered to that entity. Where the group of persons has not formed an entity, the name is registered to that group of persons and each of the persons is a joint venture entity in a joint venture for the purposes of section 87 of the Registration Bill. This Bill provides that two or more entities that contract to carry on a business under a business name, without forming a new entity, are taken for the purposes of the Registration Bill and the Transitional Bill to be a single entity, being a joint venture. Moreover, an obligation imposed on the joint venture is imposed on each joint venture entity which can be discharged by one of them on behalf of all. *[Schedule 1, item 3]*

***Part 2 – Business names held on change-over day to resolve outstanding matters***

2.8 If ASIC is given notification by a State or Territory that a business name is to be held for the purpose of resolving outstanding matters such as correcting details of the person or ensuring that the business name complies with the law of the State or Territory, ASIC must hold the business name until it is registered or ASIC receives notification from a State or Territory to cease holding the business name. *[Schedule 1, items 4 and 5]*

2.9 Notification must be given to ASIC in an electronic form before the change-over day. *[Schedule 1, subitem 4(2)]*

2.10 A State or Territory may then notify ASIC, in electronic form, that the business name is to be registered and such notification must give details of the person or persons who carry on, or intend to carry on,

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business under that business name and the period of registration of that business name. *[Schedule 1, item 6]*

2.11 The procedure for ASIC registering the business name following such notification includes such matters as:

- entering the identifying details of the person or persons carrying on, or intending to carry on, business under that business name;
- indicating whether the business name is registered to a group for the purposes of section 87 of the Registration Bill;
- entering the period for which the business name is to be registered;
- providing notification in writing to the person, persons or group of persons, after four months has elapsed from the change-over day, that the business name is registered.  
*[Schedule, item 7]*

2.12 ASIC is to cease holding the business name if all of the relevant States and Territories give notification in electronic form to cease holding that business name. *[Schedule 1, item 8]*

2.13 ASIC may, by electronic notice and no earlier than three months after the change-over day, request each State or Territory that has given ASIC notification in relation to a business name to inform ASIC whether the business name should continue to be held for the purposes of resolving outstanding matters. ASIC may cease to hold the business name if no response is received to its notification within the prescribed time. To avoid doubt, ASIC may exercise its powers in relation to a business name more than once and if ASIC ceases to hold a business name, it must notify the State or Territory of that fact. *[Schedule 1, item 9]*

2.14 Regulations may be made to deal with business names in relation to which outstanding matters under the law of a State or Territory are to be resolved; regulations must not direct a State or Territory on how outstanding matters are to be resolved and this Bill and the Registration Bill have effect subject to any modifications made by regulations made under subitem 10(1). *[Schedule 1, item 10]*

### ***Part 3 – Entities disqualified on registration under this Act***

2.15 An entity to whom a business name is registered under this Bill is obliged to notify ASIC if it is disqualified on the day on which it is registered (the registration day). Notification must be given in the prescribed form and lodged in the prescribed manner within the relevant time period. If a business name is registered to an entity but that entity is disqualified on the registration day, then neither section 21 nor section 44 of the Registration Bill applies in relation to that disqualification. The Minister may determine that the registration of the business name is to be

cancelled when he or she is satisfied of prescribed matters. However, the Minister must not make a determination cancelling registration of the business name in circumstances where the business name was registered to a person or persons under a State or Territory law because of leave granted by a court or because such leave was not necessary. A determination is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*. The statement in this item has been included for the sake of clarity only, to assist the reader, and does not amount to a declaration under the *Legislative Instruments Act 2003*.  
*[Schedule 1, item 11]*

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## **Chapter 3**

# ***Information-gathering, other obligations to give information to ASIC and exemptions and the suppression of information***

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### **Outline of chapter**

3.1 Chapter 3 of this explanatory memorandum explains the requirements about information-gathering for transitional purposes and other obligations to give information to the ASIC.

### **Context of new law**

3.2 Under the Registration Bill, ASIC may provide information to the Registrar of the Australian Business Register (ABR), for the purposes of identifying business names registered to an entity on the Register and ensuring consistency between the ABR and the Register in the details registered on those registers.

3.3 Part 4 of the Registration Bill sets out how ASIC obtains information in order to maintain the Register and how it may act upon that information. It also sets out the obligations of business name holders to provide information to ASIC.

### **Summary of new law**

3.4 ASIC may disclose information to the Registrar of the ABR and to the States and Territories for transitional purposes.

3.5 There are other obligations to notify ASIC of such matters as bankruptcy, insolvency and death of an individual.

### **Detailed explanation of new law**

#### ***Information-gathering for transitional purposes***

3.6 To establish an entity's ABN and to obtain details of the business names that are listed on the ABR, ASIC may disclose information to the Registrar of the ABR. ASIC may record and use information disclosed to ASIC by the Registrar of the ABR for the purpose of making certain decisions under the Transitional Bill. [*Schedule 1, item 12*]

3.7 To ensure that a business name is registered to the correct entity and that the details entered on the Register are correct, ASIC may disclose information to a referring / adopting State or an affected Territory for the purpose of obtaining assistance from that State or Territory. *[Schedule 1, item 13]*

3.8 ASIC may use the information disclosed to it by a referring / adopting State or an affected Territory for the purpose of making certain decisions under the Transitional Bill. *[Schedule 1, item 14]*

3.9 ASIC may rely on information disclosed to it by a State or Territory or the Registrar of the ABR. *[Schedule 1, item 15]*

3.10 ASIC must correct the Register if ASIC is satisfied that, because of a deficiency in the information available to ASIC before registration, the business name has not been registered to the correct entity or a detail on the Register is incorrect. *[Schedule 1, item 16]*

3.11 ASIC may request an entity to which a business name is registered to nominate a single principal place of business or address for service to be entered on the Register where there is more than one of these entered on the Register. The request is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*. The statement in this item has been included for the sake of clarity only, to assist the reader, and does not amount to a declaration under the *Legislative Instruments Act 2003*. *[Schedule 1, item 17]*

#### ***Other obligations to give information to ASIC***

3.12 A person who is a debtor representative of an entity immediately before the day on which a business name is first registered to the entity under this Bill (the registration day) is taken to satisfy section 38 of the Registration Bill if:

- the person has, before the registration day, given a person responsible for registration in a referring / adopting State or an affected Territory notice that the person is acting as the debtor representative and identifying who (if anyone) will carry on a business under the business name while this arrangement is in place; or
- the person lodges with ASIC notice of the debtor representative's appointment. *[Schedule 1, item 23]*

3.13 The legal personal representative of a deceased estate of an individual immediately before the day on which a business name is first registered to the individual under this Bill (the registration day) is taken to satisfy subsection 39(1) of the Registration Bill if:

- the person has, before the registration day, given a person responsible for registration in a referring / adopting State or an affected Territory notice that one of the following is



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granted to the person: probate of the will of the deceased;  
letters of administration of the estate or any other similar  
grant or has lodged a notice in accordance with subsection  
39(2) of the Registration Bill. *[Schedule 1, item 24]*



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## **Chapter 4**

### **Grandfathered business names**

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#### **Outline of chapter**

4.1 Chapter 4 of this explanatory memorandum explains that ASIC may insert on the Register a distinguishing word or expression to assist in identifying businesses with an identical or nearly identical name.

#### **Context of new law**

4.2 Under the Registration Bill, names currently registered on notified State and Territory registers are grandfathered onto the national register. As part of this process, there will be names on the national register that are identical or nearly identical. To assist in distinguishing between identical or nearly identical business names, ASIC may insert a distinguisher on the register. This does not form part of the entity's business name.

#### **Summary of new law**

4.3 ASIC may, after providing notice to each entity who has the registered business name(s), insert on the Register a distinguisher to assist in identifying between two or more identical or nearly identical business names.

4.4 Any distinguishing word or expression inserted by ASIC on the register does not form part of the business name.

#### **Detailed explanation of new law**

4.5 If two or more identical or nearly identical business names are registered under this Bill, or one or more of the names is subsequently registered by virtue of the consent provisions in the Registration Bill, ASIC has a discretion to place on the Register a distinguishing word or expression to assist in distinguishing between businesses carried on by different entities.

4.6 ASIC can only place a word or expression on the Register if it would assist in identifying between the two entities. A word or expression may be the location at which the businesses are carried on by the entities. Before placing a word or expression on the Register ASIC must notify the entities which hold the business names that ASIC is

considering placing the particular word or expression on the Register and that they have the opportunity to suggest an alternative. The entity has 28 days to either accept ASIC's suggestion or to object and nominate an alternative word or expression. *[Schedule 1, item 18]*

4.7 ASIC must accept the alternative nominated word or expression unless it would not be available to the entity by virtue of section 25 of the Registration Bill (i.e. it is a word or expression that the name availability rules do not allow to be registered to the business name). If an alternative is nominated by the entity ASIC must advise whether it accepts or rejects the alternative word or expression and, if it rejects this, specify the word or expression that will be included on the Register. *[Schedule 1, items 18, 19]*

4.8 The distinguishing word or expression does not form part of the registered business name. Therefore, businesses are not required to display the distinguishing word or expression in or include it in written communications. ASIC may remove the distinguisher if it believes that the removal would not cause confusion. ASIC must advise relevant entities if it removes the distinguisher. *[Schedule 1, item 20]*

4.9 Once a distinguishing word or expression is added to a name, a name that is identical or nearly identical to the name including the distinguisher is not available to any other entity. *[Schedule 1, item 21]*

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## **Chapter 5**

### ***Registration periods and review***

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#### **Outline of chapter**

5.1 Chapter 5 of this explanatory memorandum outlines the rules in relation to the aligning of registration periods at the first renewal date after the name is registered to a business under the Bill.

#### **Context of new law**

5.2 It may be that an entity has multiple business names registered to them. If the entity considers it appropriate, it can request that ASIC align the registration periods.

#### **Summary of new law**

5.3 An entity can lodge a request with ASIC to align the registration period of different business names that they hold.

#### **Detailed explanation of new law**

5.4 An entity is able to request an alternative registration period for the renewal of the registration of the business name to an entity if the alternative registration period is not more than 18 months (for a one year registration) or three years and six months (for a three year registration). A determination of an alternative registration period is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*. The statement in this item has been included for the sake of clarity only, to assist the reader, and does not amount to a declaration under the *Legislative Instruments Act 2003*. [Schedule 1, item 22].



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## **Chapter 6**

### ***Obligations to give information to ASIC***

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#### **Outline of chapter**

6.1 Chapter 6 of this explanatory memorandum sets out what a debtor representative and a legal personal representative have to do to comply with notification obligations.

#### **Context of new law**

6.2 In the event of insolvency or death, information will need to be provided to ASIC regarding the appropriate contact for the registration of the business name.

#### **Summary of new law**

6.3 A person who is a debtor representative of an entity immediately before the time the business name is registered to an entity is taken to have satisfied the requirements to notify ASIC set out in section 38 of the Registration Bill if they have advised the body responsible for registering the State and Territory business name that they have been appointed or are authorised to act as the debtor representative of the entity. They are also obliged to advise ASIC who (if anyone) will carry on business under the business name, during the period of the debtor representative's appointment or authorisation.

6.4 In relation to the death of an entity that is an individual, a legal personal representative is taken to have satisfied the notification requirements contained in section 39 of the Registration Bill if they have advised the State and Territory authority or they have lodged notice with ASIC.

#### **Detailed explanation of new law**

6.5 Section 38 of the Registration Bill provides that if a person is appointed or authorised to act as a debtor representative of an entity which has a business name registered to them, that person is required to lodge a notice with ASIC advising ASIC of their appointment or authorisation. This is required to be lodged within 28 days after the person is appointed or authorised to be the debtor representative. 'Debtor representative' is defined in section 38 of the Registration Bill as meaning, amongst others, a liquidator and a trustee in bankruptcy. *[Schedule 1, item 23]*

6.6 In relation to debtor representatives that are appointed or authorised in relation to an entity prior to the entity's business name being registered under the Registration Bill (that is; the business name was registered to the entity under a State or Territory law), if the debtor representative has notified the State or Territory authority before the business name is registered to the entity under the national scheme, they are taken to have complied with the requirements of section 38 of the Registration Bill. This is to ensure that debtor representatives do not have to notify both the State authorities and ASIC. *[Schedule 1, item 23]*

6.7 Section 39 of the Registration Bill contains a similar obligation in relation to legal personal representatives. The legal personal representative includes a person to whom probate, letters of administration or some other similar grant has been given. The Transitional Bill provides that if the legal personal representative has provided notice to a State or Territory authority before the business name is registered to an entity under the Registration Bill, they are taken to have complied with the requirements of section 39 of the Registration Bill. *[Schedule 1, item 24]*



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## **Chapter 7**

# **Preserving exemptions and protecting information**

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### **Outline of chapter**

7.1 Chapter 7 of this explanatory memorandum outlines how exemptions under State and Territory registration laws continue to apply in the circumstances mentioned.

### **Context of new law**

7.2 Registration laws of States and Territories exempt some entities from having to include in written communications their business name and ABN. Some entities are also exempt from having to display their name at a place of business. The Transitional Bill will preserve those exemptions.

7.3 In addition, if information is protected under a State or Territory law, it will continue to be protected.

### **Summary of new law**

7.4 If an entity has received an exemption from having to display its business name or ABN in written communications under a registration law of a State or Territory, this exemption continues under the Registration Bill.

7.5 If an entity receives an exemption from a State or Territory authority from having to display a name at a place of business, it still has that exemption under the provisions of the Registration Bill.

7.6 If information is protected under the law of a State or Territory, it will continue to be protected.

### **Detailed explanation of new law**

7.7 Section 19 of the Registration Bill imposes an obligation on those entities who have a registered business name to include both their ABN and business name in written communications. This is an offence provision.

7.8 The Transitional Bill provides that if, before the commencement of the Registration Bill, an entity is exempted under a law of a State or Territory from having to use their ABN or business name in written communications, this exemption is to continue under the national law. [*Schedule 1, item 25*]

7.9 Section 20 of the Registration Bill imposes an obligation on those entities who have a registered business name to display the name. This is an offence provision

7.10 The Transitional Bill contains an exemption from the display requirement if, immediately before the business name was registered under the Registration Bill, the entity was subject to an exemption from the requirement to display a name under a law of a State or Territory. [*Schedule 1, item 25*]

7.11 Sections 60 and 61 of the Registration Bill permit access to information contained on the Register. The Transitional Bill provides that notwithstanding what is stated in sections 60 and 61 of the Registration Bill, if information is protected at the commencement of the national scheme, this information continues to be protected. [*Schedule 1, item 26*]

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## **Chapter 8**

### **Review**

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#### **Outline of chapter**

8.1 Chapter 8 of this explanatory memorandum sets out details of reviewable decisions.

#### **Context of new law**

8.2 ASIC has to make a number of decisions regarding the registration of business names. Entities which are aggrieved by decisions made by ASIC have rights to seek review of decisions made by ASIC.

#### **Summary of new law**

8.3 A person may seek internal review or external administrative review of the decisions of ASIC. In relation to a decision by ASIC regarding whether a person is carrying on or intends to carry on a business alone, a person to whom the business name was registered under State or Territory law may seek review of ASIC's decision.

8.4 In relation to a decision by ASIC regarding whether a person is carrying on, or intends to carry on business under a business name with other people, a person to whom the business name was registered under a State or Territory law may seek review of ASIC's decision.

8.5 In relation to decisions by ASIC to reject an alternative word or expression, specify a distinguishing word or expression, or remove a distinguishing word or expression, review may be sought by the relevant entity.

8.6 Decisions of ASIC, other than as a delegate of the Minister, may be reviewed internally by ASIC. Decisions made by ASIC as a delegate of the Minister may be reviewed internally by the Minister.

8.7 In relation to any decision that has been made, or has been taken to be made by ASIC or the Minister, an entity can seek administrative review in the Administrative Appeals Tribunal.

## **Detailed explanation of new law**

8.8 ASIC must register a business name to a person whose name is notified to ASIC by the States and Territories in accordance with item 1 of the Transitional Bill and the person has been carrying on, or intends to carry on, business alone. The Transitional Bill permits the person to whom the business name was registered under the State or Territory law to seek a review of any decision made under paragraph 2(1)(b) of Schedule 1. *[Schedule 1, item 27]*

8.9 Paragraph 7(1)(a) of Schedule 1 concerns names that are held at change-over to resolve outstanding matters. If ASIC receives notification from a State or Territory that it is to register a name, paragraph 7(1)(a) requires ASIC to register a business name to a person where ASIC is satisfied that the person has carried on, or intends to carry on, business alone. The person to whom the business name was registered under the State or Territory law may seek review of a decision made under paragraph 7(1)(a). *[Schedule 1, item 27]*

8.10 A similar regime exists in relation to businesses where businesses are, or intended to be, carried on by a group of persons. Paragraph 3(1)(b) concerns names that ASIC is advised of at change-over. Paragraph 7(1)(b) concerns names that are held at change-over when ASIC subsequently receives notification from a State or Territory that the names are to be registered. A person to whom the business name was registered under a law of a State or Territory may seek review. *[Schedule 1, item 27]*

8.11 ASIC has the power to specify a distinguishing word or expression, to reject a proposed distinguishing word or expression requested by an entity and to remove a distinguishing word or expression. If any decision is made by ASIC to specify, reject, or remove a distinguishing word or expression, the entity may seek review. *[Schedule 1, item 27]*

8.12 If an entity is permitted to lodge an application for review of a decision by ASIC, they may seek that the decision is reviewed internally by ASIC. This does not apply to decisions made by ASIC as a delegate of the Minister which are instead reviewable by the Minister. The application for review must set out the reasons that the entity has for making an application and be in the prescribed form and lodged in the prescribed manner. An entity is required to lodge their application within 28 days after the entity is notified of ASIC's decision. Once an application has been lodged, the review body (ASIC or the Minister) is to either affirm the decision, vary the decision or set the decision aside and make a new decision in its place. The review body's decision is to have effect on the day it is made or on a day provided by the decision. If, after 28 days when the review body is ASIC and 60 days when the review body is the Minister, a decision has not been made, the entity may apply to request that the decision be treated as if it is affirmed and the review body is taken to have refused the entity's application for review. *[Schedule 1, item 28]*

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8.13 In relation to decisions that have are reviewable under *Schedule 1, item 28*, an entity may also seek administrative review of those decisions by the Administrative Appeals Tribunal. [*Schedule 1, item 29*]



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## **Chapter 9**

### **Miscellaneous**

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#### **Outline of chapter**

9.1 Chapter 9 of this explanatory memorandum sets out miscellaneous provisions.

#### **Context of new law**

9.2 Chapter 9 sets out a series of miscellaneous provisions relating to the operation of the national Register.

#### **Summary of new law**

9.3 If a name contains a restricted word or expression at change-over, and the name is registered under the provisions of the Transitional Bill, ASIC cannot use its power to cancel the registration of a name on the basis that the entity has ceased to satisfy a condition of registration.

9.4 ASIC must not use its powers to require the entity to give ASIC its ABN or, if the entity is an individual, its date of birth or place of birth information, if the entity has a business name registered to them under the provisions of the Transitional Bill.

9.5 ASIC may not use its powers to cancel the registration of a business name contained in section 43 of the Registration Bill, for business names registered under the Transitional Bill, on the basis that the name is not available to an entity at the time of registration.

9.6 The Governor General may make regulations prescribing certain matters.

#### **Detailed explanation of new law**

9.7 ASIC has a power to cancel the registration of a business name if the entity ceases to satisfy a condition of registration. The Transitional Bill provides that this does not apply if the business name is registered under the provisions of the Transitional Bill. [*Schedule 1, item 30*]

9.8 In relation to a business name that is registered under the provisions of the Transitional Bill, if an entity does not have an additional business name that is registered under provisions of the Registration Bill, ASIC is not permitted to use its powers to request the entity's ABN or, when the entity is

an individual, the entity's date of birth or place of birth information. *[Schedule 1, item 31]*

9.9 Also, ASIC is not able to cancel the registration of a business name that is registered pursuant to the Transitional Bill on the basis that the name contravenes the name availability test in the Registration Bill. The effect of this is that a name that would be prevented from being registered under the availability provisions is allowed by virtue of being grandfathered across from a State or Territory Register under the Transitional Bill. *[Schedule 1, item 32]*

9.10 The Governor-General may make regulations prescribing certain matters. This regulation making power permits the Governor-General to make regulations required or permitted by the Transitional Bill or which are necessary or convenient to carry out or give effect to the provisions of the Transitional Bill. *[Schedule 1, item 33]*



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## **Chapter 10**

### **Consequential amendments**

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#### **Outline of chapter**

10.1 Chapter 6 of this explanatory memorandum outlines consequential amendments to various statutes, that are contained in Part 1 and Part 2 of Schedule 2 to the Transitional Bill.

#### **Summary of new law**

10.2 Consequential amendments are made to various Commonwealth Acts to give effect to arrangements relating to the operation of the Registration System.

#### **Detailed explanation of new law**

##### *A New Tax System (Australian Business Number) Act 1999 (ABN Act)*

10.3 The *Business Names Registration Bill 2011* (Registration Bill) permits ASIC to engage with the Registrar of the Australian Business Register (ABR) for the purpose of identifying business names registered to an entity, and for the purpose of ensuring consistency between the ABR and the Business Names Register.

10.4 A transitional period has been provided under paragraph 26(3)(d) of the ABN Act allowing for unregistered business names used for business purposes and appearing as an entry relating to the entity on the ABR, immediately before change over day, to continue to be displayed for twelve months. This provides the Registrar of the ABR with a transitional period to implement an effective communication strategy for the new business names registration requirements and ensures continuity for the business community who rely on the information provided on the ABR [*Schedule 2, items 1, 27*]

##### *ANL Act 1956 (ANL Act)*

10.5 Section 51 of the ANL Act is repealed and section 55 is amended to allow a protected body under that Act to register a business name under the Registration Bill. [*Schedule 2, item 2, 3*]

##### *Australian Securities and Investments Commission Act 2001*

10.6 Section 12A of the ASIC Act provides that ASIC has powers and functions conferred upon it by or under the Acts that are listed. This consequential amendment provides that ASIC has the powers and functions

conferred on it by the Registration Bill and the Transitional Bill. [*Schedule 2, item 4*]

10.7 In relation to confidentiality, the ASIC Act is to be amended to provide that use or disclosure of information with consent of the provider of information is an authorised use and disclosure. [*Schedule 2, item 5*]

10.8 ASIC is to include information in its annual report regarding the functioning of the Registration Bill including details of the level of access to the national Register, the timeliness with which ASIC carries out its functions and the costs of registration. [*Schedule 2, item 6*]

10.9 In addition, there will be an obligation of the Minister to send a copy of the annual report to the Attorney General of each State or Territory as soon as practicable after the Minister receives the Report. [*Schedule 2, item 7*]

***Bank Integration Act 1991 (Bank Integration Act)***

10.10 Paragraph 18(2)(b) of the Bank Integration Act is amended and paragraph 18(3) is repealed to recognise the Registration System. [*Schedule 2, items 8, 9*]

***Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act)***

10.11 The effect of the amendments is to ensure the CATSI Act recognises the Registration System established under the Registration Bill. [*Schedule 2, items 10, 11, 12, 13*]

***Corporations Act 2001***

10.12 A definition of the Business Names Register is inserted into the Corporations Act. [*Schedule 2, item 6*]

10.13 Items 7 to 12 refer to cross references so that references to registrations under State and Territory laws and the 'national business names register' are removed and reference is made in their place to registrations under the Registration Bill. This consists of amendments to paragraphs 147(1)(b), 324BB(6)(a) and 601DC(1)(b) and subsections 147(5) and 601DD(3) of the Corporations Act. [*Schedule 2, items 14,15,16,17,18,19,20*]

***Defence Service Homes Act 1918 (Defence Service Homes Act)***

10.14 The effect of the amendment is to ensure the Defence Service Homes Act recognises the Registration System established under the Registration Bill. [*Schedule 2, item 21*]

***Financial Transaction Reports Act 1988 (FTR Act)***

10.15 The effect of these amendments is to ensure the FTR Act recognises the Registration System established under the Registration Bill. [*Schedule 2, items 22, 23*]

***Olympic Insignia Protection Act 1987 (Olympic Insignia Protection Act)***

- 10.16 The effect of the amendment is to ensure the Olympic Insignia Protection Act recognises the Registration System established under the Registration Bill. *[Schedule 2, item 7] [Schedule 2, item 24]*

***Qantas Sale Act 1992 (Qantas Sale Act)***

- 10.17 The effect of the amendment is to ensure the Qantas Sale Act recognises the Registration System established under the Registration Bill. *[Schedule 2, item 25]*

***Wine Australia Corporation Act 1980 (Wine Australia Corporation Act)***

- 10.18 The effect of the amendment is to ensure the Wine Australia Corporation Act recognises the Registration System established under the Registration Bill. *[Schedule 2, item 26]*