**EXPLANATORY STATEMENT**

*Business Names Registration Act 2011*

Proclamation

Subsection 2(1) of the *Business Names Registration Act 2011* (the Act) provides that Sections 3 to 17 commence on a single day to be fixed by Proclamation, and that Part 2 commences on a single day to be fixed by Proclamation.

The purpose of the Proclamation is to fix 20 April 2012 as the commencement date for Sections 3 to 17 of Act, and 28 May 2012 as the commencement date for Part 2 of the Act.

The Act establishes a National Business Names Registration System. This involves the States either referring powers to regulate business names to the Commonwealth or adopting the Commonwealth law, to the extent that the Commonwealth does not have legislative power. A national Register will be formed by the electronic transfer of existing state and territory business names registers to the Australian Investments and Securities Commission (ASIC).

Sections 3 to 17 are contained in Part 1 of the Act, which provides for preliminary matters. Division 2 of Part 1 contains relevant definitions (sections 3 – 6), Division 3 provides for the constitutional basis and application of the Act and the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* (the Transitional Act) (sections 7 – 11), Division 4 provides for the interaction of the business names legislation and State and Territory laws (sections 12 – 15) and Division 5 sets out the objects of the Act and consequences of registration (sections 16 – 17).

Part 2 sets out offences relating to business names. This Part sets the core obligations regarding the use of business names, and provides sanctions for their breach.

The proposal to transfer responsibility for business name registration to the Commonwealth was announced by the Council of Australian Governments (COAG) on 3 July 2008 and forms part of the National Partnership Agreement to deliver a Seamless National Economy. COAG agreed in 2011 that 28 May 2012 should be the commencement date for the National Register.

The commencement provisions in subsection 2 (1) were included to allow for an orderly data transfer from State and Territory Business Names Registers to the National Business Names Registration System before the commencement date of that National System. The dates included in this Proclamation will allow for this orderly transition to occur ahead of the commencement of the National Business Names Registration System on the agreed date of 28 May 2012.

In settling the commencement dates for the Act, the Department of Industry, Innovation, Science, Research and Tertiary Education consulted with the Treasury, the Australian Securities and Investments Commission, and State and Territory agencies with responsibility for business names registration.

Stakeholders in the business community are likely to be anticipating the implementation of this reform.

The Proclamation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Authority:   Subsection 2(1) of the

*Business Names Registration Act 2011*