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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Business Names Registration Bill 2011

No. , 2011

(Innovation, Industry, Science and Research)

**A Bill for an Act in relation to business names, and
for related purposes**

Contents

Part 1—Preliminary	1
Division 1—Introduction	1
1 Short title.....	1
2 Commencement.....	2
Division 2—Definitions	3
3 Dictionary.....	3
4 Business.....	6
5 Entities.....	6
6 Notified State/Territory registers.....	7
Division 3—Constitutional basis and application of this Act and the Transitional Act	9
7 Constitutional basis for this Act and the Transitional Act.....	9
8 Meaning of <i>referring/adopting State</i>	10
9 Meaning of <i>referred business names matter</i>	12
10 General application of this Act and the Transitional Act.....	14
11 Government bodies not liable to prosecution.....	14
Division 4—Interaction between business names legislation and State and Territory laws	16
12 Concurrent operation intended.....	16
13 When business names legislation does not apply.....	16
14 Avoiding direct inconsistency between Commonwealth and State and Territory laws.....	17
15 Regulations to deal with interaction between laws.....	19
Division 5—Objects of this Act and consequences of registration	21
16 Objects of this Act.....	21
17 Consequences of registration of a business name.....	21
Part 2—Offences relating to business names	23
18 Offence—carrying on a business under an unregistered business name.....	23
19 Offence—must include business name in written communications.....	24
20 Offence—must display business name at places open to public.....	26
21 Offence—carrying on a business under a business name while disqualified.....	27

Part 3—Registering a business name	29
22 The Business Names Register	29
23 Application to register a business name.....	29
24 Decision to register a business name to an entity	30
25 Is a business name <i>available</i> to an entity?	31
26 Identical or nearly identical names	32
27 Undesirable names.....	32
28 Restricted words and expressions	32
29 Priority.....	33
30 Refusal for failure to pay registration fee on time	34
31 Consent applications.....	34
32 Disqualified entities.....	35
33 Steps taken by ASIC to register a business name to an entity	37
34 Refusal to register.....	38
Part 4—Obligations to give information to ASIC	40
35 Notifying changes—entity that gives information to ASIC.....	40
36 Obligation to notify ASIC if entity becomes disqualified.....	40
37 Obligation to give ASIC information if requested	40
38 Notifying ASIC of bankruptcy, insolvency etc.....	42
39 Notifying ASIC of appointment of a legal personal representative.....	43
40 Notification by successor in relation to a deceased estate	44
41 Federal Court may order information be given to ASIC.....	45
Part 5—Cancelling the registration of a business name	46
42 Cancellation—request by entity to whom business name is registered	46
43 Cancellation—ASIC becomes aware of matter that would have affected registration decision	46
44 Cancellation—entity is disqualified.....	47
45 Cancellation—Ministerial determination revoked.....	47
46 Cancellation—failure to satisfy a condition of registration	47
47 Cancellation—entity not carrying on a business under the business name	48
48 Cancellation—failure to provide information.....	48
49 Cancellation—registration has expired.....	49
50 Cancellation—entity to whom business name registered ceases to exist	50
51 Cancellation—business name used in infringement of trade mark.....	50
52 Notification of cancellation of business name	50

53	Notice requirements in relation to partnerships, unincorporated associations, trusts and joint ventures	51
54	Business name held during review period for cancellation decision.....	51
Part 6—Renewing the registration of a business name		53
55	Application to renew registration	53
Part 7—Review		55
56	Reviewable decisions	55
57	Internal review of certain decisions	57
58	Administrative review of certain decisions.....	59
59	Payment of registration fee if business name to be registered as result of review.....	59
Part 8—Accessing the Business Names Register		61
60	Access to certain information in the Business Names Register by request	61
61	Certain information to be publicly available.....	62
62	Certain information to be made available to government bodies	62
Part 9—Administration		64
63	ASIC’s functions and powers	64
64	Directions by Minister.....	64
65	Arrangements with States and Territories.....	65
66	ASIC may arrange for use of computer programs to make decisions	65
67	Forms for documents to be lodged with ASIC	65
68	Manner in which documents to be lodged with ASIC	66
69	ASIC may refuse to receive document etc.....	67
70	Fees are payable to ASIC on behalf of the Commonwealth	68
71	When is an application fee fully paid?.....	68
72	Waiver and refund of fees	68
73	Address for receipt of notices	69
74	ASIC may destroy or dispose of certain documents	69
75	ASIC may issue formal warning.....	69
76	Interaction with Australian Business Register	69
77	Protection of confidentiality of information	70
78	Liability for damages.....	71
79	Delegation	72
80	Minister may delegate prescribed functions and powers under this Act	72

Part 10—General	74
81 Application of this Act to partnerships	74
82 Principal contact of a partnership	74
83 Application of this Act to unincorporated associations and bodies	75
84 Principal contact of an unincorporated association or body	76
85 Application of this Act to a trust with 2 or more trustees	76
86 Principal contact of a trust	77
87 Joint ventures	78
88 Application in the Territories of Christmas Island and Cocos (Keeling) Islands	80
89 Entities that have ceased to exist	80
90 Regulations	81
Schedule 1—Notified State/Territory registers	82
1 New South Wales	82
2 Victoria	82
3 Queensland	83
4 Western Australia	83
5 South Australia	83
6 Tasmania	84
7 Australian Capital Territory	84
8 Northern Territory	85

1 **A Bill for an Act in relation to business names, and**
2 **for related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**

5 **Division 1—Introduction**

6 **1 Short title**

7 This Act may be cited as the *Business Names Registration Act*
8 2011.

Section 2

1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table
3 commences, or is taken to have commenced, in accordance with
4 column 2 of the table. Any other statement in column 2 has effect
5 according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Sections 3 to 17	A single day to be fixed by Proclamation.	
3. Part 2	A single day to be fixed by Proclamation.	
4. Section 22	At the same time as the provision(s) covered by table item 2.	
5. Sections 23 to 36	At the same time as the provision(s) covered by table item 3.	
6. Section 37	At the same time as the provision(s) covered by table item 2.	
7. Sections 38 to 62	At the same time as the provision(s) covered by table item 3.	
8. Sections 63 to 90	At the same time as the provision(s) covered by table item 2.	
9. Schedule 1	At the same time as the provision(s) covered by table item 2.	

7 Note: This table relates only to the provisions of this Act as originally
8 enacted. It will not be amended to deal with any later amendments of
9 this Act.

10 (2) Any information in column 3 of the table is not part of this Act.
11 Information may be inserted in this column, or information in it
12 may be edited, in any published version of this Act.

1

2 **Division 2—Definitions**

3 **3 Dictionary**

4

In this Act:

5

ABN for an entity means the entity's ABN as shown in the
6 Australian Business Register.

7

affected Territory means:

8

(a) the Australian Capital Territory; and

9

(b) the Northern Territory; and

10

(c) the Jervis Bay Territory; and

11

(d) the Territory of Christmas Island; and

12

(e) the Territory of Cocos (Keeling) Islands.

13

application fee, for an application by an entity for an extract of the
14 Business Names Register, means the fee imposed under the
15 *Business Names Registration (Fees) Act 2011* in relation to such an
16 application.

17

ASIC means the Australian Securities and Investments
18 Commission.

19

ASIC Act means the *Australian Securities and Investments*
20 *Commission Act 2001*.

21

ASIC member means a member of ASIC (as defined for the
22 purposes of the ASIC Act).

23

Australia, when used in a geographical sense, includes the
24 Territory of Christmas Island and the Territory of Cocos (Keeling)
25 Islands, but does not include any other external Territory.

26

Australian Business Register means the register established under
27 section 24 of the *A New Tax System (Australian Business Number)*
28 *Act 1999*.

29

available: a business name is *available* to an entity in the
30 circumstances set out in:

Section 3

- 1 (a) section 25 and subsection 31(3) of this Act; and
2 (b) item 21 of Schedule 1 to the Transitional Act.

3 **business** has the meaning given by section 4.

4 **business day** means a day that is not a Saturday, a Sunday, a public
5 holiday or a bank holiday in a referring/adopting State or an
6 affected Territory.

7 **business name** means a name used, or to be used, in relation to one
8 or more businesses.

9 **Business Names Register** means the register established and
10 maintained under section 22.

11 **carrying on** a business includes doing anything in the course of the
12 commencement or termination of the business.

13 **Commonwealth Minister** means the Minister.

14 **company** means a body registered as a company under the
15 *Corporations Act 2001*.

16 **consent application** means an application for registration of a
17 business name that includes a statement that the entity to whom the
18 business name is currently registered has consented to the
19 registration of the business name to the applicant.

20 **court** means any court.

21 **disqualified**: an entity is **disqualified** in the circumstances
22 specified in section 32.

23 **entity** has the meaning given by section 5.

24 **entity on whose application a decision is reviewable** means an
25 entity on whose application the decision is reviewable under
26 section 56.

27 **Federal Court** means the Federal Court of Australia.

28 **government body** has the meaning given by subsection 11(3).

1 **identical**: means identical under rules made by the Minister under
2 section 26.

3 **intelligence or security agency** has the meaning given by
4 section 85ZL of the *Crimes Act 1914*.

5 **nearly identical**: means nearly identical under rules made by the
6 Minister under section 26.

7 **non-entity joint venture** means an arrangement that the
8 Commissioner of Taxation is satisfied is a contractual arrangement:

- 9 (a) under which 2 or more parties undertake an economic
10 activity that is subject to the joint control of the parties; and
11 (b) that is entered into to obtain individual benefits for the
12 parties, in the form of a share of the output of the
13 arrangement rather than joint or collective profits for all the
14 parties.

15 **notified State/Territory register** has the meaning given by
16 section 6.

17 **notified successor**, in relation to a business name, means an entity
18 entered on the Business Names Register under subsection 40(4) as
19 a notified successor in relation to the business name.

20 **priority**: an entity has **priority** over a business name in the
21 circumstances set out in section 29.

22 **referring/adopting State** has the meaning given by section 8.

23 **registered owner**, in relation to a registered trade mark, has the
24 meaning given by section 6 of the *Trade Marks Act 1995*.

25 **registered trade mark** has the meaning given by section 6 of the
26 *Trade Marks Act 1995*.

27 **registration fee**, for the registration of a business name to an entity,
28 means the fee imposed under the *Business Names Registration*
29 *(Fees) Act 2011* in relation to the registration.

30 **renewal fee**, for the renewal of the registration of a business name
31 to an entity, means the fee imposed under the *Business Names*
32 *Registration (Fees) Act 2011* in relation to the renewal.

Section 4

1 **reviewable**: a decision is **reviewable** if it is reviewable under
2 section 56.

3 **staff member** has the same meaning as in the ASIC Act.

4 **State**, when used in a geographical sense, includes the coastal sea
5 of the State.

6 **superannuation fund** has the same meaning as in the *Income Tax*
7 *Assessment Act 1997*.

8 **Territory**, when used in a geographical sense, includes the coastal
9 sea of the Territory.

10 **this Act** includes instruments made under this Act.

11 **Transitional Act** means the *Business Names Registration*
12 *(Transitional and Consequential Provisions) Act 2011*, and
13 includes instruments made under that Act.

14 **4 Business**

- 15 (1) **Business** means an activity, or series of activities, done:
16 (a) in the form of a profession, a trade, employment, a vocation
17 or a calling; or
18 (b) in the form of an adventure or concern in the nature of trade;
19 or
20 (c) on a regular or continuous basis, in the form of a lease,
21 licence or other grant of an interest in property.
- 22 (2) **Business** does not include an activity, or a series of activities, done
23 in circumstances in which an entity doing that activity or series of
24 activities in, or in connection with, Australia would not be entitled
25 to an ABN.

26 **5 Entities**

- 27 (1) **Entity** means any of the following:
28 (a) an individual;
29 (b) a body corporate;
30 (c) a corporation sole;

- 1 (d) a body politic;
2 (e) a partnership;
3 (f) any other unincorporated association or body of persons;
4 (g) a trust;
5 (h) a superannuation fund.

6 Note: The term *entity* is used in a number of different but related senses. It
7 covers all kinds of legal persons. It also covers groups of legal
8 persons, and other things, that in practice are treated as having a
9 separate identity in the same way as a legal person does.

- 10 (2) Paragraph (1)(f) does not include a non-entity joint venture.
11 (3) The trustee of a trust or of a superannuation fund is taken to be an
12 *entity* consisting of the person who is the trustee, or the persons
13 who are the trustees, at any given time.

14 Note: This is because a right or obligation cannot be conferred or imposed
15 on an entity that is not a legal person.

- 16 (4) A legal person can have a number of different capacities in which
17 the person does things. In each of those capacities, the person is
18 taken to be a different *entity*.

19 Example: In addition to his or her personal capacity, an individual may be:

- 20 (a) sole trustee of one or more trusts; and
21 (b) one of a number of trustees of a further trust.

22 In his or her personal capacity, he or she is one entity. As trustee of
23 each trust, he or she is a different entity. The trustees of the further
24 trust are a different entity again, of which the individual is a member.

- 25 (5) If a provision refers to an *entity* of a particular kind, it refers to the
26 entity in its capacity as that kind of entity, not to that entity in any
27 other capacity.

28 Example: A provision that refers to a company does not cover a company in a
29 capacity as trustee, unless it also refers to a trustee.

30 **6 Notified State/Territory registers**

- 31 (1) A register is a *notified State/Territory register* if:
32 (a) the register is maintained under the law of a
33 referring/adopting State or an affected Territory; and

Section 6

- 1 (b) notice of the names of entities entered on the register is
2 received by ASIC in electronic form from that State or
3 Territory, and updated electronically from time to time to
4 reflect changes in the register; and
5 (c) the register is specified, or of a kind specified, in Schedule 1
6 to this Act.
- 7 (2) Schedule 1 to this Act has effect subject to any modifications made
8 by the regulations to reflect changes in the registers, or kinds of
9 registers, maintained by the States and Territories.
- 10 (3) If a Minister of a referring/adopting State or of an affected
11 Territory notifies the Commonwealth Minister in writing of a
12 proposed modification to Schedule 1, the Commonwealth Minister
13 must consult with all other referring/adopting States and affected
14 Territories about the proposed modification.
- 15 (4) In this section:
16 *modifications* include additions, omissions and substitutions.
17

1
2 **Division 3—Constitutional basis and application of this Act**
3 **and the Transitional Act**

4 **7 Constitutional basis for this Act and the Transitional Act**

5 *Application in a referring/adopting State*

- 6 (1) The application of this Act and the Transitional Act in a
7 referring/adopting State is based on:
8 (a) the legislative powers that the Commonwealth Parliament has
9 under the Constitution (other than paragraph 51(xxxvii)); and
10 (b) the legislative powers that the Commonwealth Parliament has
11 because of a reference or an adoption by the Parliament of
12 the referring/adopting State under paragraph 51(xxxvii) of
13 the Constitution.

14 *Application in a Territory*

- 15 (2) The application of this Act and the Transitional Act in the affected
16 Territories is based on:
17 (a) the legislative powers that the Commonwealth Parliament has
18 under section 122 of the Constitution to make laws for the
19 government of the Territory; and
20 (b) the other legislative powers that the Commonwealth
21 Parliament has under the Constitution.

22 Despite the *Acts Interpretation Act 1901*, this Act and the
23 Transitional Act as applying in the affected Territory are laws of
24 the Commonwealth.

25 *Application outside Australia*

- 26 (3) The operation of this Act and the Transitional Act outside Australia
27 is based on:
28 (a) the legislative power the Commonwealth Parliament has
29 under paragraph 51(xxix) of the Constitution; and

Section 8

- 1 (b) the legislative powers that the Commonwealth Parliament has
2 under section 122 of the Constitution to make laws for the
3 government of a Territory; and
4 (c) the other legislative powers that the Commonwealth
5 Parliament has under the Constitution.

6 **8 Meaning of *referring/adopting State***

7 *Meaning of referring/adopting State*

- 8 (1) A State is a *referring/adopting State* if, for the purposes of
9 paragraph 51(xxxvii) of the Constitution, the Parliament of the
10 State:
11 (a) has referred the matters covered by subsections (3) and (4) to
12 the Parliament of the Commonwealth; or
13 (b) has:
14 (i) adopted the initial version of this Act and the initial
15 version of the Transitional Act; and
16 (ii) referred the matters covered by subsection (4) to the
17 Parliament of the Commonwealth.
- 18 (2) A State is a *referring/adopting State* even if a law of the State
19 provides that:
20 (a) the reference to the Parliament of the Commonwealth of a
21 matter covered by subsection (3) or (4) is to terminate in
22 particular circumstances; or
23 (b) the adoption of the initial version of this Act or the initial
24 version of the Transitional Act is to terminate in particular
25 circumstances; or
26 (c) the reference to the Parliament of the Commonwealth of a
27 matter covered by subsection (3) or (4) has effect only:
28 (i) if and to the extent that the matter is not included in the
29 legislative powers of the Parliament of the
30 Commonwealth (otherwise than by a reference under
31 section 51(xxxvii) of the Constitution); or
32 (ii) if and to the extent that the matter is included in the
33 legislative powers of the Parliament of the State.

1 *Reference covering the initial versions of this Act and the*
2 *Transitional Act*

- 3 (3) This subsection covers the matters to which the referred provisions
4 relate to the extent of making laws with respect to those matters by
5 including the referred provisions in the initial version of this Act
6 and the initial version of the Transitional Act.

7 *Reference covering amendments of this Act or the Transitional Act*

- 8 (4) This subsection covers the referred business names matters to the
9 extent of the making of laws with respect to those matters by
10 making express amendments of this Act or the Transitional Act.

11 *Effect of terminating reference or adoption of initial versions*

- 12 (5) A State ceases to be a *referring/adopting State* if:
13 (a) in the case where the Parliament of the State has referred to
14 the Parliament of the Commonwealth the matters covered by
15 subsection (3)—that reference terminates; or
16 (b) in the case where the Parliament of the State has adopted the
17 initial version of this Act and the initial version of the
18 Transitional Act—the adoption of the initial version of this
19 Act or the initial version of the Transitional Act terminates.

20 *Effect of terminating amendment reference*

- 21 (6) A State ceases to be a *referring/adopting State* if:
22 (a) the State's amendment reference terminates; and
23 (b) subsection (7) does not apply to the termination.
- 24 (7) A State does not cease to be a *referring/adopting State* because of
25 the termination of its amendment reference if:
26 (a) the termination is effected by the Governor of that State
27 fixing a day by Proclamation as the day on which the
28 reference terminates; and
29 (b) the day fixed is no earlier than the first day after the end of
30 the period of 6 months beginning on the day on which the
31 Proclamation is published; and

Section 9

1 (c) that State's amendment reference, and the amendment
2 reference of every other State, terminates on the same day.

3 *Definitions*

4 (8) In this section:

5 *amendment reference* of a State means the reference by the
6 Parliament of the State to the Parliament of the Commonwealth of
7 the matters covered by subsection (4).

8 *express amendment* of this Act or the Transitional Act means the
9 direct amendment of the text of this Act or the Transitional Act
10 (whether by the insertion, omission, repeal, substitution or
11 relocation of words or matter) by another Commonwealth Act, but
12 does not include the enactment by a Commonwealth Act of a
13 provision that has, or will have, substantive effect otherwise than
14 as part of the text of this Act or the Transitional Act.

15 *initial version of the Transitional Act* means the Transitional Act
16 as originally enacted.

17 *initial version of this Act* means this Act as originally enacted.

18 *referred business names matter* has the meaning given by
19 section 9.

20 *referred provisions* means:

- 21 (a) the initial version of this Act; and
22 (b) the initial version of the Transitional Act;
23 to the extent to which they deal with matters that are included in
24 the legislative powers of the Parliaments of the States.

25 **9 Meaning of *referred business names matter***

- 26 (1) Each of the following matters is a *referred business names matter*:
27 (a) the registration of business names;
28 (b) the regulation of the use of business names to assist entities
29 who engage with an entity carrying on a business under a
30 business name to identify the entity;

Section 9

- 1 (c) the regulation of the use of business names to assist entities
2 who engage with an entity carrying on a business under a
3 business name to contact the entity;
- 4 (d) the regulation of the use of business names to reduce the risks
5 that arise from an entity carrying on a business under a name
6 that is not the entity's own;
- 7 (e) the prohibition or restriction of the use of business names that
8 are undesirable, offensive or confusing;
- 9 (f) the prohibition or restriction of the use of business names by
10 an entity because:
- 11 (i) the entity has engaged in unlawful conduct; or
12 (ii) a person involved in the management of the entity has
13 engaged in unlawful conduct.
- 14 (2) However, none of the following matters is a *referred business*
15 *names matter*:
- 16 (a) the imposition of a restriction on a government body
17 affecting the ability of the body to carry on business under a
18 name;
- 19 (b) the imposition of a restriction on an entity affecting the
20 ability of the entity to carry on business under a name that is
21 registered to the entity on a notified State/Territory register;
- 22 (c) the imposition of a restriction on an entity affecting the
23 ability of the entity to carry on business under a name that is
24 specified as the name of the entity in an Act of a State, or an
25 instrument made under such an Act;
- 26 (d) the imposition of an obligation on a government body to
27 include a name in a communication or to display a name;
- 28 (e) the imposition of an obligation on an entity to include in a
29 communication, or to display, a name that is registered to the
30 entity on a notified State/Territory register;
- 31 (f) the imposition of an obligation on an entity to include in a
32 communication, or to display, a name that is specified as the
33 name of the entity in an Act of a State, or an instrument made
34 under such an Act;
- 35 (g) the omission of an exemption provision without the insertion
36 of an equivalent provision, or the imposition of a limitation
37 on the operation of an exemption provision;
-

Part 1 Preliminary

Division 3 Constitutional basis and application of this Act and the Transitional Act

Section 10

1 (h) any matter relating to the imposition or payment of taxes
2 under an Act of a State, or an instrument made under such an
3 Act.

4 (3) In this section:

5 *exemption provision* means a provision in the terms, or
6 substantially in the terms, of subsection 19(5) or 20(3).

7 **10 General application of this Act and the Transitional Act**

8 *Application in this jurisdiction*

9 (1) Each provision of this Act and the Transitional Act applies in this
10 jurisdiction.

11 *Geographical coverage of this jurisdiction*

12 (2) **This jurisdiction** means the geographical area that consists of:
13 (a) each referring/adopting State (including its coastal sea); and
14 (b) each affected Territory (including its coastal sea).

15 **11 Government bodies not liable to prosecution**

16 (1) A government body that carries on a business under a business
17 name:
18 (a) is not liable to be prosecuted for an offence against this Act
19 or the Transitional Act; and
20 (b) is not subject to proceedings for an injunction or any other
21 remedy in relation to conduct that would constitute an
22 offence against this Act or the Transitional Act.

23 (2) However, nothing in this Act or the Transitional Act prevents the
24 registration of a business name to a government body if the
25 provisions of this Act or the Transitional Act are otherwise
26 satisfied.

27 (3) Each of the following is a **government body**:
28 (a) the Commonwealth;
29 (b) a referring/adopting State;

Section 11

- 1 (c) an affected Territory;
- 2 (d) an agency or authority of the Commonwealth;
- 3 (e) an agency or authority of a referring/adopting State or an
- 4 affected Territory;
- 5 (f) an agency or authority of the Commonwealth and any of the
- 6 referring/adopting States and the affected Territories, acting
- 7 jointly;
- 8 (g) an agency or authority of any 2 or more of the
- 9 referring/adopting States and affected Territories, acting
- 10 jointly;
- 11 (h) a local government body.
- 12

Section 12

1

2 **Division 4—Interaction between business names legislation**
3 **and State and Territory laws**

4 **12 Concurrent operation intended**

5 (1) This Act and the Transitional Act (the *business names legislation*)
6 are not intended to exclude or limit the concurrent operation of any
7 law of a referring/adopting State or an affected Territory.

8 (2) Without limiting subsection (1), the business names legislation is
9 not intended to exclude or limit the concurrent operation of a law
10 that:

11 (a) requires or permits a word or expression to be used by an
12 entity or class of entities; or

13 (b) prohibits or restricts the use of a word or expression by an
14 entity or class of entities; or

15 (c) relates to the accreditation or licensing of an entity that
16 carries on a business; or

17 (d) makes provision for the conversion of one body into another
18 or the amalgamation of bodies; or

19 (e) imposes obligations on an entity or class of entities that are in
20 addition to obligations imposed under this Act; or

21 (f) makes provision in relation to a notified State/Territory
22 register; or

23 (g) specifies a name as the name of an entity.

24 (3) This section does not apply to a law of a referring/adopting State or
25 an affected Territory if there is a direct inconsistency between that
26 law and the business names legislation.

27 Note: Section 14 avoids direct inconsistency arising in some cases by
28 limiting the operation of the business names legislation.

29 **13 When business names legislation does not apply**

30 (1) Subsection (2) applies if a provision of a law of a
31 referring/adopting State or an affected Territory declares a matter

1 to be an excluded matter for the purposes of this section in relation
2 to:

- 3 (a) the whole of the business names legislation; or
4 (b) a specified provision of the business names legislation; or
5 (c) the business names legislation other than a specified
6 provision; or
7 (d) the business names legislation otherwise than to a specified
8 extent.

9 (2) By force of this subsection:

- 10 (a) none of the provisions of the business names legislation
11 (other than this section) applies in or in relation to the State
12 or Territory with respect to the matter if the declaration is one
13 to which paragraph (1)(a) applies; and
14 (b) the specified provision of the business names legislation does
15 not apply in or in relation to the State or Territory with
16 respect to the matter if the declaration is one to which
17 paragraph (1)(b) applies; and
18 (c) the provisions of the business names legislation (other than
19 this section and the specified provisions) do not apply in or in
20 relation to the State or Territory with respect to the matter if
21 the declaration is one to which paragraph (1)(c) applies; and
22 (d) the provisions of the business names legislation (other than
23 this section and otherwise than to the specified extent) do not
24 apply in or in relation to the State or Territory with respect to
25 the matter if the declaration is one to which paragraph (1)(d)
26 applies.

27 (3) Subsection (2) does not apply to the declaration to the extent to
28 which the regulations provide that that subsection does not apply to
29 that declaration.

30 **14 Avoiding direct inconsistency between Commonwealth and State**
31 **and Territory laws**

32 *This section overrides other business names legislation*

33 (1) This section has effect despite anything else in the business names
34 legislation.

Part 1 Preliminary

Division 4 Interaction between business names legislation and State and Territory laws

Section 14

1 *When this section does not apply to a referring/adopting State or*
2 *Territory law*

3 (2) This section does not apply to a provision of a law of a
4 referring/adopting State or an affected Territory that is capable of
5 concurrent operation with the business names legislation.

6 Note: This kind of provision is dealt with by section 12.

7 *When this section applies to a referring/adopting State or Territory*
8 *law*

9 (3) This section applies to the interaction between a provision (the
10 ***displacement provision***) of a law of a referring/adopting State or
11 an affected Territory and a provision (the ***Commonwealth***
12 ***provision***) of the business names legislation only if the
13 displacement provision is declared by a law of the State or
14 Territory to be a business names legislation displacement provision
15 for the purposes of this section (either generally or specifically in
16 relation to the Commonwealth provision).

17 *Effect of displacement provision*

18 (4) The Commonwealth provision does not:
19 (a) prohibit the doing of an act; or
20 (b) impose a liability (whether civil or criminal) for doing an act;
21 if the displacement provision specifically permits, authorises or
22 requires the doing of that act.

23 (5) The Commonwealth provision does not operate in or in relation to
24 the State or Territory to the extent necessary to ensure that no
25 inconsistency arises between:
26 (a) the Commonwealth provision; and
27 (b) the displacement provision to the extent to which the
28 displacement provision would, apart from this subsection, be
29 inconsistent with the Commonwealth provision.

30 Note 1: The displacement provision is not covered by this subsection if
31 subsection (4) applies to the displacement provision: if that subsection
32 applies there would be no potential inconsistency to be dealt with by
33 this subsection.

1 Note 2: The operation of the displacement provision will be supported by
2 section 12 to the extent to which it can operate concurrently with the
3 Commonwealth provision.

4 (6) Subsections (4) and (5) do not apply in relation to the displacement
5 provision to the extent to which the regulations provide that those
6 subsections do not apply in relation to the displacement provision.

7 **15 Regulations to deal with interaction between laws**

- 8 (1) The regulations may modify the operation of the business names
9 legislation so that:
- 10 (a) provisions of the business names legislation do not apply to a
11 matter that is dealt with by a law of a referring/adopting State
12 or an affected Territory specified in the regulations; or
 - 13 (b) no inconsistency arises between the operation of a provision
14 of the business names legislation and the operation of a
15 provision of a law of a referring/adopting State or an affected
16 Territory specified in the regulations.
- 17 (2) Without limiting subsection (1), regulations made for the purposes
18 of that subsection may provide that a provision of the business
19 names legislation:
- 20 (a) does not apply to:
 - 21 (i) a person specified in the regulations; or
 - 22 (ii) a body specified in the regulations; or
 - 23 (iii) circumstances specified in the regulations; or
 - 24 (iv) a person or body specified in the regulations in the
25 circumstances specified in the regulations; or
 - 26 (b) does not prohibit an act to the extent to which the prohibition
27 would otherwise give rise to an inconsistency with a law of a
28 referring/adopting State or an affected Territory; or
 - 29 (c) does not require a person to do an act to the extent to which
30 the requirement would otherwise give rise to an
31 inconsistency with a law of a referring/adopting State or an
32 affected Territory; or
 - 33 (d) does not authorise a person to do an act to the extent to which
34 the conferral of that authority on the person would otherwise
35 give rise to an inconsistency with a law of a
36 referring/adopting State or an affected Territory; or
-

Part 1 Preliminary

Division 4 Interaction between business names legislation and State and Territory laws

Section 15

- 1 (e) does not impose an obligation on a person to the extent to
2 which complying with that obligation would require the
3 person not to comply with an obligation imposed on the
4 person under a law of a referring/adopting State or an
5 affected Territory; or
6 (f) authorises a person to do something for the purposes of the
7 business names legislation that the person:
8 (i) is authorised to do under a law of a referring/adopting
9 State or an affected Territory; and
10 (ii) would not otherwise be authorised to do under the
11 business names legislation; or
12 (g) will be taken to be satisfied if a law of a referring/adopting
13 State or an affected Territory is satisfied.
14

1
2 **Division 5—Objects of this Act and consequences of**
3 **registration**

4 **16 Objects of this Act**

- 5 (1) The objects of this Act are:
6 (a) to ensure that if an entity carries on a business under a
7 business name, those who engage or propose to engage with
8 that business can identify the entity and how the entity may
9 be contacted; and
10 (b) to remove the inconvenience caused by the registration of
11 business names under the law of more than one jurisdiction
12 within Australia.
- 13 (2) These objects are achieved by requiring an entity that intends to
14 carry on a business under a business name to register the business
15 name on a nationally established and maintained register of
16 business names.
- 17 (3) The objects of this Act are also:
18 (a) to avoid confusion by ensuring that business names that are
19 identical or nearly identical are not registered; and
20 (b) to ensure that business names that are undesirable (for
21 example, because they are offensive) are not registered; and
22 (c) to ensure that business names that should be restricted for
23 any other reason (for example, because they might mislead
24 consumers) are not registered.
- 25 (4) The objects mentioned in subsection (3) are achieved by rules
26 dealing with the availability of business names.

27 **17 Consequences of registration of a business name**

- 28 (1) The registration of a business name does not affect the rights of
29 any entity in relation to the business name, or a word or an
30 expression that constitutes or is included in the business name,
31 under the law of the Commonwealth or of a State or Territory, or
32 under the general law.

Part 1 Preliminary

Division 5 Objects of this Act and consequences of registration

Section 17

- 1 (2) An entity does not acquire property in a business name, or in a
2 word or an expression that constitutes or is included in a business
3 name, because the name is registered to the entity under this Act or
4 the Transitional Act.
5

Part 2—Offences relating to business names**18 Offence—carrying on a business under an unregistered business name**

- (1) An entity commits an offence if:
- (a) the entity carries on a business under a name; and
 - (b) the name is not registered to the entity as a business name on the Business Names Register.

Penalty: 30 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the entity is an individual and the name is the individual's name; or
 - (b) the entity is a corporation and the name is the corporation's name; or
 - (c) the entity is a partnership and the name consists of all of the partners' names; or
 - (d) the name is registered to the entity on a notified State/Territory register; or
 - (e) an Act of the Commonwealth, a referring/adopting State or an affected Territory, or an instrument made under such an Act, specifies the name as the name of the entity; or
 - (f) the entity is a government body; or
 - (g) the entity is a notified successor in relation to the name; or
 - (h) other circumstances prescribed by the regulations for the purposes of this paragraph apply.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Section 19

1 **19 Offence—must include business name in written communications**

- 2 (1) An entity commits an offence if:
- 3 (a) the entity carries on a business under a business name; and
 - 4 (b) the entity communicates in writing with another entity; and
 - 5 (c) that communication is a business document connected with
 - 6 carrying on the business under the name; and
 - 7 (d) the entity does not include clearly legible business names
 - 8 information in the document.

9 Penalty: 5 penalty units.

- 10 (2) ***Business names information*** means the name and, if the entity has
- 11 an ABN, the entity's ABN, where the business document is of one
- 12 of the following kinds:

- 13 (a) a document that is lodged with ASIC;
- 14 (b) a statement of account (including an invoice);
- 15 (c) a receipt;
- 16 (d) an order for goods or services;
- 17 (e) a cheque;
- 18 (f) a promissory note or bill of exchange;
- 19 (g) an offer to provide goods or services (rather than an
- 20 invitation to treat).

- 21 (3) In any other case, ***business names information*** means the name.

- 22 (4) Subsection (1) does not apply if:
- 23 (a) the entity is an individual and the name is the individual's
 - 24 name; or
 - 25 (b) the entity is a corporation and the name is the corporation's
 - 26 name; or
 - 27 (c) the entity is a partnership and the name consists of all of the
 - 28 partners' names; or
 - 29 (d) the name is registered to the entity on a notified
 - 30 State/Territory register; or
 - 31 (e) an Act of the Commonwealth, a referring/adopting State or
 - 32 an affected Territory, or an instrument made under such an
 - 33 Act, specifies the name as the name of the entity; or
 - 34 (f) the entity is a government body; or
-

-
- 1 (g) the entity is a notified successor in relation to the name; or
2 (h) the Minister has exempted the entity from the requirement in
3 relation to the business and the business name, under
4 subsection (6); or
5 (i) other circumstances prescribed by the regulations for the
6 purposes of this paragraph apply.

- 7 (5) Subsection (1) does not require an entity to include a name or the
8 entity's ABN in a written communication in circumstances where:
9 (a) it would be contrary to the law of the Commonwealth or of a
10 referring/adopting State or an affected Territory to include
11 the name or the entity's ABN in the communication; or
12 (b) the inclusion of the name in the communication would
13 directly or indirectly give rise to a representation that would
14 be contrary to the law of the Commonwealth or of a
15 referring/adopting State or an affected Territory; or
16 (c) the use of the name by the entity would be contrary to the law
17 of the Commonwealth or of a referring/adopting State or an
18 affected Territory.

19 Note 1: A defendant bears an evidential burden in relation to the matters in
20 subsections (4) and (5): see subsection 13.3(3) of the *Criminal Code*.

21 Note 2: As an example, the use of a name would be contrary to the law of a
22 referring/adopting State or an affected Territory if the law of that
23 jurisdiction provided that the name could not be used without the
24 consent of a relevant authority and that consent was not obtained.

- 25 (6) The Minister may, by determination in writing, exempt an entity
26 from the requirement to include a name or the entity's ABN in a
27 written communication in connection with a specified business
28 carried on under a specified business name, if the Minister is
29 satisfied that the inclusion of that information in a written
30 communication would create a serious risk to:
31 (a) public safety; or
32 (b) significant infrastructure such as:
33 (i) transport infrastructure; or
34 (ii) energy infrastructure; or
35 (iii) communications infrastructure; or
36 (iv) water infrastructure.

37 The determination is not a legislative instrument.

Section 20

1 (7) Subsection (1) is an offence of strict liability.

2 Note: For strict liability, see section 6.1 of the *Criminal Code*.

3 **20 Offence—must display business name at places open to public**

4 (1) An entity commits an offence if:

- 5 (a) the entity carries on a business under a business name; and
6 (b) the entity does not display the name prominently at every
7 place at which the entity carries on the business that is open
8 to the public.

9 Penalty: 5 penalty units.

10 (2) Subsection (1) does not apply if:

- 11 (a) the entity is an individual and the name is the individual's
12 name; or
13 (b) the entity is a corporation and the name is the corporation's
14 name; or
15 (c) the entity is a partnership and the name consists of all of the
16 partners' names; or
17 (d) the name is registered to the entity on a notified
18 State/Territory register; or
19 (e) an Act of the Commonwealth, a referring/adopting State or
20 an affected Territory, or an instrument made under such an
21 Act, specifies the name as the name of the entity; or
22 (f) the entity is a government body; or
23 (g) the entity is a notified successor in relation to the name; or
24 (h) the Minister has exempted the entity from the requirement in
25 relation to the business name and the place, under
26 subsection (4); or
27 (i) other circumstances prescribed by the regulations for the
28 purposes of this paragraph apply.

29 (3) Subsection (1) does not require an entity to display a name at a
30 place in circumstances where:

- 31 (a) it would be contrary to the law of the Commonwealth or of a
32 referring/adopting State or an affected Territory to display
33 the name at that place; or

- 1 (b) displaying the name at the place would directly or indirectly
 2 give rise to a representation that would be contrary to the law
 3 of the Commonwealth or of a referring/adopting State or an
 4 affected Territory; or
 5 (c) the use of the name by the entity would be contrary to the law
 6 of the Commonwealth or of a referring/adopting State or an
 7 affected Territory.

8 Note 1: A defendant bears an evidential burden in relation to the matters in
 9 subsections (2) and (3): see subsection 13.3(3) of the *Criminal Code*.

10 Note 2: As an example, the law of a referring/adopting State or an affected
 11 Territory may prohibit advertising in relation to gambling. A sign
 12 relating to gambling would not therefore be required to be displayed
 13 under this Act.

- 14 (4) The Minister may, by determination in writing, exempt an entity
 15 from the requirement to display a specified name at a specified
 16 place, if the Minister is satisfied that the display of that name at
 17 that place would create a serious risk to:
 18 (a) public safety; or
 19 (b) significant infrastructure such as:
 20 (i) transport infrastructure; or
 21 (ii) energy infrastructure; or
 22 (iii) communications infrastructure; or
 23 (iv) water infrastructure.

24 The determination is not a legislative instrument.

- 25 (5) Subsection (1) is an offence of strict liability.

26 Note: For strict liability, see section 6.1 of the *Criminal Code*.

27 **21 Offence—carrying on a business under a business name while**
 28 **disqualified**

- 29 (1) An entity commits an offence if it carries on a business under a
 30 business name while disqualified.

31 Penalty: 30 penalty units.

- 32 (2) Subsection (1) does not apply if:

- 33 (a) the entity is an individual and the name is the individual's
 34 name; or

Section 21

- 1 (b) the entity is a corporation and the name is the corporation's
2 name; or
3 (c) the entity is a partnership and the name consists of all of the
4 partners' names; or
5 (d) the name is registered to the entity on a notified
6 State/Territory register; or
7 (e) an Act of the Commonwealth, a referring/adopting State or
8 an affected Territory, or an instrument made under such an
9 Act, specifies the name as the name of the entity; or
10 (f) the entity is a government body; or
11 (g) the entity is a notified successor in relation to the name; or
12 (h) other circumstances prescribed by the regulations for the
13 purposes of this paragraph apply.

14 Note: A defendant bears an evidential burden in relation to the matters in
15 subsection (2): see subsection 13.3(3) of the *Criminal Code*.

16 (3) Subsection (1) is an offence of strict liability.

17 Note: For strict liability, see section 6.1 of the *Criminal Code*.

1

Part 3—Registering a business name

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22 The Business Names Register

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(1) ASIC must establish and maintain a Business Names Register.

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(2) The purpose of the Business Names Register is to enable those who engage or propose to engage with a business carried on under a business name to identify the entity carrying on the business and how the entity may be contacted.

10

11

(3) The Business Names Register may be kept in any form that ASIC considers appropriate.

12

(4) The Business Names Register is not a legislative instrument.

23 Application to register a business name

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16

(1) An entity that intends to carry on a business under a name may lodge with ASIC an application for the name to be registered to the entity as a business name.

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Note: Under section 18, it is an offence to carry on a business under an unregistered business name.

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(2) The application must:

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(a) include:

(i) details sufficient to identify the entity; and

(ii) the entity's ABN or, if an application for an ABN is pending, a statement to that effect and the reference number for the ABN application; and

(iii) the address of the entity's principal place of business in Australia; and

(iv) an address in Australia for service of documents; and

(v) the business name to which the application relates; and

(b) specify the period for which registration is sought; and

(c) specify whether the entity is disqualified.

Section 24

- 1 (3) The application:
2 (a) must be in the prescribed form; and
3 (b) must be lodged in the prescribed manner.
- 4 (4) The applicant must pay the registration fee.
- 5 (5) If an application for registration of a business name is lodged with
6 ASIC by post, it is taken to have been lodged with ASIC
7 immediately after the end of the period of 5 business days
8 beginning on the day on which it is received by ASIC.
- 9 (6) The prescribed form for an application for registration of a
10 business name must require the applicant to provide details of a
11 person's date and place of birth if it is necessary for or directly
12 related to the purposes of:
13 (a) identifying the entity to whom the business name is to be
14 registered; or
15 (b) determining whether the entity is disqualified.

16 **24 Decision to register a business name to an entity**

- 17 (1) ASIC must register the business name to the entity if ASIC is
18 satisfied that:
19 (a) the entity has an ABN; and
20 (b) the registration fee has been paid; and
21 (c) the name is available to the entity; and
22 (d) the entity is not disqualified.
- 23 (2) ASIC may request the entity in writing to give ASIC, within the
24 period specified in the request, information or a document that is of
25 a kind specified in the request and that ASIC needs to be satisfied
26 of the matters mentioned in subsection (1).
- 27 (3) If the entity does not comply with the request within the time
28 specified, ASIC may refuse the application.
- 29 (4) Subsection (3) does not limit the grounds on which ASIC may
30 refuse an application to register a business name to an entity.

25 Is a business name *available* to an entity?

A business name is *available* to an entity if:

- (a) the name is not identical or nearly identical to:
 - (i) a business name registered to another entity; or
 - (ii) a name that is reserved or registered under the *Corporations Act 2001* for another body; or
 - (iii) a name that is registered to another entity on a notified State/Territory register; or
 - (iv) if ASIC receives notice electronically from a referring/adopting State or an affected Territory of the name of a government body and the entity is not that body—that name; or
 - (v) if ASIC receives notice electronically from a referring/adopting State or an affected Territory that an Act of the State or Territory, or an instrument made under such an Act, specifies a name as the name of another entity—that name; or
 - (vi) if ASIC receives notice electronically from a Commonwealth government body of the name of that body and the entity is not that body—that name; or
 - (vii) if ASIC receives notice electronically from a body that an Act of the Commonwealth, or an instrument made under such an Act, specifies a name as the name of that body and the entity is not that body—that name; and
- (b) a name that is identical or nearly identical is not held under section 54 or a provision of the Transitional Act; and
- (c) no other entity has priority over a name that is identical or nearly identical; and
- (d) either:
 - (i) the name is not of a kind that is undesirable; or
 - (ii) the name is of a kind that is undesirable but the Minister has determined under subsection 27(2) that the name is available to the entity; and
- (e) either:
 - (i) the name is not constituted by, and does not include, a restricted word or expression; or

Section 26

- 1 (ii) the name is constituted by or includes a word or
2 expression that is restricted unless a condition is
3 satisfied, and the entity satisfies the condition.

4 **26 Identical or nearly identical names**

5 The Minister may, by legislative instrument, make rules for
6 determining whether a name is *identical* or *nearly identical* to
7 another name.

8 **27 Undesirable names**

- 9 (1) The Minister may, by legislative instrument, determine the kinds of
10 name that are undesirable for the purposes of this Act.
- 11 (2) The Minister may determine in writing that a business name
12 specified in the determination is to be available to an entity
13 specified in the determination, even though the name is of a kind
14 that is undesirable.
- 15 (3) A determination under subsection (2) is not a legislative
16 instrument.
- 17 (4) The Minister must, at least 28 days before revoking a
18 determination made under subsection (2), give notice in writing to
19 the entity specified in the determination:
20 (a) informing the entity of the Minister's intention to revoke the
21 determination; and
22 (b) setting out the Minister's reasons for revoking the
23 determination.

24 **28 Restricted words and expressions**

- 25 (1) The Minister may, by legislative instrument, determine that a word
26 or expression specified in the determination:
27 (a) is restricted; or
28 (b) is restricted in relation to a specified class of entity or
29 business unless a condition or conditions specified in the
30 determination are met.

- 1 (2) The Minister may determine in writing that a word or expression
2 specified in the determination is restricted in relation to a specified
3 entity or a specified business unless a condition or conditions
4 specified in the determination are met.
- 5 (3) A determination under subsection (2) is not a legislative
6 instrument.

7 **29 Priority**

- 8 (1) Where:
- 9 (a) 2 or more applications are lodged with ASIC for registration
10 of business names that are identical or nearly identical; and
11 (b) none of the applications is a consent application;
12 the applications take priority in the order in which they are lodged.
- 13 (2) To avoid doubt, the priority of an entity over a business name is
14 not affected by the fact that an ABN application by the entity is
15 pending.
- 16 (3) If an entity's application for registration of a business name to the
17 entity is refused, the entity's priority over the business name is not
18 affected during the review period in relation to that decision.
- 19 (4) The *review period*, in relation to a decision to refuse an application
20 by an entity for the registration of a business name to the entity, is:
21 (a) a period of 28 days beginning on the day on which the entity
22 is notified of the decision; or
23 (b) if ASIC determines a longer period under subsection (5)—
24 that longer period.
- 25 (5) ASIC may determine in writing a longer review period. The
26 determination is not a legislative instrument.
- 27 (6) ASIC must give a copy of the determination to the applicant.
- 28 (7) ASIC may refuse 2 or more applications for registration of
29 business names that are identical or nearly identical if all of the
30 applications take the same priority.

Section 30

1 **30 Refusal for failure to pay registration fee on time**

- 2 (1) This section applies if an entity lodges with ASIC an application
3 for the registration of a business name to the entity, but the entity
4 does not pay the registration fee when the application is lodged.
- 5 (2) The application is taken to have been refused if the registration fee
6 is not paid before the end of the fee payment period.
- 7 (3) The *fee payment period* begins at the time at which the application
8 is lodged and ends immediately before that time on the day 10
9 business days after the day on which the application is lodged.

10 **31 Consent applications**

11 *Consent of holder of the business name to registration by another*
12 *entity*

- 13 (1) An entity to whom a business name is registered may, by notice in
14 accordance with subsection (2), consent to the registration of the
15 business name to another entity.

16 Note: So if, for example, the entity to whom the business name is registered
17 uses the business name in relation to a business that is then sold, the
18 entity might also consent to the business name being registered to the
19 purchaser.

20 *Prescribed manner and form*

- 21 (2) The consent notice:
22 (a) must be in the prescribed form; and
23 (b) must be lodged in the prescribed manner.

24 *Availability of business name*

- 25 (3) If:
26 (a) an application under section 23 for registration of a business
27 name to an entity (the *applicant*) is lodged with ASIC; and
28 (b) each of the following notices is lodged with ASIC:
29 (i) a notice under subsection (1) by the entity to whom the
30 business name is registered consenting to the
31 registration of the business name to the applicant;

- 1 (ii) a notice under subsection 42(1) by the entity to whom
 2 the business name is registered requesting ASIC to
 3 cancel the registration of the business name to the
 4 entity;
 5 the business name is taken to be *available* to the applicant.

6 *Potential applicant may carry on a business*

- 7 (4) If an entity to whom a business name is registered gives notice
 8 under subsection (1) consenting to the registration of the business
 9 name to another entity (the *potential applicant*), the potential
 10 applicant may notify ASIC in accordance with subsection (5) that
 11 the consent has been given.
- 12 (5) The notice:
 13 (a) must be in the prescribed form; and
 14 (b) must be lodged in the prescribed manner.
- 15 (6) If the potential applicant gives notice under subsection (4), the
 16 potential applicant does not commit an offence under subsection
 17 18(1) if the potential applicant carries on a business under the
 18 business name during the period of 3 months beginning on the day
 19 on which that notice is given.

20 Note 1: A defendant bears an evidential burden in relation to the matters in
 21 subsection (6): see subsection 13.3(3) of the *Criminal Code*.

22 Note 2: Subsections (4) to (6) allow the potential applicant to trade while an
 23 application for registration of a business name is being processed.

24 **32 Disqualified entities**

- 25 (1) An entity is *disqualified* if:
 26 (a) the entity is a person disqualified from managing
 27 corporations under subsection 206B(1) of the *Corporations*
 28 *Act 2001* because the person is convicted of an offence; or
 29 (b) a person involved in the management of the entity is
 30 disqualified from managing corporations under subsection
 31 206B(1) of the *Corporations Act 2001* because the person is
 32 convicted of an offence; or
 33 (c) the entity is a person who is not disqualified under subsection
 34 206B(1) of the *Corporations Act 2001*, but is convicted of an

Section 32

- 1 offence against a law of the Commonwealth, a State, a
2 Territory or a foreign country that involves dishonesty and is
3 punishable by imprisonment for at least 3 months; or
4 (d) the entity is a person who is not disqualified under subsection
5 206B(1) of the *Corporations Act 2001*, but is convicted of an
6 offence against the law of a foreign country that is punishable
7 by imprisonment for a period of more than 12 months; or
8 (e) a person involved in the management of the entity is not
9 disqualified under subsection 206B(1) of the *Corporations*
10 *Act 2001*, but is convicted of an offence referred to in
11 paragraph (c) or (d) of this subsection.
- 12 (2) The entity is *disqualified*:
- 13 (a) in a case mentioned in paragraph (1)(a)—during the period
14 for which the entity is disqualified under subsection 206B(2)
15 of the *Corporations Act 2001*; and
16 (b) in a case mentioned in paragraph (1)(b)—during the period
17 for which the person involved in the management of the
18 entity is disqualified under subsection 206B(2); and
19 (c) in a case mentioned in paragraph (1)(c) or (d):
20 (i) if the entity does not serve a term of imprisonment—for
21 a period of 5 years after the day on which the entity is
22 convicted; or
23 (ii) if the entity serves a term of imprisonment—for a
24 period of 5 years after the day on which the entity is
25 released from prison; and
26 (d) in a case mentioned in paragraph (1)(e):
27 (i) if the person involved in the management of the entity
28 does not serve a term of imprisonment—for a period of
29 5 years after the day on which the person is convicted;
30 or
31 (ii) if the person involved in the management of the entity
32 serves a term of imprisonment—for a period of 5 years
33 after the day on which the person is released from
34 prison.
- 35 (3) The Minister may, on application in writing by a person, determine
36 that:

- 1 (a) where the person is the entity that would otherwise be
2 disqualified—the entity is not disqualified despite the
3 conviction; and
4 (b) where the person is involved in the management of an entity
5 that would otherwise be disqualified—the entity is not
6 disqualified despite the conviction.
- 7 (4) A determination under subsection (3) must be in writing but is not
8 a legislative instrument.

9 **33 Steps taken by ASIC to register a business name to an entity**

- 10 (1) ASIC registers a business name to an entity by entering in the
11 Business Names Register:
12 (a) details sufficient to identify the entity, including the entity's
13 ABN; and
14 (b) the business name; and
15 (c) the address of the entity's principal place of business in
16 Australia; and
17 (d) an address in Australia for service of documents; and
18 (e) the period for which the business name is registered to the
19 entity, including the time at which, and the day on which, the
20 period starts.
- 21 (2) The registration period for which the business name is registered to
22 the entity must be a period of either 1 year or 3 years, unless an
23 alternative registration period is determined by ASIC under
24 subsection (3) or (4).
- 25 (3) ASIC may determine an alternative registration period for the
26 registration of a business name to an entity if:
27 (a) the entity lodges a request with ASIC, in the prescribed form
28 and manner, to have an alternative registration period
29 determined; and
30 (b) the entity is a company; and
31 (c) the alternative registration period would align the day on
32 which the registration period for the registration of the
33 business name to the company would expire with the

Section 34

- 1 company's review date, as defined for the purposes of the
2 *Corporations Act 2001*.
- 3 (4) ASIC may determine an alternative registration period for the
4 registration of a business name (the *new business name*) to an
5 entity if:
- 6 (a) the entity lodges a request with ASIC, in the prescribed form
7 and manner, to have an alternative registration period
8 determined; and
 - 9 (b) another business name (the *other business name*) is
10 registered to the entity; and
 - 11 (c) the alternative registration period would align the day on
12 which the registration period for the registration of the new
13 business name to the entity would expire with the day on
14 which the registration period for the registration of the other
15 business name to the entity would expire.
- 16 (5) However, an alternative registration period must be:
- 17 (a) if the registration period would otherwise have been 1 year—
18 of no more than 18 months; and
 - 19 (b) if the registration period would otherwise have been 3
20 years—of no more than 3 years and 6 months.
- 21 (6) A determination under subsection (3) or (4) must be in writing, but
22 is not a legislative instrument.
- 23 (7) The Business Names Register may include any other details
24 prescribed, but no others.
- 25 (8) ASIC must give the entity notice in writing of:
- 26 (a) the fact that the business name has been registered to the
27 entity; and
 - 28 (b) the day and time on which the registration took effect; and
 - 29 (c) the other details entered in relation to the business name and
30 the entity in the Business Names Register.

31 **34 Refusal to register**

- 32 (1) If ASIC refuses an application for registration of a business name
33 to an entity, it must:
-

- 1 (a) give written notice to the applicant of the refusal and the
2 reasons for refusal; and
3 (b) if the applicant has paid the registration fee—refund the
4 registration fee to the applicant.
- 5 (2) If ASIC has not decided an application for registration of a
6 business name to an entity within 28 days after the application is
7 lodged, the entity may, at any time, lodge with ASIC notice that
8 the entity wishes to treat the application as having been refused.
- 9 (3) The notice under subsection (2):
10 (a) must be in the prescribed form; and
11 (b) must be lodged in the prescribed manner.
- 12 (4) If an entity lodges notice under subsection (2):
13 (a) for the purposes of Part 7 (Review), ASIC is taken to have
14 refused the entity's application for registration on the day on
15 which the notice is lodged; and
16 (b) if the entity has paid the registration fee—ASIC must refund
17 the registration fee to the applicant.
- 18 (5) For the purposes of counting the 28 days mentioned in
19 subsection (2), disregard each period (if any):
20 (a) starting on the day when ASIC requests the entity under
21 subsection 24(2) to give ASIC specified information or a
22 specified document; and
23 (b) ending at the end of the day the entity gives ASIC the
24 specified information or specified document.
25

1

2 **Part 4—Obligations to give information to ASIC**

3

4 **35 Notifying changes—entity that gives information to ASIC**

5

(1) If:

6

(a) an entity gives information to ASIC; and

7

(b) the information is recorded in relation to a business name in the Business Names Register; and

8

9

(c) circumstances change so that the information is no longer correct;

10

11

the entity must lodge with ASIC notice of the change within 28 days after becoming aware of it.

12

13

(2) The notice:

14

(a) must be in the prescribed form; and

15

(b) must be lodged in the prescribed manner.

16

36 Obligation to notify ASIC if entity becomes disqualified

17

(1) If an entity becomes disqualified after registration of a business name to the entity, the entity must immediately lodge with ASIC notice of the disqualification.

18

19

20

(2) The notice:

21

(a) must be in the prescribed form; and

22

(b) must be lodged in the prescribed manner.

23

37 Obligation to give ASIC information if requested

24

(1) ASIC may request an entity (other than a government body) to give ASIC information relevant for the purposes of establishing or maintaining the Business Names Register.

25

26

27

(2) A request under subsection (1) to an entity:

28

(a) is to be made by notice in writing to the entity; and

29

(b) must specify:

-
- 1 (i) the information the entity is to give; and
2 (ii) the period within which the entity is to give the
3 information.
- 4 The period specified under subparagraph (b)(ii) must be of at least
5 28 days, beginning on the day on which the notice is given.
- 6 (3) If ASIC requests an entity to give information under this section,
7 the entity must comply with the request.
- 8 Penalty: 5 penalty units.
- 9 (4) Subsection (3) is an offence of strict liability.
- 10 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 11 (5) The information must be given by lodging a response with ASIC in
12 the prescribed form and manner.
- 13 (6) If:
- 14 (a) an entity fails to comply with a request given under this
15 section; and
- 16 (b) ASIC reasonably believes that information on the Business
17 Names Register to which the request relates is not correct;
18 ASIC may delete, correct or annotate the information on the
19 Register.
- 20 (7) If:
- 21 (a) an entity gives ASIC information in purported compliance
22 with a request given under this section; and
- 23 (b) ASIC reasonably believes that the information is incorrect;
24 ASIC may decide not to include the information on the register, or
25 to include the information in a corrected or annotated form.
- 26 (8) If ASIC deletes, decides not to include, corrects or annotates
27 information under subsection (6) or (7), ASIC must give the entity
28 to whom the business name is registered notice in writing:
- 29 (a) setting out the action ASIC has taken; and
30 (b) in the case of a correction or annotation, setting out the
31 details of that correction or annotation; and
32 (c) giving ASIC's reasons for its decision.
-

Section 38

1 **38 Notifying ASIC of bankruptcy, insolvency etc.**

2 (1) If:

- 3 (a) a business name is registered to an entity; and
4 (b) a person is appointed or authorised to act as a debtor
5 representative of the entity;
6 the person must lodge with ASIC notice of that fact in accordance
7 with subsection (2).

8 (2) The notice:

- 9 (a) must be given to ASIC within 28 days after the appointment
10 or authorisation; and
11 (b) must identify who (if anyone) will carry on a business under
12 the business name while the person is appointed or
13 authorised; and
14 (c) must be in the prescribed form; and
15 (d) must be lodged in the prescribed manner.

16 (3) In this section:

17 ***debtor representative*** means:

- 18 (a) a trustee in bankruptcy; or
19 (b) a liquidator within the meaning given by subsection 6(1) of
20 the *Income Tax Assessment Act 1936*; or
21 (c) a receiver; or
22 (d) a controller (within the meaning of section 9 of the
23 *Corporations Act 2001*); or
24 (e) an administrator appointed to an entity under Division 2 of
25 Part 5.3A of the *Corporations Act 2001*; or
26 (f) a person appointed, or authorised, under a law of the
27 Commonwealth, or of a State or Territory, to manage the
28 affairs of an entity because it is unable to pay all its debts as
29 and when they become due and payable; or
30 (g) an administrator of a deed of company arrangement executed
31 by the entity; or
32 (h) a foreign representative in respect of a foreign proceeding
33 that has been recognised for the purposes of the
34 *Cross-Border Insolvency Act 2008*.

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trustee in bankruptcy means:

- (a) in relation to a bankruptcy—the trustee of the estate of the bankrupt; or
- (b) in relation to a composition or scheme of arrangement under Division 6 of Part IV of the *Bankruptcy Act 1966*—the trustee of the composition or scheme of arrangement; or
- (c) in relation to a debtor whose property is subject to control under Division 2 of Part X of the *Bankruptcy Act 1966*—the controlling trustee in relation to the debtor under that Part of that Act; or
- (d) in relation to a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*—the trustee of the agreement; or
- (e) in relation to the estate of a deceased person in respect of which an order has been made under Part XI of the *Bankruptcy Act 1966*—the trustee of the estate.

39 Notifying ASIC of appointment of a legal personal representative

(1) If:

- (a) a business name is registered to an entity that is an individual; and
- (b) the individual dies; and
- (c) one of the following is granted to a person (the *legal personal representative*):
 - (i) probate of the will of the deceased;
 - (ii) letters of administration of the estate of the deceased;
 - (iii) any other similar grant;

the legal personal representative must lodge with ASIC notice of the grant within 28 days after the grant is made.

(2) The notice:

- (a) must be in the prescribed form; and
- (b) must be lodged in the prescribed manner.

(3) If ASIC receives notice under this section:

- (a) ASIC must (if it has not already done so) register the Business Name to the estate of the deceased; and

Section 40

- 1 (b) enter the details of the legal personal representative on the
2 Business Names Register.

3 **40 Notification by successor in relation to a deceased estate**

- 4 (1) If:
5 (a) a business name is registered to an entity that is an
6 individual; and
7 (b) the individual dies; and
8 (c) none of the following has been granted to a person:
9 (i) probate of the will of the deceased;
10 (ii) letters of administration of the estate of the deceased;
11 (iii) any other similar grant; and
12 (d) there are reasonable grounds for concluding that an entity
13 will inherit assets formerly used by the deceased in carrying
14 on a business under the business name;
15 the entity may lodge with ASIC notice of that fact.
- 16 (2) The notice:
17 (a) must be in the prescribed form; and
18 (b) must be lodged in the prescribed manner.
- 19 (3) ASIC must register the Business Name to the estate of the
20 deceased.
- 21 (4) ASIC may enter the name of an entity as a notified successor in
22 relation to a business name, and other prescribed details, if the
23 entity lodges notice with ASIC in accordance with subsections (1)
24 and (2).
- 25 (5) ASIC may refuse to enter the name of an entity as a notified
26 successor in relation to a business name if ASIC is not satisfied
27 that there are reasonable grounds for concluding that the entity will
28 inherit assets formerly used by the deceased in carrying on a
29 business under the business name.
- 30 (6) ASIC must remove the entry for a notified successor in relation to
31 a business name from the Business Names Register if ASIC
32 receives notice in relation to the business name under section 39.

- 1 (7) If one or more entities is noted on the Business Names Register as
2 a notified successor, ASIC is taken to satisfy an obligation under
3 this Act or the Transitional Act to give notice to the entity to whom
4 the business name is registered if ASIC gives notice to each
5 notified successor.

6 **41 Federal Court may order information be given to ASIC**

- 7 (1) If an entity has failed to comply with any provision of this Act or
8 the Transitional Act that requires the entity to lodge with ASIC any
9 information, ASIC may give the entity a written notice requiring
10 the entity to comply with the requirement within 10 business days
11 after the notice is given.
- 12 (2) If the entity does not comply with the notice within that period, the
13 Federal Court may, on an application by ASIC, make an order
14 directing any of the following persons to comply with the
15 requirement or request:
- 16 (a) if the entity is a person—the entity;
 - 17 (b) if the entity is a body corporate—a director, secretary or
18 senior manager of the body corporate;
 - 19 (c) if the entity is a partnership or the trustees of a trust—a
20 partner or trustee;
 - 21 (d) if the entity is an unincorporated association—a member of
22 the committee of management of the association;
 - 23 (e) in the case of a joint venture, an individual who is a joint
24 venture entity or involved in the management of a joint
25 venture entity.
- 26 (3) In paragraph (2)(e), *joint venture* and *joint venture entity* have the
27 same meaning as in Part 10.
- 28 (4) The order may provide that all costs of and incidental to the
29 application are to be borne by the person.
30

Section 42

1

2 **Part 5—Cancelling the registration of a business**
3 **name**

4

5 **42 Cancellation—request by entity to whom business name is**
6 **registered**

- 7 (1) ASIC must cancel the registration of a business name to an entity if
8 the entity lodges a notice with ASIC requesting ASIC to do so.
- 9 (2) The notice:
10 (a) must be in the prescribed form; and
11 (b) must be lodged in the prescribed manner.
- 12 (3) ASIC must, at least 28 days before cancelling the registration, give
13 notice in writing to the entity informing the entity that ASIC
14 intends to cancel the registration.

15 **43 Cancellation—ASIC becomes aware of matter that would have**
16 **affected registration decision**

- 17 (1) ASIC may cancel the registration of a business name to an entity if:
18 (a) ASIC becomes aware of a matter after the business name is
19 registered to the entity; and
20 (b) ASIC is satisfied that, had it known of the matter at the time
21 the business name was registered to the entity, ASIC would
22 not have registered the business name to the entity; and
23 (c) ASIC is not satisfied that there are exceptional circumstances
24 justifying the continued registration of the business name.
- 25 (2) ASIC must, at least 28 days before cancelling the registration, give
26 notice in writing to the entity informing the entity:
27 (a) of the matter that has, since registration, become known to
28 ASIC; and
29 (b) that ASIC will cancel the registration of the business name
30 unless the entity satisfies ASIC that there are exceptional

1 circumstances justifying the continued registration of the
2 business name.

3 **44 Cancellation—entity is disqualified**

- 4 (1) ASIC must cancel the registration of a business name to an entity if
5 ASIC becomes aware that the entity is disqualified.
- 6 (2) ASIC must, at least 28 days before cancelling the registration, give
7 notice in writing to the entity informing the entity that:
- 8 (a) ASIC has formed the view that the entity is disqualified; and
9 (b) ASIC proposes to cancel the registration of the business
10 name on that basis.

11 **45 Cancellation—Ministerial determination revoked**

- 12 (1) ASIC must cancel the registration of a business name to an entity if
13 a Ministerial determination in relation to the availability of the
14 business name to the entity made under subsection 27(2) is
15 revoked.
- 16 (2) ASIC must, at least 28 days before cancelling the registration, give
17 notice in writing to the entity informing the entity that:
- 18 (a) the determination in relation to the availability of the
19 business name to the entity made under subsection 27(2) has
20 been revoked; and
21 (b) ASIC proposes to cancel the registration of the business
22 name on that basis.

23 **46 Cancellation—failure to satisfy a condition of registration**

- 24 (1) ASIC must cancel the registration of a business name to an entity
25 if:
- 26 (a) the name contains a word or expression that, under an
27 instrument made under paragraph 28(1)(b) or subsection
28 28(2), is restricted unless a condition is satisfied; and
29 (b) the entity ceases to satisfy the condition.
- 30 (2) ASIC must, at least 28 days before cancelling the registration, give
31 notice in writing to the entity informing the entity that:

Section 47

- 1 (a) ASIC has formed the view that the entity ceases to satisfy the
2 condition; and
3 (b) ASIC proposes to cancel the registration of the business
4 name on that basis.

5 **47 Cancellation—entity not carrying on a business under the**
6 **business name**

- 7 (1) ASIC may cancel the registration of a business name to an entity if:
8 (a) ASIC is satisfied that:
9 (i) the entity is not carrying on a business under the
10 business name; and
11 (ii) the entity has not, in the immediately preceding period
12 of 3 months, carried on a business under the business
13 name; and
14 (b) the entity is not a government body; and
15 (c) ASIC is not satisfied that there are exceptional circumstances
16 justifying the failure to carry on a business under the business
17 name during that 3 month period.
- 18 (2) ASIC must, at least 28 days before cancelling the registration, give
19 notice in writing to the entity:
20 (a) informing the entity that ASIC intends to cancel the
21 registration; and
22 (b) inviting the entity to give ASIC evidence that:
23 (i) it is carrying on, or has within the immediately
24 preceding period of 3 months carried on, a business
25 under the business name; or
26 (ii) there are exceptional circumstances justifying the failure
27 to carry on a business under the business name during
28 that period.

29 **48 Cancellation—failure to provide information**

- 30 (1) ASIC may cancel the registration of a business name to an entity if:
31 (a) either:

-
- 1 (i) the entity is obliged under section 35 to notify ASIC of
2 a change to information and the entity fails to do so
3 within the period required under that section; or
4 (ii) ASIC requests the entity to give ASIC information
5 under section 37 and the entity fails to do so within the
6 period specified in the request; and
7 (b) ASIC is satisfied that the failure to provide the information
8 affects the integrity of the Business Names Register; and
9 (c) ASIC is not satisfied that there are exceptional circumstances
10 justifying the failure to give the information.
- 11 (2) ASIC must, at least 28 days before cancelling the registration, give
12 notice in writing to the entity informing the entity that ASIC will
13 cancel the registration unless:
14 (a) the information is given to ASIC within that 28 day period;
15 or
16 (b) the entity satisfies ASIC that there are exceptional
17 circumstances justifying the failure to give the information.

18 **49 Cancellation—registration has expired**

- 19 (1) ASIC must, at least 28 days before the registration period for the
20 registration of a business name to an entity expires, remind the
21 entity in writing of the time and day on which the registration
22 period will expire.
- 23 (2) Failure to give a reminder in accordance with subsection (1) does
24 not affect ASIC's power to cancel the registration if not renewed.
- 25 (3) If the registration period for the registration of a business name to
26 an entity expires, ASIC may give notice in writing to the entity that
27 ASIC will cancel the registration unless it is renewed.
- 28 (4) ASIC may cancel the registration of a business name to an entity
29 under this section with effect on the later of:
30 (a) the end of a period of 3 months beginning when the
31 registration expires; and
32 (b) the end of a period of 6 weeks beginning on the day on which
33 notice is given in accordance with subsection (3).

Section 50

- 1 (5) To avoid doubt, a business name continues to be registered to an
2 entity after the expiry of the registration period for the registration
3 unless the registration is cancelled.

4 **50 Cancellation—entity to whom business name registered ceases to**
5 **exist**

- 6 ASIC must cancel the registration of a business name to an entity
7 (other than an individual) if ASIC is reasonably satisfied that the
8 entity no longer exists.

9 **51 Cancellation—business name used in infringement of trade mark**

- 10 (1) To avoid doubt, the relief that a court may grant in an action for an
11 infringement of a registered trade mark includes an order that the
12 registration of a business name to an entity must be cancelled.
- 13 (2) ASIC must cancel the registration of the business name to the
14 entity if:
- 15 (a) a copy of the court's order is lodged with ASIC; and
16 (b) ASIC is satisfied, within a reasonable period after the order is
17 lodged, that:
- 18 (i) no application for the stay of the order is pending; and
19 (ii) no appeal of the order is pending; and
20 (iii) the order is not stayed; and
21 (iv) the order has not been overturned on appeal.
- 22 (3) Nothing in this section limits any orders that a court may make (in
23 an action for an infringement of trade mark or otherwise) in
24 relation to the registration of a business name, or ASIC's
25 obligations under such orders.

26 **52 Notification of cancellation of business name**

- 27 If ASIC cancels the registration of a business name to an entity,
28 ASIC must give written notice of the decision to the entity and
29 ASIC's reasons for the decision.

53 Notice requirements in relation to partnerships, unincorporated associations, trusts and joint ventures

- 1
2
- 3 (1) Where ASIC is required under a provision of this Part to give
4 notice to a partnership, ASIC must also give copy of the notice to
5 each partner within the partnership in relation to whom ASIC has
6 details.
- 7 (2) Where ASIC is required under a provision of this Part to give
8 notice to an unincorporated association or body, ASIC must also
9 give a copy of the notice to each member of the committee of
10 management of the association or body in relation to whom ASIC
11 has details.
- 12 (3) Where ASIC is required under a provision of this Part to give
13 notice to a trust and there are 2 or more trustees of the trust, ASIC
14 must also give a copy of the notice to each trustee in relation to
15 whom ASIC has details.
- 16 (4) Where ASIC is required under a provision of this Part to give
17 notice to a joint venture, ASIC must also give a copy of the notice
18 to each joint venture entity in relation to whom ASIC has details.
- 19 (5) In subsection (4), *joint venture* and *joint venture entity* have the
20 same meaning as in Part 10.

54 Business name held during review period for cancellation decision

- 21
22
- 23 (1) If ASIC cancels the registration of a business name to an entity:
24 (a) the business name is held during the review period in relation
25 to that decision; and
26 (b) the entity does not commit an offence under subsection 18(1)
27 if the entity carries on a business under the business name
28 during the review period in relation to that decision.

29 Note: A defendant bears an evidential burden in relation to the matters in
30 paragraph (1)(b): see subsection 13.3(3) of the *Criminal Code*.

- 31 (2) The *review period*, in relation to a decision to cancel the
32 registration of a business name to an entity, is:

Section 54

- 1 (a) a period of 4 months beginning on the day on which the
2 entity is notified of the decision under section 52; or
3 (b) if ASIC determines a longer period under subsection (3)—
4 that longer period.
- 5 (3) ASIC may determine in writing a longer review period. The
6 determination is not a legislative instrument.
- 7 (4) ASIC must give a copy of the determination to the entity.
8

1

2 **Part 6—Renewing the registration of a business**

3 **name**

4

5 **55 Application to renew registration**

- 6 (1) An entity may renew the registration of a business name to the
- 7 entity for a period of 1 year or 3 years by lodging the renewal fee
- 8 appropriate to that period with ASIC.
- 9 (2) An entity may lodge an application with ASIC to have the
- 10 registration of a business name to the entity renewed for an
- 11 alternative registration period.
- 12 (3) The application:
- 13 (a) must be in the prescribed form; and
- 14 (b) must be lodged in the prescribed manner; and
- 15 (c) must specify the period for which renewal is sought; and
- 16 (d) must be accompanied by the renewal fee appropriate to the
- 17 period sought.
- 18 (4) ASIC may determine an alternative registration period for the
- 19 renewal of the registration of a business name to an entity if:
- 20 (a) the entity is a company; and
- 21 (b) the alternative registration period would align the day on
- 22 which the registration period for the registration of the
- 23 business name to the company would expire with the
- 24 company's review date, as defined for the purposes of the
- 25 *Corporations Act 2001*.
- 26 (5) ASIC may determine an alternative registration period for the
- 27 renewal of the registration of a business name (the ***renewed***
- 28 ***business name***) to an entity if:
- 29 (a) another business name (the ***other business name***) is
- 30 registered to the entity; and
- 31 (b) the alternative registration period would align the day on
- 32 which the registration period for the registration of the

Section 55

- 1 renewed business name to the entity would expire with the
2 day on which the registration period for the registration of the
3 other business name to the entity would expire.
- 4 (6) A determination under subsection (4) or (5) must be in writing, but
5 is not a legislative instrument.
- 6 (7) However, an alternative registration period must be:
7 (a) if the registration period would otherwise have been 1 year—
8 of no more than 18 months; and
9 (b) if the registration period would otherwise have been 3
10 years—of no more than 3 years and 6 months.
- 11 (8) An entity may:
12 (a) renew the registration of a business name to the entity under
13 subsection (1); or
14 (b) make an application under subsection (2);
15 no earlier than 2 months before the expiry of the registration period
16 for the business name.
- 17 (9) The period of registration on renewal begins immediately after the
18 end of the immediately preceding registration period.
19

Part 7—Review**56 Reviewable decisions**

A decision specified in an item in column 1 of the table, made under a provision specified in that item in column 2 of the table, is *reviewable* on the application of an entity specified in that item in column 3 of the table.

Reviewable decisions			
Item	Column 1 Decision	Column 2 Provision	Column 3 Who may seek review
1	Registration of a business name to an entity	Section 24	an entity in relation to whom there is a real risk of substantial detriment because of the registration of the business name
2	Refusal to register a business name to an entity	Section 24	the entity
3	Refusal to determine that a business name of a kind that is undesirable is available to an entity	Subsection 27(2)	the entity
4	Revocation of determination that a business name of a kind that is undesirable is available to an entity	Subsection 27(2)	the entity
5	Determination that a word or expression specified in the determination is restricted in relation to a specified entity or specified business unless a condition or conditions specified in the determination are met	Subsection 28(2)	(a) where an entity is specified—that entity; and (b) where a business is specified—the entity carrying on that business

Section 56

Reviewable decisions			
Item	Column 1 Decision	Column 2 Provision	Column 3 Who may seek review
6	Determination of a longer review period (priority of an entity's application for registration)	Subsection 29(5)	any entity that, but for the determination, would have priority over a name that is identical, or nearly identical to the name to which the determination relates
7	Refusal to determine a longer review period (priority of an entity's application for registration)	Subsection 29(5)	the entity
8	Refusal to determine that an entity that would otherwise be disqualified is not to be disqualified	Subsection 32(3)	the entity
9	Refusal to determine an alternative registration period in relation to the registration of a business name to an entity	Subsection 33(3) or (4)	the entity
10	Revocation of a determination of an alternative registration period in relation to the registration of a business name to an entity	Subsection 33(3) or (4)	the entity
11	Deletion, refusal to include, correction or annotation of information in relation to a business name on the Business Names Register	Subsection 37(6) or (7)	the entity to whom the business name is registered
12	Refusal to enter an entity's name on the Business Names Register as a notified successor in relation to a	Subsection 40(5)	the entity

Section 57

Reviewable decisions			
Item	Column 1 Decision	Column 2 Provision	Column 3 Who may seek review
	business name		
13	Cancellation of the registration of a business name to an entity	Section 43, 47 or 48	the entity
14	Refusal to determine a longer review period (holding business name after registration to an entity cancelled)	Subsection 54(3)	the entity
15	Revocation of a determination of an alternative registration period in relation to the renewal of the registration of a business name to an entity	Subsection 55(4) or (5)	the entity
16	Refusal to decide that it is appropriate to excise details in relation to an entity from disclosure	Subsection 60(6)	the entity
17	Refusal to receive a document submitted by an entity	Subsection 69(1) or (5)	the entity

1 **57 Internal review of certain decisions**

- 2 (1) If a reviewable decision is made by ASIC other than as a delegate
3 of the Minister, an entity on whose application the decision is
4 reviewable may lodge an application with ASIC (the *review body*)
5 for review of the decision.
- 6 (2) If a reviewable decision is made by an ASIC member or staff
7 member as a delegate of the Minister, an entity on whose
8 application the decision is reviewable may lodge an application
9 with the Minister (the *review body*) for review of the decision.
- 10 (3) An application for review of a decision:

Section 57

- 1 (a) must set out the reasons for making the application; and
2 (b) must be in the prescribed form; and
3 (c) must be lodged in the prescribed manner.
- 4 (4) An application for review of a decision must be lodged:
5 (a) in the case of a decision of the kind specified in item 1 of the
6 table in section 56—within 15 months after the day on which
7 the business name is registered to the entity; or
8 (b) in any other case—within 28 days after the entity is notified
9 of the decision.
- 10 (5) Despite subsection (4), an application for review of a decision may
11 be lodged within such longer period as the review body allows.
- 12 (6) After an application for review of a decision is lodged with a
13 review body, the review body must review the decision and:
14 (a) affirm the decision under review; or
15 (b) vary the decision under review; or
16 (c) set aside the decision under review and make a decision in
17 substitution for it.
- 18 (7) A decision of the review body under subsection (6) takes effect:
19 (a) on a day, provided in the decision, that is after the decision is
20 made; or
21 (b) if a day is not so provided—on the day on which the decision
22 is made.
- 23 (8) If the review body has not decided an application by an entity for
24 review of a decision:
25 (a) where the review body is ASIC—within 28 days after the
26 application is lodged; and
27 (b) where the review body is the Minister—within 60 days after
28 the application is lodged;
29 the entity may, at any time, give the review body written notice
30 that the entity wishes to treat the decision as having been affirmed.
- 31 (9) For the purposes of section 58, if an entity gives notice under
32 subsection (8), the review body is taken to have refused the entity's
33 application on the day on which the notice is given.

58 Administrative review of certain decisions

- 1
- 2 (1) An application may be made to the Administrative Appeals
3 Tribunal for review of a decision made or taken to have been made
4 by ASIC or the Minister under section 57.
- 5 (2) The application may be made by any entity that could have lodged
6 an application under subsection 57(1) in relation to the decision in
7 relation to which the decision under section 57 was made or taken
8 to have been made.
- 9 (3) An application may be made to the Administrative Appeals
10 Tribunal for review of one of the following decisions made
11 personally by the Minister:
- 12 (a) a refusal to determine under subsection 27(2) that a business
13 name of a kind that is undesirable is available to an entity;
- 14 (b) the revocation of a determination made under subsection
15 27(2) that a business name of a kind that is undesirable is
16 available to an entity;
- 17 (c) a determination made under subsection 28(2) that a word or
18 expression specified in the determination is restricted in
19 relation to a specified entity or specified business unless a
20 condition or conditions specified in the determination are
21 met.
- 22 (4) The application may be made by:
- 23 (a) in the case of a decision mentioned in paragraph (3)(a) or
24 (b)—the entity referred to in that paragraph; and
- 25 (b) in the case of a determination mentioned in paragraph (3)(c)
26 in relation to a specified entity—that entity; and
- 27 (c) in the case of a determination mentioned in paragraph (3)(c)
28 in relation to a specified business—the entity carrying on the
29 business specified.

59 Payment of registration fee if business name to be registered as result of review

- 30
- 31
- 32 (1) This section applies if, as a result of a review of a decision carried
33 out under section 57 or 58 or by a court, a decision is made (the

Part 7 Review

Section 59

- 1 *review decision*) that a business name is to be registered to an
2 entity.
- 3 (2) The entity must pay the registration fee.
- 4 (3) The registration fee is payable at the end of a period of 5 business
5 days beginning on the day on which the entity is notified of the
6 review decision.
7

Part 8—Accessing the Business Names Register**60 Access to certain information in the Business Names Register by request**

- (1) A person may lodge an application with ASIC for a copy of:
- (a) the entry in the Business Names Register relating to a particular business name; or
 - (b) the entries in the Business Names Register relating to a particular entity.
- (2) The application:
- (a) must be in the prescribed form; and
 - (b) must be lodged in the prescribed manner; and
 - (c) must be accompanied by the application fee.
- (3) If a person lodges an application under subsection (1), ASIC must give the person a copy of the entry or entries sought.
- (4) However, before a copy of an entry is given to a person, ASIC must excise from it:
- (a) any detail which under the regulations made under subsection (5) is to be excised; and
 - (b) any detail that ASIC is prohibited from disclosing under subsection (6).
- (5) The regulations may provide that details of a kind specified in the regulations are to be excised from a copy of an entry before it is given to any person, or any person of a prescribed class.
- (6) If:
- (a) a person lodges with ASIC an application for a detail in relation to a business name or the person not to be disclosed; and
 - (b) ASIC is satisfied that it is not appropriate to disclose the detail;
- ASIC must not disclose the detail under this section.

Section 61

- 1 (7) An application mentioned in paragraph (6)(a):
2 (a) must be in the prescribed form; and
3 (b) must be lodged in the prescribed manner.

4 **61 Certain information to be publicly available**

5 In addition to providing copies under section 60, ASIC must make
6 publicly available on the internet or otherwise free of charge any
7 details of a kind prescribed by the regulations.

8 **62 Certain information to be made available to government bodies**

- 9 (1) In addition to providing copies under section 60 and making details
10 publicly available under section 61, ASIC must make available
11 details of a kind prescribed by the regulations:
12 (a) to a government body, if the body has requested ASIC to
13 make the information available for one or more of the
14 following the purposes:
15 (i) the enforcement of the criminal law;
16 (ii) the enforcement of a law imposing a pecuniary penalty;
17 (iii) the protection of the public revenue;
18 (iv) the exercise of the powers or the performance of the
19 functions of that body in relation to consumer
20 protection;
21 (v) the exercise of the powers or the performance of the
22 functions of that body in relation to anti-discrimination;
23 (vi) the exercise of the powers or the performance of the
24 functions of that body in relation to workers'
25 compensation;
26 (vii) the exercise of the powers or the performance of the
27 functions of that body in relation to insolvency or
28 bankruptcy;
29 (viii) the exercise of the powers or the performance of the
30 functions of that body in relation to licences;
31 (ix) maintaining a notified State/Territory register; and
32 (b) to an intelligence or security agency, if the agency has
33 requested ASIC to provide the information for the purposes

Section 62

- 1 of the exercise of the powers or the performance of the
2 functions of the agency in relation to intelligence or security.
- 3 (2) The details must be made available electronically and without
4 charge.
5

1

Part 9—Administration

2
3

63 ASIC's functions and powers

4

- 5 (1) ASIC has the functions and powers conferred on it by or under this
6 Act and the Transitional Act.
- 7 (2) ASIC has power to do whatever is necessary for or in connection
8 with, or reasonably incidental to, the performance of its functions
9 under this Act and the Transitional Act.
- 10 (3) Subject to the ASIC Act, ASIC has the general administration of
11 this Act and the Transitional Act.

64 Directions by Minister

12

- 13 (1) The Minister may give ASIC a written direction about policies it
14 should pursue, or priorities it should follow, in performing or
15 exercising any of its functions or powers under this Act or the
16 Transitional Act. The direction is not a legislative instrument.
- 17 (2) The Minister must not give a direction under subsection (1) unless
18 he or she has:
- 19 (a) notified ASIC in writing that he or she is considering giving
20 the direction; and
- 21 (b) given the Chairperson of ASIC an adequate opportunity to
22 discuss with the Minister the need for the proposed direction.
- 23 (3) The Minister must not give a direction under subsection (1) about a
24 particular case.
- 25 (4) ASIC must comply with a direction under subsection (1).
- 26 (5) The Minister must cause a copy of an instrument under
27 subsection (1):
- 28 (a) to be published in the *Gazette* within 21 days after the
29 instrument is made; and

- 1 (b) to be laid before each House of the Parliament within 15
2 sitting days of that House after the publication;
3 but failure of the Minister to do so does not affect the instrument's
4 validity.

5 **65 Arrangements with States and Territories**

- 6 (1) ASIC may, with the consent of the Minister, enter into an
7 agreement or arrangement with a State or Territory for the
8 performance of functions or the exercise of powers by ASIC as an
9 agent of the State or Territory.
- 10 (2) ASIC has such functions and powers as are referred to it in such an
11 agreement or arrangement. However, ASIC is not under a duty to
12 perform such functions or exercise such powers.
- 13 (3) ASIC is not subject to any directions of the Minister in relation to:
14 (a) entering into an agreement or arrangement under
15 subsection (1); or
16 (b) performing functions or exercising powers referred to in
17 subsection (2).

18 **66 ASIC may arrange for use of computer programs to make** 19 **decisions**

- 20 (1) ASIC may arrange for the use, under ASIC's control, of computer
21 programs for any purposes for which ASIC may make decisions
22 under this Act or the Transitional Act, other than a decision under
23 subsection 57(6) of this Act or subitem 28(6) of Schedule 1 to the
24 Transitional Act.
- 25 (2) A decision made by the operation of a computer program under an
26 arrangement made under subsection (1) is taken to be a decision
27 made by ASIC.

28 **67 Forms for documents to be lodged with ASIC**

- 29 (1) A document that this Act or the Transitional Act requires to be
30 lodged with ASIC in a prescribed form must:

Section 68

- 1 (a) if a form for the document is prescribed in the regulations
2 made under that Act:
3 (i) be in the prescribed form; and
4 (ii) include the information, statements, explanations or
5 other matters required by the form; and
6 (iii) be accompanied by any other material required by the
7 form; or
8 (b) if a form for the document is not prescribed in the regulations
9 made under that Act but ASIC has approved a form for the
10 document:
11 (i) be in the approved form; and
12 (ii) include the information, statements, explanations or
13 other matters required by the form; and
14 (iii) be accompanied by any other material required by the
15 form.
- 16 (2) A reference in this Act or the Transitional Act to a document that
17 has been lodged (being a document to which subsection (1)
18 applies), includes, unless a contrary intention appears, a reference
19 to any other material lodged with the document as required by the
20 relevant form.
- 21 (3) If:
22 (a) this Act or the Transitional Act requires a document to be
23 lodged with ASIC in a prescribed form; and
24 (b) a provision of this Act or the Transitional Act either
25 specifies, or provides for regulations to specify, information,
26 statements, explanations or other matters that must be
27 included in the document, or other material that must
28 accompany the document;
29 that provision is not taken to exclude or limit the operation of
30 subsection (1) in relation to the prescribed form (and so the
31 prescribed form may also require information etc. to be included in
32 the form or material to accompany the form).

33 **68 Manner in which documents to be lodged with ASIC**

- 34 A document that this Act or the Transitional Act requires to be
35 lodged with ASIC in a prescribed manner must:
-

- 1 (a) if a manner in which the document is to be lodged is
 2 prescribed in the regulations made under that Act—be lodged
 3 in the prescribed manner; and
 4 (b) if a manner in which the document is to be lodged is not
 5 prescribed in the regulations under that Act but ASIC has
 6 approved a manner for lodging the document—be lodged in
 7 the approved manner.

8 **69 ASIC may refuse to receive document etc.**

9 *ASIC may refuse to receive document etc.*

- 10 (1) If ASIC considers that a document submitted to ASIC under this
 11 Act or the Transitional Act:
 12 (a) contains matter that, in a material particular, is false or
 13 misleading in the form or context in which it is included; or
 14 (b) is incomplete; or
 15 (c) is to be lodged in a prescribed form or in a prescribed manner
 16 under this Act or the Transitional Act and is not submitted in
 17 that form or manner; or
 18 (d) otherwise contravenes this Act or the Transitional Act; or
 19 (e) contains an error, alteration or erasure;
 20 ASIC may refuse to receive the document and may make a request
 21 under subsection (2).
 22 Note: The effect of ASIC refusing to receive the document is that the
 23 document is not lodged with ASIC (see subsection (6)).
 24 (2) For the purposes of subsection (1), ASIC may request:
 25 (a) that the document be appropriately amended or completed
 26 and resubmitted; or
 27 (b) that a fresh document be submitted in its place; or
 28 (c) if the document is incomplete—that a supplementary
 29 document in the prescribed form be lodged.

30 *Notice to provide further document or information*

- 31 (3) ASIC may give a written notice to an entity that submits a
 32 document (the **first document**) under this Act or the Transitional
 33 Act, requiring the entity to:

Section 70

- 1 (a) give to ASIC any other document; or
2 (b) give to ASIC any information;
3 that ASIC considers necessary in order to form an opinion as to
4 whether it may refuse to receive the first document.

5 *Notice must specify day by which entity must comply*

- 6 (4) The notice must specify the day by which the entity must comply
7 with the notice (which must be a reasonable period after the notice
8 is given). ASIC may specify a later day by giving a written notice
9 to the entity.

10 *Requirement to comply with notice*

- 11 (5) If the entity does not comply with the notice within the time
12 specified in the notice, ASIC may refuse the first document.

13 *Consequences of refusal to receive*

- 14 (6) If ASIC refuses to receive a document, it is taken never to have
15 been lodged with ASIC.

16 **70 Fees are payable to ASIC on behalf of the Commonwealth**

17 Fees are payable to ASIC on behalf of the Commonwealth.

18 **71 When is an application fee fully paid?**

19 ASIC may, by legislative instrument, determine the circumstances
20 in which fees are taken to be fully paid.

21 **72 Waiver and refund of fees**

22 Nothing in this Act, the Transitional Act or the *Business Names*
23 *Registration (Fees) Act 2011* prevents ASIC, on behalf of the
24 Commonwealth, from:

- 25 (a) waiving or reducing, in a particular case or in particular
26 classes of cases, fees that would otherwise be payable; or
27 (b) refunding, in whole or in part, in a particular case or in
28 particular classes of cases, fees.

73 Address for receipt of notices

If a business name is registered to an entity, a notice under this Act and the Transitional Act may be given to the entity by:

- (a) leaving it at, or sending it by pre-paid post to, the address shown in the Business Names Register as the address for service; or
- (b) if there is an email address on the Business Names Register for the entity, and the entity has given its consent to the use of that address in receipt of notices—sending it to that email address.

74 ASIC may destroy or dispose of certain documents

ASIC may destroy or otherwise dispose of any document that is lodged with ASIC under this Act or the Transitional Act, or otherwise given to ASIC under this Act or the Transitional Act, if:

- (a) ASIC considers that it is no longer necessary or desirable to retain it; and
- (b) either of the following apply:
 - (i) it has been in ASIC's possession for the period prescribed by the regulations;
 - (ii) an electronic copy of the document is retained by ASIC.

75 ASIC may issue formal warning

If ASIC has reasonable grounds to believe that an entity has contravened a provision of this Act, ASIC may, by written notice given to the entity:

- (a) inform the entity of that fact; and
- (b) warn the entity of the action that may be taken by ASIC under this Act in response to the contravention.

76 Interaction with Australian Business Register

(1) ASIC may disclose information to the Registrar of the Australian Business Register for the purposes of:

- (a) identifying business names registered to an entity on the Business Names Register; and

Section 77

- 1 (b) ensuring consistency between that Australian Business
2 Register and the Business Names Register in details
3 registered on those registers.
- 4 (2) ASIC may record and use information disclosed to ASIC by the
5 Registrar of the Australian Business Register for the purposes of
6 ensuring consistency between the Australian Business Register and
7 the Business Names Register in details registered on those
8 registers.

9 **77 Protection of confidentiality of information**

- 10 (1) A person who obtains information in the course of performing
11 functions or exercising powers under this Act or the Transitional
12 Act must not:
13 (a) make a record of the information; or
14 (b) use the information; or
15 (c) disclose the information.
- 16 Penalty: Imprisonment for 1 year.
- 17 (2) Subsection (1) does not apply if:
18 (a) the information is recorded, used or disclosed for the
19 purposes of performing functions or exercising powers under
20 this Act or the Transitional Act; or
21 (b) the information is recorded, used or disclosed in accordance
22 with a provision of this Act or the Transitional Act; or
23 (c) the information is recorded, used or disclosed with the
24 consent of the entity that provided the information; or
25 (d) the information is given to a court or tribunal.
- 26 Note: A defendant bears an evidential burden in relation to the matters in
27 subsection (2): see subsection 13.3(3) of the *Criminal Code*.
- 28 (3) A person commits an offence if:
29 (a) information is made available to a government body or to an
30 intelligence or security agency under section 62; and
31 (b) a person obtains the information in the course of performing
32 functions or exercising powers for the body or agency; and

- 1 (c) the person would not have had access to the information if it
 2 had not been made available to the body or agency under
 3 section 62; and
 4 (d) the person records, uses or discloses the information for a
 5 purpose other than that for which it was made available; and
 6 (e) the person is reckless as to whether the purpose for which the
 7 information is recorded, used or disclosed is that for which it
 8 was made available.

9 **Penalty:** Imprisonment for 6 months.

10 **Note:** Where a fault element for a physical element of an offence is not
 11 stated, see section 5.6 of the *Criminal Code* for the appropriate fault
 12 element.

- 13 (4) Subsection (3) does not apply if:
 14 (a) the person discloses the information to another person; and
 15 (b) the disclosure is reasonably necessary for:
 16 (i) the enforcement of the criminal law; or
 17 (ii) the enforcement of a law imposing a pecuniary penalty;
 18 or
 19 (iii) the protection of the public revenue.

20 **Note:** A defendant bears an evidential burden in relation to the matters in
 21 subsection (4): see subsection 13.3(3) of the *Criminal Code*.

- 22 (5) Subsections (1) and (3) are not intended to have an operation that
 23 would infringe an implied constitutional immunity of a
 24 referring/adopting State.

25 **78 Liability for damages**

26 None of the following:

- 27 (a) the Minister;
 28 (b) ASIC;
 29 (c) a member of ASIC;
 30 (d) a staff member or a person who is, or is a member of, an
 31 ASIC delegate or is authorised to perform or exercise a
 32 function or power of, or on behalf of, ASIC;
 33 (e) an APS employee or an officer or employee of an authority
 34 of the Commonwealth, whose services are made available to

Section 79

1 ASIC in connection with the performance or exercise of any
2 of its functions or powers;
3 is liable to an action or other proceeding for damages for or in
4 relation to an act done or omitted to be done in good faith in
5 performance or purported performance of any function, or in
6 exercise or purported exercise of any power, conferred or
7 expressed to be conferred by or under this Act or the Transitional
8 Act.

9 **79 Delegation**

- 10 (1) ASIC may, by writing under its common seal, delegate all or any
11 of its functions and powers under the following provisions to an
12 ASIC member or a staff member who is an SES employee or an
13 acting SES employee:
14 (a) section 37 (requesting information and correcting the
15 register);
16 (b) subsection 41(1) (giving notice requiring entity to lodge
17 information);
18 (c) subsection 47(1) (cancellation for not carrying on a business).
- 19 (2) ASIC may, by writing under its common seal, delegate any or all
20 of its functions and powers under this Act or the Transitional Act,
21 other than the functions and powers under the following
22 provisions, to a staff member who has the expertise appropriate to
23 the function or power delegated:
24 (a) the provisions mentioned in subsection (1);
25 (b) subsection 41(2) (application to Federal Court to obtain
26 information);
27 (c) subsection 65(1) (arrangements with States and Territories).
- 28 (3) In the performance of a function, or the exercise of a power,
29 delegated under this section, the delegate must comply with any
30 directions by ASIC.

31 **80 Minister may delegate prescribed functions and powers under**
32 **this Act**

- 33 (1) The Minister may, by signed instrument, delegate to:

Section 80

- 1 (a) an ASIC member; or
2 (b) a staff member who is an SES employee or an acting SES
3 employee;
4 such of the Minister's functions and powers under this Act or the
5 Transitional Act as are prescribed.
- 6 (2) In performing functions or exercising powers under a delegation,
7 the delegate must comply with any directions of the Minister.
8

1

2 **Part 10—General**

3

4 **81 Application of this Act to partnerships**

- 5 (1) An obligation that would otherwise be imposed on a partnership
6 under this Act or the Transitional Act is imposed on each partner,
7 but may be discharged by any of the partners.
- 8 (2) If this Act or the Transitional Act would otherwise require or
9 permit something to be done by a partnership, the thing may be
10 done by one or more of the partners on behalf of the partnership.
- 11 (3) An offence against this Act or the Transitional Act that would
12 otherwise be committed by the partnership is taken to have been
13 committed by each partner.
- 14 (4) A partner does not commit an offence because of subsection (3) if
15 the partner:
- 16 (a) does not know of the circumstances that constitute the
17 contravention of the provision concerned; or
- 18 (b) knows of those circumstances but takes all reasonable steps
19 to correct the contravention as soon as possible after the
20 partner becomes aware of those circumstances.

21 Note: A defendant bears an evidential burden in relation to the matters in
22 subsection (4): see subsection 13.3(3) of the *Criminal Code*.

23 **82 Principal contact of a partnership**

- 24 (1) A notice, signed by all the partners in a partnership, may be lodged
25 with ASIC, nominating a person as the principal contact for the
26 partnership for the purposes of this Act and the Transitional Act.
- 27 (2) If a person is nominated as the principal contact for a partnership
28 for the purposes of this Act or the Transitional Act, that person is
29 taken to be the agent of the partnership for the purposes of that Act,
30 until the nomination is withdrawn.

- 1 (3) Subsection (2) is not affected by a change in the composition of the
2 partnership.
- 3 (4) A notice, signed by all the partners in a partnership, may be lodged
4 with ASIC, withdrawing the nomination of a person as principal
5 contact for the partnership for the purposes of this Act or the
6 Transitional Act.
- 7 (5) A notice under this section:
8 (a) must be in the prescribed form; and
9 (b) must be lodged in the prescribed manner.

10 **83 Application of this Act to unincorporated associations and bodies**

- 11 (1) An obligation that would otherwise be imposed on an
12 unincorporated association or body under this Act or the
13 Transitional Act is imposed on each member of the committee of
14 management of the association or body, but may be discharged by
15 any of the members of the committee.
- 16 (2) If this Act or the Transitional Act would otherwise require or
17 permit something to be done by an unincorporated association or
18 body, the thing may be done by one or more of the members of the
19 committee of management of the association or body on behalf of
20 the association or body.
- 21 (3) An offence against this Act or the Transitional Act that would
22 otherwise be committed by the association or body is taken to have
23 been committed by each member of the committee of management
24 of the association or body.
- 25 (4) A member of the committee of management of the association or
26 body does not commit an offence because of subsection (3) if the
27 member:
28 (a) does not know of the circumstances that constitute the
29 contravention of the provision concerned; or
30 (b) knows of those circumstances but takes all reasonable steps
31 to correct the contravention as soon as possible after the
32 member becomes aware of those circumstances.

33 Note: A defendant bears an evidential burden in relation to the matters in
34 subsection (4): see subsection 13.3(3) of the *Criminal Code*.

Section 84

1 **84 Principal contact of an unincorporated association or body**

- 2 (1) A notice, signed by all the members of the committee of
3 management of an unincorporated association or body, may be
4 lodged with ASIC, nominating a person as the principal contact for
5 the association or body for the purposes of this Act or the
6 Transitional Act.
- 7 (2) If a person is nominated as principal contact for an unincorporated
8 association or body for the purposes of this Act or the Transitional
9 Act, that person is taken to be the agent of the association or body
10 for the purposes of that Act, until the nomination is withdrawn.
- 11 (3) Subsection (2) is not affected by:
12 (a) a change in the membership of the association or body; or
13 (b) a change in the membership of the committee of management
14 of the association or body.
- 15 (4) A notice, signed by all the members of the committee of
16 management of an unincorporated association or body, may be
17 lodged with ASIC, withdrawing the nomination of a person as the
18 principal contact for the association or body for the purposes of
19 this Act or the Transitional Act.
- 20 (5) A notice under this section:
21 (a) must be in the prescribed form; and
22 (b) must be lodged in the prescribed manner.

23 **85 Application of this Act to a trust with 2 or more trustees**

- 24 (1) This section applies where a trust has 2 or more trustees.
- 25 (2) An obligation that would otherwise be imposed on the trust by this
26 Act or the Transitional Act is imposed on each trustee instead, but
27 may be discharged by any of the trustees.
- 28 (3) If this Act or the Transitional Act would otherwise require or
29 permit something to be done by the trust, the thing may be done by
30 one or more of the trustees on behalf of the trust.

- 1 (4) An offence against this Act or the Transitional Act that would
2 otherwise be committed by the trust is taken to have been
3 committed by each trustee.
- 4 (5) A trustee does not commit an offence because of subsection (4) if
5 the trustee:
- 6 (a) does not know of the circumstances that constitute the
7 contravention of the provision concerned; or
- 8 (b) knows of those circumstances but takes all reasonable steps
9 to correct the contravention as soon as possible after the
10 trustee becomes aware of those circumstances.
- 11 Note: A defendant bears an evidential burden in relation to the matters in
12 subsection (5): see subsection 13.3(3) of the *Criminal Code*.

13 **86 Principal contact of a trust**

- 14 (1) This section applies where a trust has 2 or more trustees.
- 15 (2) A notice, signed by all the trustees of a trust, may be lodged with
16 ASIC, nominating a person as the principal contact for the trustees
17 for the purposes of this Act or the Transitional Act.
- 18 (3) If a person is nominated as the principal contact for the trustees of
19 a trust for the purposes of this Act or the Transitional Act, that
20 person is taken to be the agent of the trustees in relation to the trust
21 for the purposes of that Act, until the nomination is withdrawn.
- 22 (4) Subsection (3) is not affected by a change in the trustees of the
23 trust.
- 24 (5) A notice, signed by all the trustees of a trust, may be lodged with
25 ASIC, withdrawing the nomination of a person as principal contact
26 for the trustees in relation to the trust, for the purposes of this Act
27 or the Transitional Act.
- 28 (6) A notice under this section:
- 29 (a) must be in the prescribed form; and
30 (b) must be lodged in the prescribed manner.

Section 87

1 **87 Joint ventures**

2 *Application*

3 (1) This section applies if:

4 (a) 2 or more entities (the *joint venture entities*) have entered
5 into a contractual arrangement under which they carry on, or
6 intend to carry on, a business jointly under a business name;
7 and

8 (b) the entities do not form another entity to do so.

9 Subject to this section, the joint venture entities are together treated
10 as a single entity (the *joint venture*) for the purposes of this Act
11 and the Transitional Act.

12 *Treat joint venture in the same way as an entity*

13 (2) An obligation that would otherwise be imposed on the joint venture
14 under this Act or the Transitional Act is imposed on each joint
15 venture entity, but may be discharged by any of the joint venture
16 entities.

17 (3) If this Act or the Transitional Act would otherwise require or
18 permit something to be done by the joint venture, the thing may be
19 done by one or more of the joint venture entities on behalf of all of
20 the joint venture entities.

21 (4) An offence against this Act or the Transitional Act that would
22 otherwise be committed by the joint venture is taken to have been
23 committed by each joint venture entity.

24 (5) A joint venture entity does not commit an offence because of
25 subsection (4) if the joint venture entity:
26 (a) does not know of the circumstances that constitute the
27 contravention of the provision concerned; or
28 (b) knows of those circumstances but takes all reasonable steps
29 to correct the contravention as soon as possible after the joint
30 venture entity becomes aware of those circumstances.

31 Note: A defendant bears an evidential burden in relation to the matters in
32 subsection (5): see subsection 13.3(3) of the *Criminal Code*.

Principal contact of joint venture

- 1
- 2 (6) A notice, signed by all the joint venture entities, may be lodged
3 with ASIC, nominating a person as the principal contact for the
4 joint venture for the purposes of this Act or the Transitional Act.
- 5 (7) If a person is nominated as the principal contact for the joint
6 venture for the purposes of this Act or the Transitional Act, that
7 person is taken to be the agent of the joint venture entities for the
8 purposes of this Act and the Transitional Act, until the nomination
9 is withdrawn.
- 10 (8) A notice, signed by all the joint venture entities, may be lodged
11 with ASIC, withdrawing the nomination of a person as principal
12 contact for the joint venture for the purposes of this Act or the
13 Transitional Act.
- 14 (9) A notice under subsection (6) or (8):
15 (a) must be in the prescribed form; and
16 (b) must be lodged in the prescribed manner.

ABN numbers

- 17
- 18 (10) An application for registration of a business name to the joint
19 venture must include the ABNs of each of the joint venture entities,
20 or, if an application for an ABN for a joint venture entity is
21 pending, a statement to that effect and the reference number for the
22 ABN application.
- 23 (11) ASIC must not register the business name to the joint venture
24 unless each of the joint venture entities has an ABN.
- 25 (12) To avoid doubt, the priority of a joint venture over a business name
26 is not affected by the fact that an ABN application by any joint
27 venture entity is pending.
- 28 (13) Otherwise, a reference in this Act to the ABN of an entity means,
29 in the case of a joint venture, the ABN of each of the joint venture
30 entities.

Section 88

1 *Death of a joint venture entity*

- 2 (14) If a joint venture entity who is an individual dies:
- 3 (a) the business name continues to be registered to the joint
- 4 venture; and
- 5 (b) sections 39 and 40 otherwise apply in relation to the joint
- 6 venture entity in the same way as they apply in relation to an
- 7 individual to whom a business name is registered.

8 **88 Application in the Territories of Christmas Island and Cocos**

9 **(Keeling) Islands**

- 10 (1) This section applies if, because Australia is not defined to include
- 11 the Territory of Christmas Island or the Territory of Cocos
- 12 (Keeling) Islands in the *A New Tax System (Australian Business*
- 13 *Number) Act 1999* (the *ABN Act*), an entity is not entitled to have
- 14 an ABN.
- 15 (2) If an activity, or a series of activities, done by the entity would be a
- 16 business (as defined in section 4) if Australia were defined for the
- 17 purposes of the ABN Act as including the Territory of Christmas
- 18 Island or the Territory of Cocos (Keeling) Islands, the activity or
- 19 series of activities is a business for the purposes of this Act.
- 20 (3) An application for registration of a business name to the entity
- 21 need not include an ABN for the entity or a statement that an
- 22 application for an ABN is pending.
- 23 (4) ASIC may register the business name to the entity even though the
- 24 entity does not have an ABN, and ASIC need not include details of
- 25 an ABN for the entity on the Business Names Register.

26 **89 Entities that have ceased to exist**

27 If, under this Act, notice must or may be given to an entity that no

28 longer exists, notice is taken to be given to the entity if it is given

29 to a person, or a person of a class, prescribed by the regulations for

30 the purposes of this section, to be the relevant person, or class of

31 persons, for an entity of that kind.

1 **90 Regulations**

2 The Governor-General may make regulations prescribing matters:

3 (a) required or permitted by this Act to be prescribed; or

4 (b) necessary or convenient to be prescribed for carrying out or
5 giving effect to this Act.

Section 1

1 **Schedule 1—Notified State/Territory registers**

2 Note: See section 6.
3
4

5 **1 New South Wales**

6 Each of the following registers of New South Wales is specified:

- 7 (a) the Register of Co-operatives established under the
8 *Co-operatives Act 1992* of New South Wales;
9 (b) the Register of Incorporated Associations established under
10 the *Associations Incorporation Act 2009* of New South
11 Wales;
12 (c) the Register of Limited and Incorporated Limited
13 Partnerships established under the *Partnership Act 1892* of
14 New South Wales;
15 (d) the register of co-operative housing societies and
16 Starr-Bowkett societies established under the *Co-operative*
17 *Housing and Starr-Bowkett Societies Act 1998* of New South
18 Wales;
19 (e) any register of the same kind as a register mentioned in
20 paragraphs (a) to (d), established in substitution for a register
21 mentioned in one of those paragraphs.

22 **2 Victoria**

23 Each of the following registers of Victoria is specified:

- 24 (a) the Register of Co-operatives established under the
25 *Co-operatives Act 1996* of Victoria;
26 (b) the register of incorporated associations established under the
27 *Associations Incorporation Act 1981* of Victoria;
28 (c) the Register of Incorporated Limited Partnerships established
29 under the *Partnership Act 1958* of Victoria;
30 (d) the Register of Limited Partnerships established under the
31 *Partnership Act 1958* of Victoria;
32 (e) any register of the same kind as a register mentioned in
33 paragraphs (a) to (d), established in substitution for a register
34 mentioned in one of those paragraphs.

3 Queensland

Each of the following registers of Queensland is specified:

- (a) the register of incorporated associations established under the *Associations Incorporation Act 1981* of Queensland;
- (b) the register of cooperatives, foreign cooperatives and cooperative charges established under the *Cooperatives Act 1997* of Queensland;
- (c) the register of incorporated limited partnerships established under the *Partnership Act 1891* of Queensland;
- (d) the register of the current addresses of incorporated church entities (other than the Corporation of the Bishops) that the Corporation of the Bishops is obliged to keep under the *Roman Catholic Church (Incorporation of Church Entities) Act 1994* of Queensland;
- (e) any register of the same kind as a register mentioned in paragraphs (a) to (d), established in substitution for a register mentioned in one of those paragraphs.

4 Western Australia

Each of the following registers of Western Australia is specified:

- (a) the register of co-operatives established under the *Co-operatives Act 2009* of Western Australia;
- (b) the register of foreign co-operatives established under the *Co-operatives Act 2009* of Western Australia;
- (c) the register of associations incorporated by the issue of a certificate of incorporation under the *Associations Incorporation Act 1987* of Western Australia;
- (d) any register of the same kind as a register mentioned in paragraphs (a) to (c), established in substitution for a register mentioned in one of those paragraphs.

5 South Australia

Each of the following registers of South Australia is specified:

- (a) the register of incorporated co-operatives continued in existence under the *Co-operatives Act 1997* of South Australia;

Section 6

- 1 (b) the register of incorporated associations established under the
2 *Associations Incorporation Act 1985* of South Australia;
3 (c) the Register of Limited Partnerships and Incorporated
4 Limited Partnerships established under the *Partnership Act*
5 *1891* of South Australia;
6 (d) any register of the same kind as a register mentioned in
7 paragraphs (a) to (c), established in substitution for a register
8 mentioned in one of those paragraphs.

9 **6 Tasmania**

10 Each of the following registers of Tasmania is specified:

- 11 (a) the Register of Cooperatives established under the
12 *Cooperatives Act 1999* of Tasmania;
13 (b) the register of associations incorporated by the issue of a
14 certificate of incorporation under the *Associations*
15 *Incorporation Act 1964* of Tasmania;
16 (c) the Register of Limited Partnerships and Incorporated
17 Limited Partnerships established under *Partnership Act 1891*
18 of Tasmania;
19 (d) any register of the same kind as a register mentioned in
20 paragraphs (a) to (c), established in substitution for a register
21 mentioned in one of those paragraphs.

22 **7 Australian Capital Territory**

23 Each of the following registers of the Australian Capital Territory
24 is specified:

- 25 (a) the cooperatives register established under the *Cooperatives*
26 *Act 2002* of the Australian Capital Territory;
27 (b) the register of associations incorporated by the issue of a
28 certificate of incorporation under the *Associations*
29 *Incorporation Act 1991* of the Australian Capital Territory;
30 (c) the register of incorporated limited partnerships established
31 under the *Partnership Act 1963* of the Australian Capital
32 Territory;

Section 8

- 1 (d) any register of the same kind as a register mentioned in
2 paragraphs (a) to (c), established in substitution for a register
3 mentioned in one of those paragraphs.

4 **8 Northern Territory**

5 Each of the following registers of the Northern Territory is
6 specified:

- 7 (a) the Register of Co-operatives established under the
8 *Co-operatives Act* of the Northern Territory;
9 (b) the register of associations incorporated by the issue of a
10 certificate of incorporation under the *Associations Act* of the
11 Northern Territory;
12 (c) any register of the same kind as a register mentioned in
13 paragraphs (a) and (b), established in substitution for a
14 register mentioned in one of those paragraphs.