

2010-2011

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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BUSINESS NAMES REGISTRATION BILL 2011

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EXPLANATORY MEMORANDUM

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



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# ***Glossary***

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

<b><i>Abbreviation</i></b>	<b><i>Definition</i></b>
ASIC	Australian Securities and Investments Commission
ABN	Australian Business Number
COAG	Council of Australian Governments
Fees Bill	Business Names Registration (Fees) Bill 2011
National Business Names Registration Package	Business Names Registration Bill 2011, Business Names Registration (Transitional and Consequential Provisions) Bill 2011 and the Business Names (Fees) Bill 2011 and other legislative instruments
Register	Business Names Register
Registration Bill	Business Names Registration Bill
Registration System	National Business Names Registration System
Transitional Bill	Business Names Registration (Transitional and Consequential Provisions) Bill 2011



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

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## **Outline**

On 3 July 2008, the Council of Australian Governments (COAG) agreed to the development of a single national system for registering and regulating business names. The proposal was one of 27 areas of regulatory reform, and an Inter-Governmental Agreement (Agreement) with the States and Territories was signed on 2 July 2009.

The Agreement covered arrangements for the constitutional referral of powers by the States and the subsequent management of those powers, including requirements for consultation and approval by the States and Territories.

This Project is part of COAG's reform agenda aimed at driving productivity growth and forms part of the COAG National Partnership Agreement (NPA) to deliver a Seamless National Economy.

The Project will deliver a national business name registration system which includes a seamless, online registration for both Australian Business Numbers (ABNs) and business names.

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

Section 16 sets out the objects of the Registration Bill.

The primary purpose of the national registration scheme is to ensure that any business that does not operate under its own entity name, registers its name and details on a national register to enable those who engage or propose to engage with that particular business to determine the identity of the entity behind the business name and its contact details.

In addition, the creation of a national Register will remove the inconvenience and compliance cost caused by the registration of business names across the various States and Territories.

Currently, each State and Territory operates its own business names registration regime. The national business names registration scheme will allow businesses to register once, regardless of how many jurisdictions they operate in. The scheme will be operated by the Australian Securities and Investments Commission (ASIC).

To assist with identification of the business entities, the Register will prevent identical business names in the States and Territories being registered in the future and also prevent the registration of otherwise undesirable names such as names that are misleading to consumers or offensive. This is achieved through both the Registration Bill and the proposed Business Names (Availability of Name) Determination 2011. A similar outcome is also achieved under corporations law.

To assist with identification of the entity behind a business name, the National Business Names Registration System will mandate an ABN for any new business name registration. Currently all State and Territory business name registers allocate a business name number to each business. The ABN will relate to the entity behind a business name and so will allow businesses to be identified through both their name and number.

The national Register will also provide national rules to apply in relation to the use of business names when a person is disqualified from carrying on business.

The necessity to register a business name under this legislation does not give rise to any proprietary rights over that name, consistent with trade mark law. The new online system will provide links to IP Australia and information to ensure businesses are aware of this issue.

The new law will replace the *Business Names Act 1962 (WA)*; *Business Names Act 1963 (ACT)*; *Business Names Act 2007 (NT)*; *Business Names Act 1962 (QLD)*; *Business Names Act 2002 (NSW)*; *Business Names Act 1996 (SA)*; *Business Names Act 1962 (TAS)*; and *Business Names Act 1962 (VIC)* and their supporting regulations and instruments.

## **Summary of New Law**

For the overwhelming majority of entities, the move to a national Register will have minimal practical impact on their trading. The obligations imposed upon entities largely reflect their obligations under existing State and Territory legislation. To trade under a business name, an entity will be required to register it and include the business name in written communications relating to the commercial dealings of the business. This includes communications to consumers and to a person who supplies goods and services. For new registrants, the ABN will also need to be displayed on a smaller number of documents, largely consistent with the requirements to display an Australian Company Number (ACN) for incorporated entities under the *Corporations Act 2001* (Corporations Act). An entity will also be obliged to display their business name prominently at any place of business open to the public.

If their business name is currently registered on a State or Territory Register, once transferred to the national system, the entity's registered name remains the same. These are referred to as grandfathered registrations. For duplicate names, ASIC may apply a geographical identifier to the registration on the Register only. This identifier will not need to be displayed publicly on stationery or signage. The registration renewal date will also be the same but the new renewal fees will apply.

The Bill establishes a National Business Names Registration System. This involves the States either referring powers to regulate business names to the Commonwealth or adopting the Commonwealth law, to the extent that the Commonwealth does not have legislative power. The law will apply in the Territories. A national Register will be formed by the electronic transfer of existing registers to ASIC. The Registration Bill and the Transitional Bill are not intended to exclude the concurrent operation of most State or Territory laws. Subject to displacement provisions, the law does not apply to provisions that are capable of concurrent operation.

The objects of the Bill are to ensure that entities behind businesses can be identified, that the inconvenience and compliance cost of multiple registrations is avoided and that the registration of names that are undesirable, including names that are offensive or misleading, is prevented.

The Bill contains a number of offences including: carrying on business under an unregistered business name (30 penalty units); failure to include a business name in written communications (5 penalty units); failure to display a business name at a place of business open to the public (5 penalty units); carrying on business while disqualified (30 penalty units); and failure to comply with a request from ASIC to provide information (5 penalty units). A penalty unit is currently \$110.

These offences are all strict liability offences. However ASIC is able to issue formal warnings when there is a reasonable belief that an entity has contravened a provision of the Registration Bill.

The Bill provides that a business name will be available to an entity if it is not identical or nearly identical to another business name, a company name, or a name on a notified State or Territory register. A business name will not be available if it is undesirable or it contains words or expressions that are restricted. The Business Names Registration (Availability of Names) Determination 2011 will specify what is considered to be identical, nearly identical, undesirable or restricted.

Unless ASIC otherwise determines an alternative period of registration, registrations will be for one or three years.

While the Bill does not mandate any particular service delivery channel, it is drafted to facilitate a high degree of online service delivery. It is intended that ASIC will provide extensive online services in respect of the

Register to maximise convenience, reduce complexity and minimise cost to businesses and consumers.

The Bill allows registration of business names to entities as defined in the Bill. An entity includes common business forms including a person, a company and a partnership, but also includes superannuation funds and trusts. Generally, if those involved in the management of an entity have been convicted of certain offences, the entity may be disqualified from operating under a registered business name.

ASIC has the power to request information for the purposes of establishing and maintaining the Register. Entities are obliged to provide information to ASIC and can be subject to a 5 penalty unit sanction if they do not comply with this obligation or the Federal Court may order that the entity provide the information to ASIC.

Entities aggrieved by a decision of ASIC have the right to seek review of ASIC's decision. The entity can initially ask for an internal review by ASIC. If this does not provide a desirable outcome, the entity can apply to the Administrative Appeals Tribunal.

A person can request that ASIC provide them with extracts of entries on the Register. Before providing an extract of the Register to a person, ASIC must excise specified personal details (as prescribed in the regulations) from any extract.

Much of the information on the Register will be available for free. Further details will be available from the Register for a fee.

ASIC's powers and functions are as given to it by the Registration Bill and the Transitional Bill. The Minister may provide ASIC with a written direction about which policies it should pursue or priorities it should follow in carrying out its functions and powers.

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

ASIC, as a Commonwealth agency, is obliged to handle personal information in accordance with the *Privacy Act 1988*. Additionally, the Bill contains strict penalties for the misuse of information obtained in the course of performing functions or exercising powers under the Registration Bill or the Transitional Bill.

***Date of effect:*** The Registration Bill will commence as detailed in section 3 of the Registration Bill.

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

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

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

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



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## **Chapter 2**

### **Preliminary**

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#### **Outline of chapter**

- 2.1 Chapter 1 of this explanatory memorandum outlines:
- the definitions used in the Registration Bill
  - the constitutional basis of the Bill
  - that a State, Territory or Commonwealth body is not liable to be prosecuted under the provisions of the Bill.

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

2.2 Section 1 of the Business Names Registration Bill 2011 (the Registration Bill) provides that the Act may be cited as the *Business Names Registration Act 2011*.

2.3 Section 2 provides that sections 1 and 2 commence on the day the Act receives Royal Assent whilst the other provisions of the Registration Bill are to commence on various days to be fixed by proclamation.

2.4 Section 3 outlines the definitions of terms used in the Registration Bill.

2.5 ‘Business’ is defined in section 4 to include an activity or activities that involve undertaking a profession; a trade; employment; a vocation or a calling; an adventure or concern in the nature of trade; or the leasing, licensing or granting of property on a regular or continuous basis. Business that is done in circumstances where an entity would not be entitled to an Australian Business Number (ABN) is excluded.

2.6 The legal persons that are considered to be an ‘entity’ are set out in section 5. This term is used in the Bill in relation to the holder of a business name. The term extends beyond what would be considered an entity in the general law, and includes trusts and superannuation funds.

2.7 Under the definition, a person may be considered to be a different entity when they act in different capacities. Under the definition, groups of persons may be considered for the purposes of the Bill to be one entity.

2.8 Section 6 provides details of what constitutes a ‘notified state or territory register’. This includes a register which is maintained under the law of a referring / adopting State or affected Territory. A notified

State/Territory register is one where notice of the names of entities entered on that register is received by ASIC electronically and updated from time to time, and which is specified in Schedule 1 to the Bill. This term is used in the Bill in various sections, most notably in section 25 which deals with the availability of names for registration. Further detail is provided in the commentary in relation to that section.

2.9 Schedule 1 to the Registration Bill contains a list of the registers, or kinds of registers, that may be notified State/Territory registers. Section 6 contains a trigger for such registers to be modified. A Minister of a State/Territory may notify the Commonwealth Minister in writing of a proposal to change Schedule 1 to the Bill and the Commonwealth Minister must then consult with all other referring/adopting States and affected Territories about the proposed modifications. Modifications include additions, omissions and substitutions to a register.

2.10 Section 7 sets out the constitutional basis for the Registration Bill and the Transitional Bill.

*Application in a referring/adopting State*

2.11 The Registration Bill provides the constitutional basis for its effective operation. The States will be referring constitutional power of the States to the Parliament of the Commonwealth either by a text referral, comprising the text of the initial version of the Registration Bill and the Transitional Bill (the initial Bills), or by adopting the initial Bills. The States will also be referring specified matters relating to the amendment of the initial Bills (the amendment reference). The application of the initial Bills in the referring/adopting States is based on:

- the legislative powers of the Commonwealth Parliament under section 51 of the Constitution, apart from paragraph 51(xxxvii); and
- the legislative powers of the Commonwealth Parliament which it has as a result of matters referred to it by the Parliament of the referring States under paragraph 51(xxxvii) of the Constitution.

2.12 The State referrals cover matters to the extent to which they are not otherwise included in the legislative powers of the Commonwealth Parliament.

*Application in a Territory*

2.13 In the Australian Capital Territory, the Northern Territory, the Jervis Bay Territory, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, the application of the initial Bills is based on the legislative powers of the Commonwealth Parliament under section 122 of the Constitution to make laws for the government of those Territories, and under section 51 of the Constitution. The initial Bills apply in those

affected Territories as a law of the Commonwealth, therefore overriding subsection 22(3) of the *Acts Interpretation Act 1901*.

*Application outside Australia*

2.14 Outside Australia, the application of the initial Bills is based on:

- the legislative power the Commonwealth Parliament has under paragraph 51(xxix) of the Constitution; and
- the other legislative powers that the Commonwealth Parliament has under section 51 of the Constitution; and
- the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of a Territory.

*Reference of matters by State Parliament to Commonwealth Parliament and adoption of initial Bills*

2.15 Section 8 sets out the meaning of a ‘referring / adopting State’.

2.16 A State which has referred powers or which has adopted the initial Bills and has made the amendment reference described above is a ‘referring / adopting State’:

- if and to the extent that the matters are not otherwise included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution); and
- if and to the extent to which the matters are included in the legislative powers of the Parliament of the State.

2.17 A State is a referring / adopting State even if a law of the State provides that the reference to the Commonwealth Parliament is to terminate in particular circumstances or that the adoption of the initial Bills is to terminate in particular circumstances.

2.18 As described above, the reference of powers is in two parts, the first enabling the enactment of the initial Bills, and the second enabling subsequent amendment of the initial Bills by the Commonwealth Parliament. These references of power are explained in more detail as follows.

*Reference covering initial Bills*

2.19 The first part of the reference of powers relates to the extent of the making of laws with respect to those matters by including the referred provisions in the initial Bills.

*Reference covering subsequent amendments*

2.20 The second part of the reference of powers covers the referred business names matters to the extent of the making of laws with respect to

those matters by making express amendments to the Act or the Transitional Act (as in force). The meaning of ‘referred business names matter’ is set out in section 9.

*Effect of terminating reference or adoption of initial Bills*

2.21 A State will cease to be a referring/adopting State if its initial reference of the text in the initial Bills terminates or its adoption of the initial Bills terminates.

*Effect of terminating amendment reference*

2.22 A State ceases to be a referring/adopting State if the State’s amendment reference terminates and the exception to the amendment reference termination set out in subsection 8(7) does not apply to the termination.

2.23 The exception in subsection 8(7) operates as follows. A State whose amendment reference has terminated will not cease to be a referring State if the termination is to take effect on a day to be fixed by proclamation; that day is no earlier than six months after the proclamation date; and the State’s amendment reference, and the amendment reference of every other State, terminates on that day. The effect of this provision is that a State can remain part of the national scheme for the regulation of business names if it terminates its amendment reference, but only if it gives at least six months notice of the termination and if every other referring State terminates its amendment reference on the same day.

2.24 There are various definitions relevant to explaining the terms used in the operation of Division 3. For example; there is a definition of the term ‘amendment reference’ of a State which means the reference by the Parliament of the State to the Parliament of the Commonwealth of the matters covered by section 8(4).

2.25 Section 9 sets out the meaning of ‘referred business names matter’. Subsection 9(1) provides that each of the following matters is a referred business names matter:

- (a) the registration of business names;
- (b) the regulation of the use of business names to assist entities who engage with an entity carrying on a business under a business name to identify the entity;
- (c) the regulation of the use of business names to assist entities who engage with an entity carrying on a business under a business name to contact the entity;
- (d) the regulation of the use of business names to reduce the risks that arise from an entity carrying on a business under a name that is not the entity’s own;

- (e) the prohibition or restriction of the use of business names that are undesirable, offensive or confusing;
- (f) the prohibition or restriction of the use of business names by an entity because:
  - i. the entity has engaged in unlawful conduct; or
  - ii. a person involved in the management of the entity has engaged in unlawful conduct.

2.26 Subsection 9(2) has the effect that a referred business names matter does not include the following:

- (a) the imposition of a restriction on a government body affecting the ability of the body to carry on business under a name;
- (b) the imposition of a restriction on an entity affecting the ability of the entity to carry on business under a name that is registered to the entity on a notified State/Territory register;
- (c) the imposition of a restriction on an entity affecting the ability of the entity to carry on business under a name that is specified as the name of the entity in an Act of a State, or an instrument made under such an Act;
- (d) the imposition of an obligation on a government body to include a name in a communication or to display a name;
- (e) the imposition of an obligation on an entity to include in a communication, or to display, a name that is registered to the entity on a notified State/Territory register;
- (f) the imposition of an obligation on an entity to include in a communication, or to display, a name that is specified as the name of the entity in an Act of a State, or an instrument made under such an Act;
- (g) the omission of an exemption provision without the insertion of an equivalent provision, or the imposition of a limitation on the operation of an exemption provision;
- (h) any matter relating to the imposition or payment of taxes under an Act of a State, or an instrument made under such an Act.

*General application of the initial Bills*

2.27 Section 10 provides that the initial Bills apply in ‘this jurisdiction’, which means the geographical area of each referring / adopting State and affected Territory, including their coastal seas.

2.28 Section 11 provides that a government body as defined is not liable to be prosecuted or subject to a remedy (including an injunctive remedy) for conduct that would constitute an offence under the provisions of the Bill, but that a government body is able to register a business name under the Bill and obtain the same benefits of doing so as other persons.

2.29 Section 12 provides that the initial Bills are not intended to exclude the concurrent operation of any referring / adopting State or affected Territory laws. This provision is in terms similar to those of several other Commonwealth legislative provisions, including section 23 of the *National Consumer Credit Protection Act 2009* (Credit Act) and section 5E of the Corporations Act.

2.30 The concurrent operation provision provides that in all circumstances where a Commonwealth law and a State law can operate concurrently, they are intended to do so. This means, for example, that if would-be real estate operators obtain business names, they are not entitled to operate in a jurisdiction unless they also comply with the relevant real estate licensing requirements in that jurisdiction

2.31 This section does not apply where there is a direct inconsistency between the law of a referring / adopting State or affected Territory and the business names legislation. A direct inconsistency would exist where, for example, there is a direct collision between a State law and a Commonwealth law, meaning that it is impossible to obey both the state law and the Commonwealth law.

2.32 Subsections 13(1) and 13(2) provide that a provision of a State or Territory law may declare a matter to be an excluded matter, in relation to the whole of the business names legislation, a specified provision of the legislation, the business names legislation other than a specified provision or the business names legislation otherwise than to a specified extent. As a result, the initial Bills (either in whole or as specified) will not apply in that State or Territory in relation to the declared matter. Subsection 13(3) makes it clear that subsection 13(2) does not apply to a declaration to the extent regulations are made providing that the subsection does not apply to the declaration. This provision is in terms similar to section 5F of the Corporations Act.

2.33 Section 14 is a provision which limits or qualifies the operation of the initial Bills if a valid displacement provision is in effect. The key rule is that this provision of the Registration Bill does not prohibit the doing of an act, or impose a civil or criminal liability for doing an act, if a provision of a State or Territory law (displacement provision) specifically permits, authorises or requires the doing of that act. Regulations may provide that subsections 14(4) and 14(5) do not apply to the displacement

provision to the extent specified in the regulations. This provision is in terms similar to section 5G of the Corporations Act.

2.34 Section 15 provides a regulation making power to deal with the interaction between the Commonwealth laws and the laws of a referring / adopting State or affected Territory.

2.35 Section 16 sets out the objects of the Bill, being to ensure that the entity carrying on business can be identified by those dealing or proposing to deal with the business; to enable persons to contact the entity and to remove the inconvenience caused by multiple registrations. Further, the objects of the Bill are to avoid confusion by preventing identical or nearly identical names being registered; to prevent the registration of undesirable (for example, offensive) names; to prevent business names that should be restricted for some other reason. Further detail of the purpose of the new law is set out earlier in this document in the overview of the new regime.

2.36 Section 17 provides that the registration of a business name does not affect any rights of an entity in relation to the business name, or any part of it, that the entity has under the law. For example, registering a name that infringes upon a person's trade mark does not reduce the rights of the trade mark holder to take action for the infringement. In respect of trade marks, see also section 51 of the Bill.

2.37 Registration does not lead to an entity acquiring any property in the business name or any part of it.

## **Application and transitional provisions**

2.38 Sections 1 and 2 of the Registration Bill commence on the day this Bill receives Royal Assent. Sections 3 to 17 commence on a day to be fixed by proclamation. The date of proclamation will depend on when the final State or Territory passes its referral legislation or adopts the Commonwealth legislation.

2.39 Transitional provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.

## **Consequential amendments**

2.40 Consequential provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.



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## **Chapter 3**

### **Offences relating to business names**

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#### **Outline of chapter**

- 3.1 Part 2 of this explanatory memorandum outlines:
- offences relating to business names
  - the core obligations regarding the use of business names
  - sanctions for their breach and provides sanctions for their breach

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

3.2 Subsection 18(1) of the Registration Bill provides that an entity commits an offence if they carry on business under a business name that is not registered. Subsection 18(2) provides exceptions to subsection 18(1), preserving the circumstances where it is not an offence to carry on business under a business name. This includes where an entity is carrying on business under their own name and where an entity has notified ASIC that it is the entity expected to inherit the business name following the death of the business name holder. There is a power to make regulations to prescribe other circumstances where a non-holder of a business name will not commit an offence when trading under the name.

3.3 The exceptions also include where the person is a government body. This exception also exists in relation to all of the offences in this Part. This exception exists in addition to section 11, which provides that government bodies are not liable to prosecution.

3.4 The penalty for a breach of the provision is 30 penalty units. This is a strict liability offence.

3.5 The appropriateness of applying strict liability for the offence in section 18 of the Registration Bill was considered in accordance with Report 6/2002 of the Senate Standing Committee for the Scrutiny of Bills: *Application of Absolute and Strict Liability Offences in Commonwealth Legislation* (Report 6/2002 of the Scrutiny of Bills Committee).

3.6 First, the penalty imposed under section 18 is 30 penalty units. Secondly, the punishment of offences not involving fault is likely to allow ASIC to establish a compliance program that will significantly enhance the enforcement of the regime in deterring offences.

3.7 The defence of reasonable mistake of fact as well as the other general defences in part 2.3 of the Commonwealth Criminal Code will continue to apply in relation to the strict liability offences under the Registration Bill.

3.8 Strict liability will also help ensure the integrity of the regulatory regime, by ensuring that the entity behind a business name can be identified. This is consistent with the justifications for strict liability indicated by Report 6/2002 of the Scrutiny of Bills Committee at 284:

"strict liability may be appropriate where it is necessary to ensure the integrity of a regulatory regime."

3.9 Strict liability will provide consistency with analogous offences under other Commonwealth legislation, in particular the Corporations Act and the Credit Act. Many of the existing corresponding offence provisions in State and Territory business name legislation contain strict liability offences. Therefore, applying strict liability will not impose an unduly onerous burden and entities will be provided with sufficient notice to guard against the possibility of inadvertently contravening the offence provisions.

3.10 Section 75 of the Registration Bill allows ASIC to issue formal warnings if it believes on reasonable grounds that an entity has contravened a provision of the Registration Bill and warn the entity of the action that may be taken by ASIC under the Act in response to the contravention. This provision is intended allow ASIC pursue its objective of compliance more effectively.

3.11 Section 19 provides that an entity commits an offence if it communicates externally in writing with another entity and the communication is a business document (which may be digital) connected with carrying on the business and the document does not include its clearly legible business name. Written communications that relate primarily to the internal administration of the business are not intended to be captured.

3.12 This requirement represents the current position under the Victorian, Tasmanian, Western Australia and Queensland business names legislation, with the extra catch all of 'all business documents connected with carrying on business', which is used under the current NSW business names legislation. This means that most businesses will not have a large compliance burden and will most likely not need to change stationery.

3.13 Subsection 19(2) outlines that the ABN and business name of an entity must be displayed on the following documents: a document that is lodged with ASIC; a statement of account; a receipt; an order for goods and services; a cheque; a promissory note or bill of exchange; an offer to provide goods or services (rather than an invitation to treat).

3.14 The documents required to include an entity's ABN are similar to the documents required to display an ACN under the Corporations Act.

3.15 Subsection 19(4) lists a number of exceptions where it is not an offence to not include a business name on written communications. These exceptions mirror those in the preceding offence. Under subsection 19(6) the Minister may, by written determination, exempt an entity from these requirements in specified circumstances. The Minister's determination is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*. The statement in subsection 19(6) has been included for the sake of clarity only, to assist the reader, and does not amount to a declaration under the *Legislative Instruments Act 2003*.

3.16 The penalty for a breach of the provision is 5 penalty units. This is a strict liability offence.

3.17 The appropriateness of applying strict liability for the offence in section 19 of the Registration Bill was considered in accordance with Report 6/2002 of the Scrutiny of Bills Committee.

3.18 First, the penalty imposed under section 19 is 5 penalty units. Secondly, the punishment of offences not involving fault is likely to allow ASIC to establish a compliance program that will significantly enhance the enforcement of the regime in deterring offences.

3.19 The defence of reasonable mistake of fact as well as the other general defences in part 2.3 of the Commonwealth Criminal Code will continue to apply in relation to the strict liability offences under the Registration Bill.

3.20 Strict liability will also help ensure the integrity of the regulatory regime, by ensuring that the entity behind a business name can be identified. This is consistent with the justifications for strict liability indicated by Report 6/2002 of the Scrutiny of Bills Committee at 284:

"strict liability may be appropriate where it is necessary to ensure the integrity of a regulatory regime."

3.21 Strict liability will provide consistency with analogous offences under other Commonwealth legislation, in particular the Corporations Act and the Credit Act. For example, the offence under section 19 of the Registration Bill is comparable to the strict liability offence relating to the obligation to cite an Australian credit licence number in certain documents under section 52 of the Credit Act and the obligations relating to the use of company names and ACNs under section 153 of the Corporations Act. Many of the existing corresponding offence provisions in State and Territory business name legislation contain strict liability offences. Therefore, applying strict liability will not impose an unduly onerous burden and entities will be provided with sufficient notice to guard against the possibility of inadvertently contravening the offence provisions.

3.22 Section 75 of the Registration Bill allows ASIC to issue formal warnings if it believes on reasonable grounds that an entity has contravened a provision of the Registration Bill and warn the entity of the action that may be taken by ASIC under the Act in response to the contravention. This provision is intended allow ASIC pursue its objective of compliance more effectively.

3.23 Section 20 states that an entity commits an offence if it carries on business under a business name and does not display the name prominently at every place of business open to the public. Subsection 20(2) sets out the circumstances where this requirement does not apply. These exceptions mirror those in the preceding offence. In addition, subsection 20(3) makes it clear that an entity is not required to display a business name at a particular place in circumstances where displaying the name or making a representation through displaying the name at a particular place, or using the name, would be contrary in some way to the law of the Commonwealth or of a referring / adopting State or affected Territory. Under subsection 20 (4) the Minister may, by written determination, exempt an entity from these requirements in specified circumstances. The Minister's determination is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*. The statement in subsection 20 (4) has been included for the sake of clarity only, to assist the reader, and does not amount to a declaration under the *Legislative Instruments Act 2003*.

3.24 The penalty for a breach of the provision is 5 penalty units. This is a strict liability offence.

3.25 The appropriateness of applying strict liability for the offence in section 20 of the Registration Bill was considered in accordance with Report 6/2002 of the Scrutiny of Bills Committee.

3.26 First, the penalty imposed under section 20 is 5 penalty units. Secondly, the punishment of offences not involving fault is likely to allow ASIC to establish a compliance program that will significantly enhance the enforcement of the regime in deterring offences.

3.27 The defence of reasonable mistake of fact as well as the other general defences in part 2.3 of the Commonwealth Criminal Code will continue to apply in relation to the strict liability offences under the Registration Bill.

3.28 Strict liability will also help ensure the integrity of the regulatory regime, by ensuring that the entity behind a business name can be identified. This is consistent with the justifications for strict liability indicated by Report 6/2002 of the Scrutiny of Bills Committee at 284:

"strict liability may be appropriate where it is necessary to ensure the integrity of a regulatory regime."

3.29 Strict liability will provide consistency with analogous offences under other Commonwealth legislation, in particular the Corporations Act and the Credit Act. Many of the existing corresponding offence provisions in State and Territory business name legislation contain strict liability offences. Therefore, applying strict liability will not impose an unduly onerous burden and entities will be provided with sufficient notice to guard against the possibility of inadvertently contravening the offence provisions.

3.30 Section 75 of the Registration Bill allows ASIC to issue formal warnings if it believes on reasonable grounds that an entity has contravened a provision of the Registration Bill and warn the entity of the action that may be taken by ASIC under the Act in response to the contravention. This provision is intended allow ASIC pursue its objective of compliance more effectively.

3.31 Section 21 provides that an offence is committed if an entity trades under a business name whilst disqualified. The circumstances where an entity is disqualified are set out in section 32. Subsection 21(2) sets out the exceptions to this. These exceptions mirror those in the preceding offence.

3.32 The penalty for a breach of the provision is 30 penalty units. This is a strict liability offence.

3.33 The appropriateness of applying strict liability for the offence in section 21 of the Registration Bill was considered in accordance with Report 6/2002 of the Scrutiny of Bills Committee.

3.34 First, the penalty imposed under section 21 is 30 penalty units. Secondly, the punishment of offences not involving fault is likely to allow ASIC to establish a compliance program that will significantly enhance the enforcement of the regime in deterring offences.

3.35 The defence of reasonable mistake of fact as well as the other general defences in part 2.3 of the Commonwealth Criminal Code will continue to apply in relation to the strict liability offences under the Registration Bill.

3.36 Strict liability will also help ensure the integrity of the regulatory regime, by ensuring that the entity behind a business name can be identified. This is consistent with the justifications for strict liability indicated by Report 6/2002 of the Scrutiny of Bills Committee at 284:

"strict liability may be appropriate where it is necessary to ensure the integrity of a regulatory regime."

3.37 Strict liability will provide consistency with analogous offences under other Commonwealth legislation, in particular the Corporations Act and the Credit Act. Many of the existing corresponding offence provisions in State and Territory business name legislation contain strict

liability offences. Therefore, applying strict liability will not impose an unduly onerous burden and entities will be provided with sufficient notice to guard against the possibility of inadvertently contravening the offence provisions.

3.38 Section 75 of the Registration Bill allows ASIC to issue formal warnings if it believes on reasonable grounds that an entity has contravened a provision of the Registration Bill and warn the entity of the action that may be taken by ASIC under the Act in response to the contravention. This provision is intended allow ASIC pursue its objective of compliance more effectively.

### **Application and transitional provisions**

3.39 All provisions in Part 2 will commence on a day to be fixed by proclamation. The date of proclamation will depend on when the final State or Territory passes its referral legislation or adopts the Commonwealth legislation.

3.40 Transitional provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.

### **Consequential amendments**

3.41 Consequential provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.

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## **Chapter 4**

### **Registering a business name**

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#### **Outline of chapter**

- 4.1 Chapter 3 of this explanatory memorandum outlines:
- the requirement of ASIC to establish and maintain a Business Names Register
  - the processes by which an entity may apply for and obtain the registration of a business name
  - that an entity will only be eligible to have a business name if they are eligible for an Australian Business Number (ABN)
  - the categories of people and entities who are disqualified from having a business name registered to them.

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

4.2 Section 22 provides that the Australian Securities and Investments Commission (ASIC) must establish and maintain a Business Names Register. Maintaining the Register would include updating the register based on information that is provided to ASIC by an entity that holds the business name. The Bill gives a number of additional powers to ASIC to maintain the Register (for example, see section 37 discussed below). These powers are in addition to those granted by this section and should not be read as impliedly limiting the actions that ASIC may take to maintain the Register pursuant to this section. The purpose of establishing the Business Names Register is set out in subsection 22(2). Subsection 22(3) provides that ASIC may keep the Register in any form it sees fit. Subsection 22(4) provides that the Register is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*. The statement in subsection 22(4) has been included for the sake of clarity only, to assist the reader, and does not amount to a declaration under the *Legislative Instruments Act 2003*.

4.3 Subsection 23(1) provides that an entity that has the intention of carrying on a business can lodge an application for a business name to be registered to the entity.

4.4 Subsection 23(2) sets out what must be included in the application. These details include details sufficient to identify the entity (such as the name of the entity), various contact details and the period for which registration is sought.

4.5 Of particular note is that an application must include an ABN for the entity or details of a pending ABN application. A business name will only be available to a business that is eligible for an ABN. The ABN of the entity is a mandatory field in relation to the record in the Register in respect of a business name. The purpose of mandating the ABN is to improve the ability of persons to identify the holder of a business name. Currently the Australian Business Register (the register of ABNs maintained by the Commonwealth) includes the 'trading name' for the ABN holder.

4.6 Subsection 23(3) provides that the application must be in the prescribed form and lodged in the prescribed manner. Note should be made of sections 68 and 69 of the Bill in relation to making this application (and all other kinds of application under the Bill). In the absence of prescription by regulation, ASIC is empowered to approve the form of application and the manner in which the application must be lodged. Further detail is provided below in relation to those sections.

4.7 Subsection 23(4) provides that the applicant must pay a registration fee before a name will be registered to the applicant. This is subject to ASIC's power in the circumstances set out in section 72 of the Bill to waive and refund fees. The fees under this Bill are set by regulations made pursuant to the Business Names Registration (Fees) Bill 2011.

4.8 Subsection 23(6) provides that an applicant must provide details of a person's date and place of birth for the purposes set out in that subsection. The mechanisms for providing access to the Business Names Register are set out in Part 8 of the Bill. Section 60 provides a regulation making power to restrict public access to certain information on the Register.

4.9 The *Privacy Act 1988* allows government agencies to collect personal information only where it is for a purpose directly related to a function or activity of the collector. For example, identifying an entity behind a business name or determining whether an entity is disqualified. The Registration Bill does not provide for the collection of personal information for data verification purposes.

4.10 Subsection 24(1) provides that ASIC must register the business name to the entity if ASIC is satisfied that the entity has an ABN; it has paid its registration fee; the name is available to an entity and the entity is not disqualified. Subsection 24(2) provides ASIC with a power to request that an applicant provide information or a further document within a specified time frame, if this is necessary to enable ASIC to be satisfied of the matters set out in subsection 24(1).

4.11 Part 7 of the Bill sets out the review processes for this and seventeen other kinds of decision that ASIC (or the Minister) may make under the Bill. Further detail is provided in the commentary for that Part.

4.12 Subsection 25(1) provides that a business name is available to an entity if the name is not identical or, in some cases, nearly identical to a name that is in one of the categories set out in paragraphs 25 (a)(i) to (vii) or (b). These categories include references to the names of existing business names and the names of Corporations Act companies; a name that is registered to an entity on a notified State or Territory register (for example, a cooperative or an incorporated association); and a notified State, Territory or Commonwealth government body. Names are also assessed against certain business names held pursuant to section 54 of the Bill (i.e. during the review period for a cancellation decision) or pursuant to a provision of the Business Names Registration (Transitional) Bill 2011.

4.13 Further, a name is available if: no other entity has priority over a name that is identical or nearly identical and that name is not undesirable (see section 29 for priority of applications for business names); it does not consist of a restricted word or expression; and it does not contain a word or expression that is only available if a condition is satisfied and the business has not satisfied that condition.

4.14 Sections 26, 27 and 28 provide that the Minister may make rules by legislative instrument for determining whether a name is identical or nearly identical to another name or determine by legislative instrument whether a name is undesirable or words and expressions are restricted.

4.15 Subsection 27(2) permits the Minister to allow, in a particular case, an otherwise undesirable name to be registered (note that under subsection 27(4) the Minister may revoke such a decision). Subsection 28(2) permits the Minister to determine that a particular word or expression is restricted in relation to a specified entity or specified business unless any specified conditions are met. Subsections 27(3) and 28(3) provide that determinations by the Minister under subsections 27(2) or 28(2) are not legislative instruments within the meaning of the *Legislative Instruments Act 2003*. These statements have been included for the sake of clarity only, to assist the reader, and do not amount to declarations under the *Legislative Instruments Act 2003*. Certain decisions under sections 27 and 28 are reviewable under Part 7 of the Bill. Further detail is provided in the commentary for that Part.

4.16 Section 29 provides that two or more applications for the registration of business names that are identical or nearly identical take priority in the order in which they are lodged. This does not apply to consent applications (these are explained in the commentary for section 31). Further, section 29 also provides that priority is not affected by the fact that an ABN application is pending or, where an application for

registration is refused, during a review period in relation to that decision the entity's application for registration of a business name. The review period for an application to refuse registration is a period of at least 28 days, at the discretion of ASIC. A determination by ASIC of a longer review period is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*. The statement in subsection 29(5) has been included for the sake of clarity only, to assist the reader, and does not amount to a declaration under the *Legislative Instruments Act 2003*. In the event that there is the same priority for two or more applications for names that are identical or nearly identical, ASIC may refuse these applications.

4.17 Decisions under this section are reviewable under Part 7 of the Bill. Further detail is provided in the commentary for that Part.

4.18 Section 30 provides that an application for registration of a business name is taken to be refused if the registration fee is not paid within the fee payment period set out in subsection 30(3). This period begins at the time when the application is lodged and ends immediately before that time ten business days after the day of lodgement. ASIC's powers in relation to fees are also set out in sections 71 and 72.

4.19 Section 31 provides that an entity to whom a business name is registered may consent to the registration of that business name to another entity. This provision sets out how business names are transferred from one entity to another. In brief, the former holder must consent to the transfer of the name to the new holder. The process is designed to facilitate (but not mandate) streamlined and electronic conveyancing of business names.

4.20 The consent of the former holder must be in the prescribed form and lodged in the prescribed manner. If an application is made under section 23 and the notices listed in subsection 31(3) are lodged, the name is to be taken to be available to the proposed business name holder. A potential applicant, who has received consent from the entity to whom the business name is registered, can carry on business for three months without committing an offence.

4.21 Section 32 sets out the categories of entity disqualified from holding a business name. The purpose is to prevent certain persons who are carrying on a business from concealing their identity from the customers, suppliers and other persons transacting with the business.

4.22 Entities are disqualified if they have been disqualified from managing a company under the Corporations Act due to having been convicted of certain offences or if they have been convicted of specified classes of criminal offence. Entities that are managed by disqualified persons are also disqualified.

4.23 Subsection 32(2) lists the length of time for which the persons or entities are disqualified. Generally, they are disqualified whilst they are not eligible to manage a company under the Corporations Act due to the relevant convictions; or for a period of 5 years following the convictions set out in subsection 32(1).

4.24 The Minister has the power to determine that an entity or a person is not disqualified, despite otherwise being disqualified due to subsection 32(2). A determination by the Minister is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*. The statement in subsection 32(4) has been included for the sake of clarity only, to assist the reader, and does not amount to a declaration under the *Legislative Instruments Act 2003*.

4.25 Decisions under this section are reviewable under Part 7 of the Bill. Further detail is provided in the commentary for that Part.

4.26 Section 33 provides that ASIC registers a business name by entering in the Business Names Register the details set out in subsection 33(1). Depending on which fee is paid, the registration is to be for one or three years, unless an alternative registration period is determined by ASIC.

4.27 ASIC may determine an alternative registration period, the duration of which is limited by subsection 33(5), in the circumstances set out in subsections 33(3) and 33(4). Such determinations are not legislative instruments within the meaning of the *Legislative Instruments Act 2003*. The statement in subsection 33(6) has been included for the sake of clarity only, to assist the reader, and does not amount to a declaration under the *Legislative Instruments Act 2003*. The purpose of this mechanism is to allow ASIC to align business name or company renewal dates. This will facilitate efforts by ASIC to reduce the compliance burden imposed upon businesses in completing and lodging multiple renewals at different times. ASIC may only do this at the request of the business name applicant. ASIC cannot impose alternative renewal dates upon an applicant without their consent.

4.28 Decisions under this section are reviewable under Part 7 of the Bill. Further detail is provided in the commentary for that Part.

4.29 Subsection 33(7) provides that in addition to the details stated in the Business Names legislation, the Register may only include details that are prescribed and nothing else.

4.30 Subsection 33(8) provides that upon registration of a business name, ASIC must provide the entity with notice in writing of the details of their registration.

4.31 Section 34 sets out that ASIC, when it refuses an application for registration, must advise the applicant in writing of the reasons for the refusal and refund any registration fee that has been paid. If no decision

has been made within 28 days of lodgement, an applicant may lodge notice that they wish to treat the application as having been withdrawn. The intention of this provision is to give the applicant the capacity to access the appeal and review mechanisms under the legislation.

4.32 Decisions under this section are reviewable under Part 7 of the Bill. Further detail is provided in the commentary for that Part.

### **Application and transitional provisions**

4.33 All provisions in Part 3 will commence on a single day to be fixed by proclamation. The date of proclamation will depend on when the final State or Territory passes its referral legislation or adopts the Commonwealth legislation.

4.34 Transitional provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.

### **Consequential amendments**

4.35 Consequential provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.

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## **Chapter 5**

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

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#### **Outline of chapter**

- 5.1 Chapter 4 of the explanatory memorandum outlines:
- how ASIC obtains information in order to maintain the Register
  - how ASIC may act upon that information
  - the obligations of business name holders to provide information to ASIC
  - the capacity of a debtor representative, such as a liquidator, to lodge a notice with ASIC of their appointment
  - what occurs when a business name is registered to an individual and they die.

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

5.2 Section 35 imposes an obligation on entities to update ASIC about any changes to information previously provided to ASIC within 28 days of becoming aware of the change. This is to be done by the entity lodging with ASIC a notice in the prescribed form and manner.,

5.3 Section 36 imposes an obligation on an entity to advise ASIC if they become disqualified. The entity must lodge a notice in the prescribed manner and form.

5.4 Section 37 provides ASIC with a power to request that an entity (other than a government body) provide information relevant for the purposes of establishing or maintaining the Business Names Register. Pursuant to subsection 37(3), an entity must comply with ASIC's request and is subject to a penalty of 5 penalty units if they do not. This is a strict liability offence.

5.5 The appropriateness of applying strict liability for the offence in subsection 37(3) of the Registration Bill was considered in accordance with Report 6/2002 of the Scrutiny of Bills Committee.

5.6 First, the penalty imposed under section subsection 37(3) is 5 penalty units. Secondly, the punishment of offences not involving fault is likely to allow ASIC to establish a compliance program that will significantly enhance the enforcement of the regime in deterring offences.

5.7 The defence of reasonable mistake of fact as well as the other general defences in part 2.3 of the Commonwealth Criminal Code will continue to apply in relation to the strict liability offences under the Registration Bill.

5.8 Strict liability will also help ensure the integrity of the regulatory regime, by ensuring that the entity behind a business name can be identified. This is consistent with the justifications for strict liability indicated by Report 6/2002 of the Scrutiny of Bills Committee at 284:

"strict liability may be appropriate where it is necessary to ensure the integrity of a regulatory regime."

5.9 Strict liability will provide consistency with analogous offences under other Commonwealth legislation, in particular the Corporations Act and the Credit Act. Many of the existing corresponding offence provisions in State and Territory business name legislation contain strict liability offences. Therefore, applying strict liability will not impose an unduly onerous burden and entities will be provided with sufficient notice to guard against the possibility of inadvertently contravening the offence provisions.

5.10 Section 75 of the Registration Bill allows ASIC to issue formal warnings if it believes on reasonable grounds that an entity has contravened a provision of the Registration Bill and warn the entity of the action that may be taken by ASIC under the Act in response to the contravention. This provision is intended allow ASIC pursue its objective of compliance more effectively.

5.11 If there is no response from an entity and ASIC reasonably believes that the information on the Register is not correct, ASIC has the power under subsection 37(6) to delete, correct or annotate the Register. If ASIC takes such action, it must inform the entity as required by subsection 37(8).

5.12 Decisions under this section are reviewable under Part 7 of the Bill. Further detail is provided in the commentary for that Part.

5.13 Cancellation of a business name may result from failure to provide some kinds of information when requested. This is explained further in the commentary in relation to section 48.

5.14 Subsection 38(1) provides that a debtor representative of an entity must lodge a notice in accordance with subsection 38(2). The kinds of debtor representatives to which the section refers are listed in subsection 38(3).

5.15 This provision provides only for notification. Any authority for an insolvency representative to exercise rights under the Bill in respect of a business name will derive from the relevant insolvency or bankruptcy law or instrument.

5.16 Section 39 provides that if a business name is registered to an individual who dies, a legal personal representative (within the meaning of paragraph 39(1)(c)) must lodge notice of a grant of probate, letters of administration or other grant within 28 days. The notice must be lodged in the prescribed form and manner. ASIC must also register the business name to the estate of the deceased person and include the details of the legal personal representative on the Register.

5.17 Section 40 provides that if a business name is registered to an individual who dies an entity may lodge with ASIC (in the prescribed manner and form) notice of the fact that they have reasonable grounds to believe that they will inherit assets formerly used by the deceased in carrying on business under a business name. If notice is lodged, ASIC must register the business name to the estate of the deceased, enter the name of an entity as a notified successor in relation to a business name and enter any other details prescribed by the regulations. Under subsection 37(6) ASIC may refuse to enter the name of an entity as a notified successor, if ASIC is not satisfied on reasonable grounds that the entity will receive an inheritance from the deceased. ASIC must also remove the entry of a notified successor if it receives notice under section 39.

5.18 Decisions under this section are reviewable under Part 7 of the Bill. Further detail is provided in the commentary for that Part.

5.19 Section 41 provides that if an entity fails to comply with a legislative requirement to lodge information with ASIC, ASIC can give written notice requiring the entity to comply within 10 business days after the notice is given. If the entity does not comply, ASIC may apply to the Federal Court for an order directing the entity to provide information to it.

## **Application and transitional provisions**

5.20 All provisions in Part 4 will commence on a single day to be fixed by proclamation. The date of proclamation will depend on when the final State or Territory passes its referral legislation or adopts the Commonwealth legislation.

5.21 Transitional provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.

## **Consequential amendments**

5.22 Consequential provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.



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## **Chapter 6**

# ***Cancelling the registration of a business name***

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### **Outline of chapter**

- 6.1 Chapter 5 of this explanatory memorandum outlines:
- the circumstances in which a business name may be cancelled and the processes by which any cancellation must occur
  - the steps ASIC must take before it can cancel the registration of a business name.

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

6.2 Section 42 provides that ASIC must cancel the registration of a business name to an entity if the entity lodges notice in the prescribed manner and form. Before cancelling the registration, ASIC must give the entity at least 28 days notice in writing of their intention to cancel the registration. This is the provision under which an entity may voluntarily surrender a business name. The notice requirement is imposed as a protective measure against unauthorised attempts to surrender a business name.

6.3 Section 43 allows ASIC to cancel the registration of a business name to an entity if ASIC becomes aware of a matter and would not have registered a business name if it was aware of that matter at the time of registration. If ASIC is satisfied that there are exceptional circumstances, it may decide to continue the registration. ASIC must provide the entity 28 days notice in writing before cancelling the registration and inform the entity that it will cancel the registration unless ASIC is satisfied that there are exceptional circumstances justifying the continued registration of the business name.

6.4 Decisions under this section are reviewable under Part 7 of the Bill. Further detail is provided in the commentary for that Part.

6.5 Section 44 provides that ASIC must cancel the registration of a business name to an entity, after giving the entity at least 28 days notice in writing of the proposed cancellation, once ASIC becomes aware that the entity is disqualified.

6.6 Section 45 provides that ASIC must cancel the registration of a business name to an entity if a Ministerial determination in relation to the

availability of a business name (allowing an otherwise undesirable name) is revoked. ASIC must give the entity at least 28 days notice in writing of the proposed cancellation.

6.7 Section 46 provides that ASIC must cancel the registration of a business name, if the business name contains a word or expression that is only available when a condition is satisfied and the entity no longer satisfies that condition. ASIC must provide the entity with at least 28 days notice that it has formed the view that the entity no longer satisfies the condition and that it intends to cancel the registration.

6.8 Section 47 provides that ASIC may cancel the registration of a business name to an entity if ASIC is satisfied that the entity is not carrying on business under the business name and that the entity, in the immediately preceding three months, has not carried on business under the business name. This does not apply to government bodies. ASIC may decide not to cancel the registration of a business name if it is satisfied that there were exceptional circumstances for the failure to carry on a business under the business name during the three month period. ASIC must give a least 28 days notice in writing to the entity that it intends to cancel the registration and give the entity the opportunity to provide ASIC with evidence of the matters set out in paragraph 47(2)(b)(ii). One purpose of this provision is to enable ASIC to take action in circumstances where ASIC is satisfied that an entity has registered a business name that it is not intending to use for itself.

6.9 Decisions under this section are reviewable under Part 7 of the Bill. Further detail is provided in the commentary for that Part.

6.10 Under section 48, if ASIC has made a request under either of the sections mentioned in subsection 48(1) of the Bill, the entity has failed to respond and ASIC is satisfied that this failure affects the integrity of the Register and there are no exceptional circumstances, ASIC may cancel the registration. The business name holder is to be notified of ASIC's intention in writing at least 28 days prior to cancellation and is given an opportunity to put their case to ASIC prior to this taking place.

6.11 Decisions under this section are reviewable under Part 7 of the Bill. Further detail is provided in the commentary for that Part.

6.12 Subsection 49(1) provides that ASIC must give notice to an entity at least 28 days before the registration period for its business name expires and remind the entity in writing of the time and day on which the registration period will expire. Failure to give a reminder in accordance with subsection 49(1) does not affect ASIC's power to cancel a registration if not renewed.

6.13 Separate to this 'early warning' requirement, if the registration period then expires, ASIC may give notice in writing to the entity that it will cancel the registration unless it is renewed. Cancellation may take

effect either after 3 months from the date of expiry or 6 weeks after notice of the intention to cancel is given, whichever is the later. A business name continues to be registered to an entity after the expiry of the registration period for the registration unless the registration is cancelled. A business name will never automatically expire. Cancellation requires a decision by ASIC, the regulator.

6.14 Section 50 provides that ASIC must cancel the registration of a business name if it is reasonably satisfied that the entity no longer exists. This does not apply to natural persons. For example, ASIC may cancel a business name registration if the holder of the name is a company that has been deregistered.

6.15 Section 51 permits a court in an action for an infringement of a registered trademark to make an order that the registration of a business name to an entity be cancelled. ASIC must cancel the registration if a copy of the court's order is lodged with ASIC, subject to a number of rules to account for possible stays and appeals against the order. This section is not intended to limit any orders that a court may otherwise make in relation to the registration of a business name, or ASIC's obligations under such orders.

6.16 Section 52 provides that ASIC must give written notice to an entity of ASIC's decision to cancel the registration of a business name and its reasons.

6.17 Section 53 sets out requirements for giving notice to particular types of entities and joint ventures. It provides that ASIC must give notice in accordance with this section.

6.18 Section 54 provides that if a registration of a business name is cancelled, and the entity makes an application for review of the cancellation, the business name is held during the review period in relation to ASIC's decision and the entity does not commit an offence by continuing to trade during the review period. The review period is set out in subsection 54(2) as four months (from the date the entity is notified of a decision under section 52) or such longer period as ASIC provides. ASIC may determine a longer review period and must provide a copy of the determination to the entity. Such a determination is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*. The statement in subsection 54(3) has been included for the sake of clarity only, to assist the reader, and does not amount to a declaration under the *Legislative Instruments Act 2003*.

6.19 Decisions under this section are reviewable under Part 7 of the Bill. Further detail is provided in the commentary for that Part.

## **Application and transitional provisions**

6.20 All provisions in Part 5 will commence on a single day to be fixed by proclamation. The date of proclamation will depend on when the final State or Territory passes its referral legislation or adopts the Commonwealth legislation.

6.21 Transitional provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.

## **Consequential amendments**

6.22 Consequential provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.

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## **Chapter 7**

# **Renewing the registration of a business name**

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### **Outline of chapter**

- 7.1 Chapter 6 of this explanatory memorandum outlines:
- the process by which an entity may renew the registration of a business name
  - that a business can renew their registration for either one year or three depending on payment of the appropriate fee.

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

7.2 Section 55 provides that an entity can renew their registration of their business name for a period of 1 year or 3 years, provided that they pay the appropriate registration fee by lodging the fee with ASIC.

7.3 An entity can also lodge, in the prescribed manner and form, an application for an alternative registration period. ASIC may determine an alternative registration period to align the renewal date with that for a company under the Corporations Act or another business name registered to the entity. Such a determination is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*. The statement in subsection 55(6) has been included for the sake of clarity only, to assist the reader, and does not amount to a declaration under the *Legislative Instruments Act 2003*. The purpose of this mechanism is to reduce compliance costs for business associated with lodging different renewals on different days.

7.4 Decisions under this section are reviewable under Part 7 of the Bill. Further detail is provided in the commentary for that Part.

### **Application and transitional provisions**

7.5 All provisions in Part 6 will commence on a single day to be fixed by proclamation. The date of proclamation will depend on when the final State or Territory passes its referral legislation or adopts the Commonwealth legislation.

7.6 Transitional provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.

## **Consequential amendments**

7.7 Consequential provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.

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## **Chapter 8**

### **Review**

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#### **Outline of chapter**

- 8.1 Chapter 7 of this explanatory memorandum outlines:
- the rights of business name holders and affected third parties to seek internal review and external administrative review of decisions made by ASIC or the Minister which affect them.

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

8.2 Part 7 of the Bill sets out the rights of business name holders and affected third parties to seek review of decisions made by ASIC or the Minister which affect them.

8.3 Section 56 sets out the decisions made under provisions of the Bill that are reviewable and the circumstances in which they are reviewable. These decisions relate to the registration of a business name; the refusal to register a business name; a refusal to permit an otherwise undesirable business name; the revocation of a prior permission to use an otherwise undesirable business name; a determination that specifies that words or expressions are only permitted to be included if certain conditions are met; a decision by ASIC to grant or not grant an extension of a review period in relation to a decision not to grant a name; a decision that an otherwise disqualified entity is not disqualified; a refusal to alter the registration period of a business name from the standard one or three year terms; a revocation of a previous determination to alter a registration period; decisions regarding the correction or annotation of data on the register; decisions regarding the recording on the register of a notified successor to a deceased business name holder; cancellation decisions in relation to a business name; decisions regarding the suppression of otherwise public information on the register; and refusals by ASIC to receive documents for processing.

8.4 Section 57 permits internal review by ASIC of decisions made by ASIC, where an application is made by an entity in the prescribed manner and form and the decision is not one that ASIC made as a delegate of the Minister. It also provides that where a decision has been made by ASIC as a delegate of the Minister, an application for review may be lodged with the Minister in the prescribed manner and form.

8.5 A review must be sought within 28 days or, in the case of a decision to register a business name, within 15 months. The extended

period for decisions to register a name reflects the fact that a third party may not be aware of the registration of a business name that affects them for some time after the decision is made. The period in which a review may be sought may be extended by the reviewing body.

8.6 Where the review body is ASIC, a decision must be made within 28 days. Where the review body is the Minister, a decision must be made within 60 days. The review body will be the Minister where a person is seeking a review of a decision made under a power granted to the Minister but exercised under delegation by an ASIC staff member.

8.7 Section 58 provides for a review of an internal review decision by the Administrative Appeals Tribunal. Under the *Administrative Appeals Tribunal Act 1975*, there are time limits on seeking such reviews.

8.8 Section 59 provides that if, as a result of a review under sections 57 or 58 or by a court, a decision is made that a business name be registered to an entity then the entity must pay the appropriate registration fee.

## **Application and transitional provisions**

8.9 All provisions in Part 7 will commence on a single day to be fixed by proclamation. The date of proclamation will depend on when the final State or Territory passes its referral legislation or adopts the Commonwealth legislation.

8.10 Transitional provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.

## **Consequential amendments**

8.11 Consequential provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.

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## **Chapter 9**

### ***Accessing the business names register***

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#### **Outline of chapter**

- 9.1 Chapter 8 of this explanatory memorandum outlines:
- the rules governing access to the information recorded in the Register
  - the requirement that ASIC provide information to government bodies for specified purposes.

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

9.2 Section 60 provides that ASIC must provide access to certain information in the Register upon request. An application must be made in the prescribed manner, in the prescribed form and accompanied by the application fee for a copy of an entry in the Register relating to particular business names and particular entities. If an application is lodged and complies with the requirements of the business names legislation and regulations, ASIC must provide the person with a copy of the entry or entries sought.

9.3 Subsection 60(4) provides that, before giving the person a copy of the entry, ASIC must excise any details required to be excised by regulations made under subsection 60(5) or prohibited to be disclosed under subsection 60 (6).

9.4 Information Privacy Principle 11 limits ASIC ability to disclose personal information, without consent, for purposes other than that for which it was collected.

9.5 This section also allows ASIC to suppress otherwise publicly available personal information held on the register in circumstances where a person lodges an application for a detail not to be disclosed and ASIC is satisfied that disclosure is not appropriate. Decisions under this section are reviewable under Part 7 of the Bill. Further detail is provided in the commentary for that Part.

9.6 Section 61 provides that ASIC must make publicly available and free of charge any details of the kind prescribed by the regulations. It is intended that the regulations will provide for most of the data that is currently publicly available to be available for free.

9.7 Section 62 outlines that ASIC must provide information to other government bodies for specified purposes, which are consistent with the Privacy Act. Section 77(3) provides a penalty of up to 6 months imprisonment for reckless recording, use or disclosure of information, made available under the section 62, for an inconsistent purpose.

9.8 ASIC must make the information available electronically and without charge. The purposes specified are:

- the enforcement of the criminal law;
- the enforcement of a law imposing a pecuniary penalty;
- the protection of the public revenue;
- the exercise of the powers or the performance of the functions of that body in relation to consumer protection;
- the exercise of the powers or the performance of the functions of that body in relation to anti-discrimination;
- the exercise of the powers or the performance of the functions of that body in relation to workers' compensation;
- the exercise of the powers or the performance of the functions of that body in relation to insolvency or bankruptcy;
- the exercise of the powers or the performance of the functions of that body in relation to licences;
- maintaining a notified State/Territory register; or
- the performance of the functions of an intelligence or security agency.

## **Application and transitional provisions**

9.9 All provisions in Part 8 will commence on a single day to be fixed by proclamation. The date of proclamation will depend on when the final State or Territory passes its referral legislation or adopts the Commonwealth legislation.

9.10 Transitional provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.

## **Consequential amendments**

9.11 Consequential provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.



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## **Chapter 10**

### **Administration**

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#### **Outline of chapter**

- 10.1 Chapter 9 of this explanatory memorandum outlines:
- various administrative matters in respect of the administration of the new regime
  - the ability of the Minister to provide directions to ASIC in relation to the administration of the regime
  - the ability of ASIC to share information with the Registrar of the Australian Business Register (ABR)
  - an offence in relation to the improper use by employees of information provided under the business names legislation.

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

10.2 Section 63 provides that ASIC has the powers and functions conferred on it by or under this Bill or the Transitional Bill. ASIC has the power to do whatever is necessary for or in connection with, or reasonably incidental to, the performance of its functions under this Bill and the Transitional Bill. ASIC has the general administration of this Bill and the Transitional Bill, subject to the *Australian Securities and Investments Commission Act 2001*.

10.3 Section 64 provides that the Minister may give directions to ASIC as to its policies and priorities in relation to the administration of the business names regime, but not without consulting with ASIC first and not in relation to a particular case. Such a direction is not a legislative instrument within the meaning of the *Legislative Instruments Act 2003*. The statement in subsection 64(3) has been included for the sake of clarity only, to assist the reader, and does not amount to a declaration under the *Legislative Instruments Act 2003*. Directions must be published in the Gazette and laid before each House of Parliament within 15 sitting days after publication. ASIC must comply with these directions.

10.4 Section 65 provides that ASIC can, with the consent of the Minister, enter into agreements with the States and Territories for the performance of functions or the exercise of powers by ASIC as an agent of the State and Territory. Although ASIC has such functions and powers as referred to in such an agreement, under section 65(2) ASIC is not under a duty to perform such functions or exercise such powers. In addition,

ASIC is not subject to any directions of the Minister in relation to entering into such an agreement or performing functions under such an agreement.

10.5 Section 66 provides that other than for the decisions relating to the review of any decisions, ASIC may arrange for the use of computer programs under ASIC's control to make decisions. For example, it is intended that decisions regarding whether a proposed business name is identical or nearly identical to any of the hundreds of thousands of existing business name expected to be on the Register will be largely automated.

10.6 Section 67 provides that any document which the Bill or the Transitional Bill requires to be lodged with ASIC must be in the prescribed form and must contain or be accompanied by any materials required by the form. In the absence of a form being prescribed, the Bill authorises ASIC to instead approve a form.

10.7 Section 68 provides that a document that is required to be lodged must be lodged in the manner prescribed by the regulations. However, this section likewise provides that if the regulations do not prescribe a manner ASIC may approve the manner in which the form must be lodged.

10.8 Section 69 provides that ASIC may refuse to receive a document if it considers that it: contains matter that, in a material particular, is false or misleading in the form or context in which it is included; is incomplete; is to be lodged in a prescribed form or in a prescribed manner but is not submitted in that form or manner; otherwise contravenes the Bill or Transitional Bill; or contains an error, alteration or erasure.

10.9 Further, if ASIC refuses to accept a document, it can make a request under subsection 69(2) for the document to be corrected, a fresh document submitted or a supplementary document lodged.

10.10 Subsection 69(3) provides ASIC with a power to request by a written notice an additional document or further information, once it receives a document. The information or document that ASIC can request is such that ASIC considers necessary in order to form an opinion as to whether it may refuse to receive the first document. In the written notice that ASIC is required to send out, it must specify the day by which the entity must comply with the notice. If the entity does not comply with the notice, ASIC may refuse to accept the first document and it is taken to have never been lodged with ASIC

10.11 Decisions under this section are reviewable under Part 7 of the Bill. Further detail is provided in the commentary for that Part.

10.12 Section 70 provides that the fees payable to ASIC are received on behalf of the Commonwealth of Australia.

10.13 Section 71 provides ASIC with a power to determine, by legislative instrument, the circumstances where fees are taken to be fully

paid. For example, a determination may provide rules regarding when payments made by cheque are considered to be effective for the purpose of the business name regime.

10.14 Section 72 provides that nothing in the Bill prevents ASIC on behalf of the Commonwealth to waive or reduce fees that would be otherwise payable or to refund fees if circumstances are appropriate.

10.15 Section 73 sets out the methods by which ASIC may give notices (in relation to the administration of the Register) to an entity. It entitles ASIC to rely upon the address for service specified on the Register. Similarly, if an entity has provided an email address to be included on the Register and the entity has given ASIC consent to use the email address, it may rely on that address to send notices to it.

10.16 Section 74 provides that ASIC may destroy or dispose of a document that it has received under the provisions of the Bill or the Transitional Bill, if ASIC considers that it is no longer desirable or necessary to retain the document. ASIC can only do this if the document has been in its possession for the period of time that is prescribed in the regulations or an electronic copy of the document has been retained by ASIC. It is intended that a period of 7 years will be provided for in the regulations.

10.17 Section 75 provides that ASIC may issue formal warnings to an entity where ASIC has reasonable grounds to believe that the entity has contravened a provision of the Registration Act. The entity will be warned of the action that ASIC may take under the Registration Bill in response to such a contravention.

10.18 Section 76 provides that ASIC may disclose information to the Registrar of the Australian Business Register (ABR), for the purposes of identifying business names registered to an entity on the ABR and ensuring consistency between the ABR and the Register in the details registered on those registers.

10.19 ASIC is permitted by subsection 76(2) to record and use information disclosed to ASIC by the registrar of the ABR for the purposes of ensuring consistency between the ABR and the Register.

10.20 Subsections 77(1) and (2) creates an offence in relation to the unauthorised recording, use or disclosure of information obtained in the course of performing functions or exercising powers under the new business names regime. It is punishable by up to one year of imprisonment. The recording, use or disclosure of information is permitted if done with the consent of the entity, in accordance with a provision of the Bill or the Transitional Bill or for the purpose of performing functions or exercising powers under the Bill or Transitional Bill. Provision of information to a court or tribunal is also permitted.

10.21 Subsection 77(3) creates an offence where a person obtains information in the performance of their functions for that body or agency, to which they would not have had access but for section 62, and they record, use or disclose the information other than for the purpose for which it was initially provided. To commit the offence a person must also be reckless as to whether the purpose for which it was provided is same as the purpose for which it is subsequently recorded, used or disclosed. The offence attracts a penalty of up to six months' imprisonment.

10.22 Subsection 77(4) provides an exception from the offences created under subsection 77(3) for third party disclosure of information when it is reasonably necessary for the enforcement of criminal law, a law imposing pecuniary penalty or the protection of public revenue.

10.23 These provisions seek to protect information held in the business names register from misuse.

10.24 Section 78 provides that the Minister, ASIC, a member of ASIC, a staff member of ASIC, a person authorised to exercise a function or power of ASIC or an APS employee or employee of a Commonwealth authority whose services are available to ASIC are not liable for damages for any act done or omitted to be done under the provisions of the Bill or the Transitional Bill in the performance or purported performance of any function or exercise or purported exercise of any power under the Bill or the Transitional Bill, provided that the act was done in good faith.

10.25 Section 79 provides that ASIC may delegate its functions and powers to an employee. ASIC's coercive information gathering powers and associated functions under section 37 (requesting information and correcting the register) and subsection 41(1) (giving notice requiring entity to lodge information) may only be delegated to a person who is an ASIC member or in the Senior Executive Service, or who is acting in such a position. The same restriction on delegation applies to the power in subsection 47(1) to cancel a business name on the basis that the entity is not carrying on business under that name, given the complexities and uncertainties expected to arise in respect of the exercise of this power.

10.26 The power under subsection 41(2) (relating to applying to court for orders to compel the production of information) and subsection 65(1) (relating to entry into arrangements with the States and Territories with the Minister's consent) cannot be delegated at all.

10.27 Otherwise ASIC may delegate functions and powers to an employee, provided that the employee has the expertise appropriate to the function or power delegated.

10.28 Section 80 provides that the Minister may, by a signed instrument, delegate to either an ASIC Member or a staff member who is a Senior Executive Service employee, either acting or permanent, any of the Minister's functions under the Bill or the Transitional Bill that are

specified as being capable of delegation by regulations. The person who receives the delegation must comply with any directions that the Minister gives in relation to the exercise of the delegation.

### **Application and transitional provisions**

10.29 All provisions in Part 9 will commence on a single day to be fixed by proclamation. The date of proclamation will depend on when the final State or Territory passes its referral legislation or adopts the Commonwealth legislation.

10.30 Transitional provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.

### **Consequential amendments**

10.31 Consequential provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.



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# **Chapter 11**

## **General**

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### **Outline of chapter**

- 11.1 Chapter 10 of this explanatory memorandum outlines:
- a number of general provisions necessary to ensure the proper operation of the Bill.

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

11.2 Subsection 81(1) provides that any obligation that would be imposed on a partnership under this Bill or the Transitional Bill, is an obligation imposed on each partner, but the obligation may be discharged by any of the partners. Pursuant to subsection 81(2), one or more of the partners in a partnership may cause any act that is allowed or needed under the business names legislation to be done on behalf of the partnership. If the partnership commits an offence under the Bill, each partner is taken to have committed the offence. A partner does not however commit an offence if they are not aware of the circumstances that led to the offence or, if they are aware, they take all reasonable steps to correct the breach immediately after they are aware of the circumstances. The onus of proof to demonstrate that the partner was not aware or, if they were aware, that they took reasonable steps rests with the partner who would be a defendant in any proceedings

11.3 Section 82 provides that all partners in a partnership can nominate a person as a principal contact for the partnership for the purposes of the Bill or the Transitional Bill. The person nominated is taken to be the agent of the partnership in respect of dealings with ASIC in respect of the Register, until their nomination is withdrawn by all partners by a notice in the prescribed form and manner under subsection 82(4). Pursuant to subsection 82(3), a change in the composition of the partnership does not affect a person's nomination. Thus if the composition of the partnership does change, it is not necessary for the partners to nominate a new principal contact.

11.4 Sections 83 and 84 contain similar obligations for unincorporated associations or bodies to those that are imposed on partnerships in section 81 and 82.

11.5 Sections 85 and 86 contain similar obligations for trustees to those that are imposed on partnerships in section 81 and 82.

11.6 Section 87 provides that, for the purposes of the Bill and the Transitional Bill, two or more entities that contract to carry on a business under a business name, without forming a new entity, are taken for the purposes of the Bill and the Transitional Bill to be a single entity, being a joint venture. An obligation imposed on the joint venture is imposed on each joint venture entity but can be discharged by one of them on behalf of any of them. Similar provisions that apply to partnerships also apply to joint ventures in that if a joint venture entity can establish that it was not aware of the circumstances that constitute a breach, or alternatively that it took all reasonable steps to correct the breach, the joint venture entity will not be liable. Under subsection 87(6), joint venture entities may nominate a person as the principal contact for the joint venture, who will act as the joint venture's agent for the purposes of the Bill and the Transitional Bill, until their nomination is withdrawn. If all the joint venture entities wish to withdraw the person's nomination, they can lodge a notice with ASIC in the prescribed form and manner. In relation to an application for the registration of a business name to a joint venture entity, each joint venture entity must provide a copy of their ABN or a statement that they have applied for an ABN and the reference number for the application for the ABN. ASIC cannot register the business name to the joint venture unless each of the joint venture entities has an ABN. The priority that a joint venture has over a business name, which it has applied for, is not affected by an ABN application being pending. If a joint venture entity is an individual, and they die, the business name remains registered to the joint venture. Sections 39 and 40 of the Bill will apply to the death of the joint venture entity like they do to an individual who has died and has a business name registered to them.

11.7 Section 88 applies the business names regime to the territories of Christmas Island and Cocos (Keeling) Islands. Necessary modifications are made to the definition of 'business'. Exceptions to the requirement that an entity have (or have applied for) an ABN are also made for this purpose, to the extent provided by this provision.

11.8 Section 89 provides for the giving of notice under the Bill where the relevant entity has ceased to exist. The regulations may provide that a notice is taken to have been given to the entity if a person described in the regulations is given a notice instead. For example, it is intended that the regulations will provide for notice to be given to a company that had been deregistered following the completion of a winding up by giving notice to the person who was the liquidator of the company immediately prior to deregistration occurring.

11.9 Section 90 provides that the Governor-General may make regulations prescribing matters that are required or permitted by this Bill to be prescribed or are matters that are necessary or convenient to be prescribed for carrying out or giving effect to this Bill.

## **Application and transitional provisions**

11.10 All provisions in Part 10 will commence on a single day to be fixed by proclamation. The date of proclamation will depend on when the final State or Territory passes its referral legislation or adopts the Commonwealth legislation.

11.11 Transitional provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.

## **Consequential amendments**

11.12 Consequential provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.



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## **Chapter 12**

### ***Notified State and Territory Registers***

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#### **Outline of chapter**

12.1 Chapter 11 of this explanatory memorandum outlines the arrangements relating to a notified State or Territory Register

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

12.2 When registration of a business name is sought pursuant to section 25, the name sought cannot be identical or nearly identical to the name of an entity on a notified State or Territory register. Section 6 of the Bill defines such a register as a register specified, or of a kind specified, in Schedule 1 as modified by regulations. The Schedule sets out a range of State and Territory registers that contain the names of entities or collections of persons recognised under the laws of these jurisdictions; listed registers include those relating to cooperatives, incorporated associations, incorporated or limited liability partnerships and church entities.

#### **Application and transitional provisions**

12.3 All provisions in Part 11 will commence on a single day to be fixed by proclamation. The date of proclamation will depend on when the final State or Territory passes its referral legislation or adopts the Commonwealth legislation.

12.4 Transitional provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.

#### **Consequential amendments**

12.5 Consequential provisions are contained in the Business Names Registration (Transitional and Consequential Provisions) Bill 2011.