

WESTERN AUSTRALIA.

BUSINESS NAMES.

6° and 7° Geo. VI., No. XLV.

No. 2 of 1943.

[As amended by Act No. 11 of 1946 (a) and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to provide for the registration of firms, individuals, and corporations carrying on business under business names and relating to the names, styles, titles, or designations under which businesses are carried on; to repeal the Registration of Firms Act, 1897-1940; and for other relative purposes.

[Assented to 26th March, 1943.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY.

1. (1) This Act may be cited as the *Business Names Act, 1942-1946*.

Short title:
See No. 11 of
1946, s. 3.

(2) This Act shall come into operation on a day to be fixed by proclamation* and not earlier than the first day of January, one thousand nine hundred and forty-four.

Commence-
ment.

(a) Assented to 13th November, 1946.

* Proclaimed to come into operation 1st September, 1944: G.G. 11/8/44, p. 689.

Division into
Parts.

(3) This Act is divided into Parts, as follows—

PART I.—PRELIMINARY—ss. 1-3.

PART II.—REGISTRATION OF FIRMS, INDIVIDUALS,
AND CORPORATIONS CARRYING ON BUSINESS
UNDER BUSINESS NAMES—ss. 4-23.

PART III.—USE OF CERTAIN WORDS IN THE NAMES,
ETC., OF FIRMS, ETC.—ss. 24-28.

Construc-
tion.

(4) This Act shall be construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that if any provision hereof would, apart from this section, be construed as being in excess of that power it shall, nevertheless be a valid enactment to the extent to which it is not in excess of that power.

Repeal.

2. The Registration of Firms Act, 1897-1940, is hereby repealed.

Interpreta-
tion.
cf. Vict. Act.
1928, No. 3648,
s. 3; N.S.W.
No. 50 of 1934,
s. 2.

3. In this Act, unless the context or subject-matter otherwise requires—

“Business” includes trade and profession.

“Business name” means the name, style, title, or designation under which any business is carried on, whether in partnership or otherwise, and includes a firm-name registered under the Registration of Firms Act, 1897-1940.

“Christian name” includes any forename.

“Firm” means an unincorporated body of two or more individuals or one or more individuals and one or more corporations, or two or more corporations who or which have entered into partnership with one another.

“Individual” means a natural person and does not include a corporation.

“Initials” include any recognised abbreviation of a Christian name.

“Part” means Part of this Act.

“Prescribed” means prescribed by the regulations.

“Registrar” means the Registrar of Companies.

“Regulations” means regulations made under this Act.

PART II.—REGISTRATION OF FIRMS, INDIVIDUALS, OR CORPORATIONS CARRYING ON BUSINESS UNDER BUSINESS NAMES.

4. Subject to the provisions of this Part—

(a) every firm having a place of business in Western Australia and carrying on business under a business name which does not consist of—

(i) the surnames of all partners who are individuals (together with their Christian name or names or the initials thereof); and

(ii) the corporate names of all partners (if any) which are corporations—

without any addition;

(b) every individual having a place of business in Western Australia and carrying on business under a business name which does not consist of his surname (together with his Christian name or names or the initials thereof) without any addition;

(c) every corporation having a place of business in Western Australia and carrying on business under a business name which does not consist of its corporate name without any addition,

Firms, etc.,
to be
registered.
6 & 7 Geo. V.
(Imp.), c. 58,
s. 1; Vict. Act.
1928, No.
3648, s. 4;
N.S.W. No. 50
of 1934, s. 4;
S.A. Act,
1928, No. 1851,
s. 4.

shall be registered in the manner directed by this Part:

When registration not necessary.

Provided that—

- (i) where the addition merely indicates that the business is carried on in succession to a former owner of the business, that addition shall not of itself render registration necessary; and
- (ii) where the business is carried on by an official receiver or a trustee in bankruptcy or a receiver, manager, or other person appointed by any court to carry on the business, registration shall not be necessary; and
- (iii) a purchase or acquisition of property by two or more persons as joint tenants or tenants in common is not of itself to be deemed carrying on a business, whether or not the owners share any profits arising from the sale thereof.

Registration by attorney nominee, etc. cf. 6 & 7 Geo. V., c. 58 s. 2; S.A. Act, 1926, No. 1951, s. 5; N.S.W. Act No. 50 of 1934, s. 5.

5. Where a firm, individual, or corporation having a place of business within Western Australia carries on business wholly or mainly as attorney, nominee, or trustee of or for another firm, individual, or corporation, or acts as general agent for any foreign firm, the first-mentioned firm, individual, or corporation shall be registered in manner provided by this Part.

The regulations may require that additional particulars shall be furnished and registered in all or any of such cases.

Provided that, where the business is carried on by an official receiver or a trustee in bankruptcy, or a receiver, manager, or other person appointed by any court to carry on the business, registration under this Part shall not be necessary.

Registration under repealed Act to be deemed registration under this Act. cf. N.S.W. Act No. 50 of 1934, s. 3.

6. (1) A registration under the Registration of Firms Act, 1897-1940, of the firm-name of any firm, individual, or corporation in force immediately before the commencement of this Act shall be deemed to be a registration under this Act, and for

the purposes and within the meaning of this Act such firm-name shall be deemed to be the business name of such firm, individual, or corporation: Provided that such registration shall continue for the term of one year from the commencement of this Act and no longer, and before the termination of that period every such firm, individual, or corporation shall effect a new registration under this Act.

(2) Subject to subsection (1) of this section registration under this Act shall continue for the term of three years, and prior to the termination of that period and each successive period of three years a new registration shall be effected.

7. (1) Every firm, individual, or corporation required under this Part to be registered shall furnish by sending by post or delivering to the Registrar a statement in writing in or to the effect of the prescribed form, containing the following particulars:—

Particulars to be furnished on registration. cf. 6 & 7 Geo. V., c. 58, s. 3; Vict. Act. 1928, No. 3648, s. 5; S.A. Act, 1928, No. 1851, s. 6; N.S.W. Act No. 50 of 1934, s. 6.

- (a) the business name;
- (b) the general nature of the business;
- (c) the place or places of the business and the particular address or addresses at which the business is carried on, indicating, where there is more than one place of business, the principal place of business;
- (d) where the registration to be effected is that of a firm, the Christian name and surname, the usual residence and the other business occupation (if any) of every individual who is a partner, and the corporate name and the registered office in Western Australia of every corporation which is a partner;
- (e) where the registration to be effected is that of an individual, the Christian name and surname, the usual residence and the other business occupation (if any) of such individual;

Business Names.

- (f) where the registration to be effected is that of a corporation, its corporate name and registered office in Western Australia;
- (g) if the business is commenced after the commencement of this Act, the date of commencement of the business.

Minors.

(2) If any of the persons mentioned in such statement is a minor, he shall be so described in the statement, and, in addition to the other particulars required by subsection (1) of this section, the date of such person's birth shall be stated in the statement.

Separate statements where two or more business names.

(3) Where a business is carried on under two or more business names a separate statement shall be furnished in respect of each of those business names.

Signature and attestation of statement required for registration.
 cf. 6 & 7 Geo. V. c. 58, s. 4; Vict. Act, 1928 No. 3645, s. 6; S.A. Act, 1928, No. 1851, s. 8; N.S.W. No. 50 of 1934, s. 7; W.A. 61 Vict. No. 14, s. 6.

8. (1) The statement required for the purpose of registration shall be signed, if in Western Australia, in the presence of a person authorised by law to take statutory declarations, and if elsewhere than in Western Australia, in the presence of a person having authority to administer an oath in the place where such statement is signed, and must—

- (a) in the case of an individual, be signed by him or his duly constituted attorney; and
- (b) in the case of a corporation, be signed by a director or the secretary thereof; and
- (c) in the case of a firm, be signed either by all the individuals who are partners, or by their duly constituted attorneys, and by a director or the secretary of all corporations which are partners, or by some individual who is a partner, or the secretary of some corporation which is a partner—

and in either of the last two cases mentioned in paragraph (c) must be verified by a statutory declaration made by the signatory:

Provided that—

- (i) no such statutory declaration stating that any person other than the declarant is a partner, or omitting to state that any person other than as aforesaid is a partner shall be evidence for or against such other person in respect of his liability or non-liability as a partner; and
- (ii) the Supreme Court, or a Judge thereof may, on application of any person alleged or claiming to be or not to be a partner, as the case may be, direct the rectification of the register directed to be kept in pursuance of section nineteen of this Act, and decide any question arising under this section; and
- (iii) in the case of a corporation registered under the provisions of Part VIII. of the Companies Act, 1893-1938, or registered or deemed to be registered as a foreign company under the provisions of any Act replacing such Act,¹ the statement must be signed for and on behalf of such corporation by its attorney, or the person who has been duly appointed to be the agent of the corporation in Western Australia for the purposes of any such Act.
- (iv) Where an individual carrying on business under a business name or all the members of a firm so carrying on business is or are absent from Western Australia, the foregoing provisions of this section shall be deemed to be sufficiently complied with if the said statement be signed by a person who has previously filed in the office of the Registrar a statutory declaration that he is duly authorised by and on behalf of such individual or firm to carry on the business of the individual or firm in Western Australia.

¹ See now Companies Act, 1943-1954.

Fee on statement, etc.

(2) The prescribed fee shall be paid to the Registrar on furnishing any statement or statutory declaration under this Part.

Time for registration, cf. Vict. Act, No. 3648, s. 7, N.S.W. No. 50 of 1934, s. 8 (1); W.A. 61 Vic. No. 14, s. 7.

9. Except in the case of a new registration pursuant to section six the particulars required to be furnished under this Part shall be furnished before the firm, individual, or corporation commences the business in respect of which registration is required.

Firm, etc., carrying on business without registration to be under continuing obligation to register. cf. N.S.W. No. 50 of 1934, s. 7 (2).

10. If any firm, individual, or corporation carries on any business in respect of which registration under this Part is required, without such registration being effected, or, where registration under this Part has expired, without effecting a new registration, such firm, individual, or corporation shall, without affecting any liability imposed under this Part, be under a continuing obligation to effect such registration or new registration, as the case may be, and, notwithstanding anything to the contrary in section fifty-one of the Justices Act, 1902-1936,¹ may be proceeded against in respect of any default accordingly.

Registered business name to be always used and shown on outside of premises. cf. N.S.W. No. 50 of 1934, s. 9.

11. The business name under which any firm, individual, or corporation is registered under this Part shall be used in all matters connected with or relating to the business carried on by such firm, individual, or corporation, and shall be painted or affixed on the outside of every office or place in which the business is carried on, in a conspicuous position, in letters easily legible.

Further requirements where surname, etc. of individual or partner not included in business name. cf. N.S.W. No. 50 of 1934, s. 9.

Where the business name of an individual registered under this Part does not include his surname, there shall also be painted or affixed as aforesaid his surname, together with his Christian name or initial of such Christian name.

¹ Now Justices Act, 1902-1954.

Where the business name of a firm registered under this Part does not include the surname of one of the individuals composing the firm, there shall also be painted or affixed as aforesaid the surnames, together with the Christian names or initials of such Christian names of all individual members of the firm, and the corporate name of any corporation which is a member of the firm.

Where the business name of a firm composed of corporations does not include the corporate name of one of the members, there shall also be painted or affixed as aforesaid the corporate names of all the members.

12. Whenever a change is made or occurs in any of the particulars in respect of which any firm, individual, or corporation is registered, or deemed to be registered, such firm, individual, or corporation shall, within fourteen days after such change, or within such longer period as the Registrar on application being made in any particular case, whether before or after the expiration of such fourteen days allows, furnish, by sending by post or delivering to the Registrar, a statement in writing in the prescribed form specifying the nature and date of the change, signed in like manner and verified in like circumstances as the statement required on registration.

Registration of change in firm, etc.
cf. 6 & 7 Geo. V., c. 58, s. 6; Vict. Act., 1928, No. 3648, s. 9; S.A. Act., 1928, No. 1851, s. 11; N.S.W. No. 50 of 1934, s. 10.

13. (1) If any firm, individual, or corporation registered or deemed to be registered under this Part ceases to carry on business or abandons the use of the business name under which he or it is registered, or deemed to be registered, it shall be the duty of the persons who were partners in the firm at the time when it ceased to carry on business or abandoned the business name, or of the individual, or, if he is dead, his legal personal representative, or of the corporation or its successor (as the case may be); within one month after the business has ceased to be carried on, or the business name has been abandoned, or within such longer period as the

Removal of names from register.
cf. 6 & 7 Geo. V., c. 58, s. 13; Vict. Act., 1928, No. 3648, s. 10; S.A. Act., 1928, No. 1851, s. 21; N.S.W. No. 50 of 1934, s. 11.

Registrar, on application being made in any particular case, whether before or after the expiration of such month, allows to send by post or deliver to the Registrar notice in the prescribed form that the firm or individual or corporation has ceased to carry on business, or (as the case may be) that the business name has been abandoned.

Such notice shall be signed in like manner and verified in like circumstances as the statement required on registration.

(2) On receipt of such notice the Registrar may cancel the registration of the firm or individual or corporation.

14. (1) Where the Registrar has reasonable cause to believe that any firm, individual, or corporation registered or deemed to be registered is not carrying on business under the business name under which he or it is registered or deemed to be registered, he may send to the firm, individual or corporation, by registered post, a notice addressed to the firm, individual, or corporation at the address, or where there is more than one place of business, the address of the principal place of business, appearing in the registration thereof, inquiring whether such firm, individual, or corporation is still carrying on business under such business name, and notifying that, unless an answer is received to such notice within one month from the date thereof, the registration of the firm, individual, or corporation may be cancelled.

(2) If the Registrar either receives an answer from the firm, individual, or corporation to the effect that the firm, individual, or corporation is not so carrying on business, or does not within one month after sending the notice receive an answer, he may cancel the registration of the firm, individual, or corporation. The Registrar may, on any grounds which he deems sufficient, revoke or annul any such cancellation, or any cancellation under subsection (3) of this section, and thereupon the firm,

Power of Registrar to strike off the register names of defunct firms.
 cf. 6 & 7 Geo. V., c. 58, s. 13; Vict. Act, 1928, No. 3648, s. 10; S.A. Act, 1928, No. 1851, s. 22. N.S.W. No. 50 of 1934, s. 11.

individual, or corporation shall be deemed to have continued to be registered as if the registration had not been so cancelled.

(3) The Registrar may cancel the registration of—

- (a) any corporation registered or deemed to be registered under this Part, the name of which has been struck off any register of companies kept under the Companies Act for the time being in force; or
- (b) any firm, individual, or corporation convicted of making default without reasonable excuse in sending or delivering any statement required by this Act; or
- (c) any firm the partners or any partner of which are or is, or of any individual who is, or any corporation the directors or any director of which are or is convicted of an offence against this Act; or
- (d) any firm or corporation which is dissolved or deemed to be dissolved.

(4) Where the registration of any firm, individual, or corporation is cancelled under subsection (2) or (3) of this section, any member of the firm, or the individual or corporation may apply to the Supreme Court, and the Court may, if it is satisfied that the firm, individual, or corporation was carrying on business under the business name, and that it is just and equitable so to do, order that the registration of the firm, individual, or corporation be restored, and thereupon the firm, individual, or corporation shall be deemed to have continued to be registered as if the registration had not been so cancelled.

The court may, upon making any such order, impose such terms as to the court seems fit.

Penalty for default in registration. cf. 6 & 7 Geo. V., c. 58, s. 7; Vict. Act, 1928, No. 3648, s. 11; S.A. Act, 1928, No. 1851, s. 15; N.S.W. No. 50 of 1934, s. 12.

15. (1) If without reasonable excuse any firm, individual, or corporation by this Part required to furnish a statement of particulars, or of any change in particulars, or a notice that it or he has ceased to carry on business, or has abandoned a business name, makes default in so doing in the manner and within the time prescribed by this Part—

- (a) every partner in the firm, or the individual or corporation so in default, shall be liable to a penalty of not more than five pounds for every day during which the default continues; and
- (b) the court exercising jurisdiction to impose the penalty under paragraph (a) of subsection (1) of this section shall order a statement, or a corrected statement, as the case may be, of the required particulars, or change in the particulars, or a notice that the firm, individual, or corporation has ceased to carry on business, or has abandoned the business name to be furnished to the Registrar within such time as is specified in the order.

(2) The expression “default” within the meaning of sections fourteen, fifteen, and sixteen of this Act shall include the furnishing of a statement of particulars, or of any change in particulars, incorrect to the knowledge of the person signing it in some material particular.

Persons in default bringing action. cf. W.A. 61 Vict., No. 14, s. 12; S.A., 1928, No. 1851, s. 16; N.S.W. No. 50 of 1934, s. 13.

16. (1) Where any firm, individual, or corporation by this Act required to furnish a statement of particulars, or of any change in particulars, makes default in so doing, and during the default commences any action or suit in the business name or for a cause of action arising out of any dealing by such firm, individual, or corporation in the business name, the court in which the proceedings are taken shall order the firm, individual or corporation in default to furnish to the Registrar the proper statement, and may stay all proceedings in the action or suit until the order be complied with, or

allow proceedings to be continued, on an undertaking to comply with the order within a time to be limited by the court.

(2) The power by this section given to the court may be exercised, in the case of the Supreme Court, by a judge in chambers, or, in the case of a local court, by a magistrate thereof in chambers, or, in the case of a court of petty sessions, by a stipendiary or police magistrate in chambers, or by two or more justices sitting in petty sessions.

(3) If any firm, individual, or corporation required to be registered, as provided in this Part, shall fail to register accordingly, all proceedings in any court of competent jurisdiction may be taken and prosecuted against such firm, individual, or corporation in the name under which such firm, individual, or corporation is carrying on business, and such name shall, for the purpose of such proceedings, be a sufficient designation of such firm, individual, or corporation in all courts and in all summonses, plaints, and other legal documents and instruments.

Any judgment obtained or order made in such proceedings may be enforced against the firm, or any member thereof, or the individual or corporation.

(4) Nothing in this section shall be construed to exempt any firm, individual, or corporation from compliance with any provision of this Part.

17. If any statement or notice required to be furnished under this Part contains any matter which is false in any material particular to the knowledge of any person signing it, that person shall be liable on summary conviction to a penalty of not more than one hundred pounds, or to imprisonment for a term of not more than twelve months, or to both such fine and such imprisonment, and any person knowingly authorising or permitting the commission of the offence shall be liable on summary conviction to the like punishment.

Penalty for
false
statement.
cf. Vict. Act,
1928, No.
3648, s. 13;
N.S.W. No. 50
of 1934, s. 14.

Duty to furnish particulars to Registrar. cf. 6 & 7 Geo. V., c. 58, s. 10; Vict. Act, 1928, No. 3648, s. 14; S.A. 1928, No. 1851, s. 13; N.S.W. No. 50 of 1934, s. 15.

18. (1) The Registrar may—

- (a) require any person to furnish to the Registrar such particulars as appear necessary to him for the purposes of ascertaining whether or not such person or the firm of which he is a partner should be registered under this Part or an alteration made in the registered particulars; and
- (b) in the case of a corporation, require the secretary or any other officer of a corporation performing the duties of secretary to furnish such particulars.

(2) If any person, secretary, or officer, when so required, fails to furnish such particulars as it is in his power to give, or furnishes particulars which are false in any material particular, he shall be liable on summary conviction to imprisonment for a term of not more than three months, or to a penalty of not more than twenty pounds or to both such imprisonment and such penalty.

(3) If from any information so furnished it appears to the Registrar that any firm, individual, or corporation ought to be registered under this Part, or an alteration ought to be made in the registered particulars, the Registrar may require the firm, individual, or corporation to furnish to the Registrar the required particulars within such time as he allows, but where any default under this Part has been discovered from the information acquired under this section, no proceedings under this Part shall be taken against any person in respect of such default prior to the expiration of the time within which the firm, individual, or corporation is required under this section to furnish particulars to the Registrar.

Register and index to be kept. cf. 61 Vict. No. 14, s. 15; N.S.W. No. 50 of 1934, s. 16.

19. (1) The Registrar shall keep a register and index of the business names of all firms, individuals, and corporations registered under this Act, and of all statements furnished in reference thereto.

(2) On receiving any statement furnished pursuant to section seven of this Act, the Registrar shall cause the business name of the firm, individual, or corporation on whose behalf the statement was furnished to be entered in the register; and upon such entry being made the firm, individual, or corporation shall be deemed to be registered.

(3) The Registrar shall, upon registration, send by post or deliver a certificate thereof to the firm, individual, or corporation registering.

The certificate shall be in or to the effect of the form prescribed.

(4) A certificate of the registration of the firm, individual, or corporation shall be kept exhibited in a conspicuous position at the principal place of business of such firm, individual, or corporation, and, if not kept so exhibited, every partner in the firm, or the individual or corporation (as the case may be) shall be liable on summary conviction to a penalty of not more than twenty pounds.

20. (1) Any person, on payment of the prescribed fee, may make a search in the register and index kept in pursuance of this Act, or may inspect or make extracts from or a copy of the statements furnished in pursuance of this Act, or filed in pursuance of any corresponding previous enactment.

Searches and inspection of statements. cf. 61 Vict. No. 14, s. 16; N.S.W. No. 50 of 1934, s. 17.

(2) Any person, on payment of the prescribed fee, may require a certificate of the registration or non-registration under a particular business name of any firm, individual, or corporation to be furnished or a copy of or extract from any statement furnished in pursuance of this Act or filed in pursuance of any corresponding previous enactment to be certified by the Registrar.

(3) The register referred to in section nineteen, or a certificate of registration, or a copy of or extract from any statement furnished in pursuance of this Act or filed in pursuance of any corresponding previous enactment purporting to be signed and

certified by the Registrar, shall in all courts, and before all persons having authority to hear, receive, and examine evidence, be admitted as *prima facie* evidence of the matter contained therein and of the fact and date of registration as shown thereon.

(4) A certificate, purporting to be signed by the Registrar, that a firm, individual, or corporation was not, on any date or during any period, registered under the business name specified in the certificate, shall likewise be admitted as *prima facie* evidence, according to its tenor, that the firm, individual, or corporation was not so registered.

Registrar
may correct
errors in
register, etc.
cf. N.S.W. No.
50 of 1934,
s. 18.

21. (1) The Registrar may, on such evidence as to him appears sufficient, correct errors in any register, index, or certificate:

Provided that, in the correction of any such error, he shall not erase or render illegible the original words, and shall affix the date upon which such correction was made with his initials.

Every registration so corrected shall have the like validity and effect as if such error had not been made.

(2) The Registrar may, where an error in the register is corrected, or the registration of any firm, individual, or corporation is cancelled, by notice under his hand, require the members of such firm, or such individual or corporation, as the case may be, to deliver up the certificate of registration to be corrected or cancelled, as the case may be.

Any person who without reasonable excuse neglects or fails to deliver up any such certificate to the Registrar within the period specified in the notice, shall be liable on summary conviction to a penalty not exceeding ten pounds.

Offences by
corporations.
cf. Vict. Act,
1928, No.
3648, s. 18;
N.S.W. No.
50 of 1934,
s. 19.

22. Where any offence against this Act committed by a corporation is proved to have been committed with the consent or approval of, or to have been facilitated by any neglect on the part of any director,

manager, secretary, or other officer of the corporation, he, as well as the corporation, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly.

23. (1) Regulations, not inconsistent with this Act, may be made prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed to carry this Act into effect, or to give effect to any power, function, duty or authority under this Act, and without limiting the generality of the power conferred by this section, the regulations may prescribe—

Regulations.
cf. 61 Vict.
No. 14, s. 17.

- (a) the fees to be paid to the Registrar under this Act;
- (b) the forms to be used under this Act (and all such forms, or forms to the like effect, may be used for the purposes of this Act, and shall be sufficient in law);
- (c) the duties of the Registrar for the purposes of this Act;
- (d) generally the conduct and regulation of registration under this Act, and any matters or things convenient to be prescribed for carrying this Act into effect;

(2) Such regulations may prescribe penalties not exceeding twenty pounds for any breach thereof.

PART III.—USE OF CERTAIN WORDS IN THE NAMES,
ETC., OF FIRMS, ETC.

24. (1) Notwithstanding anything in any Act no firm, individual, or corporation required to register under Part II. of this Act shall use a business name, and no business name shall be registered which includes the word "Royal," or the word "King," or the word "Queen," or the word "Crown," or the word "Empire," or the word "Imperial," or the word "Commonwealth," or the word "State," or any word

Business name not to contain certain words.
cf. W.A. 61
Vict., No. 14,
s. 4A (1)
(inserted by
No 32 of 1940,
s. 2).

which, in the opinion of the Registrar, suggests, or is calculated to suggest the patronage of His Majesty or any member of the Royal Family or Government support or patronage, unless the Governor by order published in the *Government Gazette* consents to the use of such word in the said business name:

Provided that nothing in this section shall prevent the continuance of the use by any firm, individual, or corporation, or its or his successor in interest, of any of the words (other than the word "Commonwealth" or the word "State"), the use of which is prohibited by this section, in any business name under which it or he was registered under the Registration of Firms Act, 1897-1940, prior to the sixteenth day of December, one thousand nine hundred and forty, or prevent a new registration of any such business name in compliance with the provisions of section six of this Act.

cf. W.A. 61
Vict. 14.
s. 4A (3).

(2) The consent of the Governor, as provided for in subsection (1) of this section shall not be granted in any case, if in the opinion of the Governor the use of any word mentioned in the said subsection in a business name by the firm, individual, or corporation using or proposing to use the same would imply or be likely to convey the impression that such firm, individual, or corporation is or will be wholly or partly authorised or supported by or connected with His Majesty's Government in any part of His Majesty's Dominions.

cf. W.A. 61
Vict. 14.
s. 4A (4).

(3) Every application for the consent of the Governor under subsection (1) of this section shall be made, in the first instance, to the Registrar, and shall be in writing; and for any Order in Council granting any consent under the said subsection (1) there shall be paid by the applicant to the Registrar a fee of five pounds five shillings.

(4) Nothing in this section contained shall apply to any person whose Christian or surname may include any word or words prohibited from use as aforesaid, nor shall such person be prohibited from continuing to use such name or names: Provided

such name or names are not used in combination with any other word or words, unless the consent of the Governor by Order in Council be first obtained.

25. No firm, individual, or corporation required to be registered under Part II. of this Act shall use a business name, and no business name shall be registered which—

- (a) includes the word or title of "saving" or "savings," or the words or title of "savings bank" or "savings institution," or "savings department," or "savings section," as part of the designation or title, or as a description of the business, or of any department, section, or other part of the business of such firm, individual or corporation;
- (b) includes the word or title of "bank," "banker," "banking company," "banking house," "banking association," or "banking institution," or words of like import, or the word "proprietary," or the word "trust," "trustee," "guarantee," or "fidelity," or words of like import as part of the designation or title, or as a description of the business of such firm, individual, or corporation.

Words
"savings,"
"bank,"
"proprietary," "trust,"
etc., not to
be used.
No. 2 of 1943,
s. 25 am. by
No. 11 of
1946, s. 2
cf. W.A. 51
Vict. 14.
s. 4A (b) (c).

26. (1) No firm, individual or corporation required to be registered under Part II. of this Act shall use a business name, and no business name shall be registered, which—

- (a) is identical with the business name of a firm, individual, or corporation already registered or deemed to be registered under Part II. of this Act, or which in the opinion of the Registrar so nearly resembles any such name as to be calculated to deceive, except where the firm, individual, or corporation already so registered, or deemed to be registered is about to cease carrying on business and signifies its or his consent in such manner as the Registrar requires; or

Persons or
firms not to
be registered
under certain
business or
other names.
cf. W.A. 61
Vict. 14, s.
4A, (1) (d)
(e) (f).

Registered
business
names.

Names of
companies,
associations,
friendly
societies, etc.

(b) is identical with that by which—

- (i) a company which is registered under (or has complied with Part VIII. of) the Companies Act, 1893-1938,¹ is registered or known;
- (ii) an association in existence is already incorporated under the Associations Incorporation Act, 1895;²
- (iii) a society in existence is already registered or deemed to be registered under the Friendly Societies Act, 1894-1938;³

or, in the opinion of the Registrar, so nearly resembles that name as to be calculated to deceive, or contains any words or combination of letters which are or is identical with the words or initial letters of the name by which a society in existence is already registered as aforesaid, or any words so nearly resembling the words or any of the words of that name as to be calculated to deceive, except where the company, association, or society in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar desires;

Offensive or
blasphemous
names.

- (c) in the opinion of the Registrar is offensive or blasphemous, or likely to mislead the public as to the identity of any firm, individual, or corporation required to register or as to the nature of its or his business.

Registrar
may in his
discretion
register
similar names
where public
not likely to
be misled.

(2) Where, in the opinion of the Registrar, owing to the nature of the business and the locality in which the same is carried on, the public are not likely to be misled, he may in his discretion register a firm, individual, or corporation, using a name identical with or similar to one already in use, but

¹ See now Companies Act, 1943-1954.

² Now Associations Incorporation Act, 1895-1953.

³ See now Friendly Societies Act 1894-1952.

shall not so register any firm, individual, or corporation where such registration would result in two or more businesses being carried on in the same locality under the same name.

(3) Nothing contained in this section shall ^{Saving.} prevent any new registration, pursuant to section six of this Act, of a business name under which the firm, individual, or corporation applying for registration was registered under the Registration of Firms Act, 1897-1940, prior to the sixteenth day of December, one thousand nine hundred and forty.

27. Every person, and every member of any firm guilty of committing, causing, directing, or authorising a breach of sections twenty-four, twenty-five, or twenty-six of this Act shall be guilty of an offence, and shall be liable on summary conviction to a penalty of not more than ten pounds, and, in the case of a continuing offence, to a penalty of two pounds for every day or part of a day upon which the offence is continued.

28. (1) Any firm, individual, or corporation who or which through inadvertence or otherwise is registered under any business name prohibited or containing any word or words or combination of letters prohibited by this Part, or who or which has been so registered under the Registration of Firms Act, 1897-1940— cf. W.A. 61
Vict. 14, s.
4A (6).

(a) shall on the request in writing of the Registrar, change his or its business name; and

(b) shall comply with the provisions of Part II. of this Act relating to the change of particulars registered in respects of firms, individuals, or corporations, so far as such provisions are applicable.

Registrar to register new business name.

(2) The Registrar shall enter the new business name in the register in place of the former name, and upon payment of the prescribed fees issue a certificate of registration, altered to meet the circumstances of the case.

Duty of firms, etc. to take necessary steps to change names in such cases. cf. W.A. 61 Vict. 14, s. 4A (7).

(3) If any such firm, individual, or corporation registered under any business name prohibited, or containing any word or words or combination of letters prohibited by this Part, neglects or refuses to take forthwith all necessary steps to change his or its business name after being required by the Registrar by notice in writing to change the same, every such individual or corporation, and every member of such firm, shall be guilty of an offence, and shall be liable on summary conviction to a penalty of not more than five pounds and, in the case of a continuing offence, to a further penalty of not more than five pounds for every day such offence continues.

Saving.

(4) Nothing in this section shall affect any liability incurred by any firm, individual, or corporation under this or any other Act.