

BUSINESS NAMES.

No. 40 of 1976.

AN ACT to amend the Business Names Act, 1962.

[Assented to 9th June, 1976.]

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

1. (1) This Act may be cited as the *Business Names Act Amendment Act, 1976*. Short title and citation.

(2) In this Act the Business Names Act, 1962 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Business Names Act, 1962-1976.

Commence-
ment.

2. The provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation.

Section 5
amended.

3. Subsections (2) and (3) of section 5 of the principal Act are amended by adding after the word "section", in each case, the passage "and of subsection (2) of section five A".

Section 5A
added.

4. The principal Act is amended by adding after section 5 the following section—

Leave of
District Court
required in
certain cases
before using
business
name.

5A. (1) This section applies to a person convicted whether before or after the commencement of this section, and whether within or without the State—

- (a) on indictment of an offence in connection with the promotion, formation or management of a corporation;
- (b) of an offence involving fraud or dishonesty punishable on conviction with imprisonment for three months or more; or
- (c) of an offence which at the time of his conviction is or was specified in paragraph (c) of subsection (1) of section one hundred and twenty-two of the Companies Act, 1961.

(2) A person to whom this section applies shall not, within the period of five years next succeeding any occasion on which he is convicted as referred to in subsection (1) of this section or, where he has served a term of imprisonment imposed pursuant to any such conviction, within the period of five years next

succeeding his release from that imprisonment, carry on business in the State under a business name unless—

(a) the business name under which he so carries on business—

(i) consists of his name; or

(ii) where he carries on business in association with another person or other persons, consists of his name and the name or names of the person or persons in association with whom he carries on business,

without any addition; or

(b) he has obtained the leave of The District Court of Western Australia upon application made as provided by subsection (3) of this section so to carry on business.

Penalty: Four hundred dollars or imprisonment for six months or both. Default penalty.

(3) An application for leave of the District Court shall not be made unless the Minister has been given not less than twenty-eight days' notice of the proposed application.

(4) The Minister may be represented at the hearing of, and may oppose, the application.

(5) Nothing in this section shall be construed as affecting the operation of section five.

(6) Nothing in this section shall make it an offence for any person to carry on business under a business name which immediately before the commencement of this section and at all times thereafter has been a business name registered under this Act under which that person was carrying on business in the State. .

Section 11
amended.

5. Subsection (1) of section 11 of the principal Act is amended by adding after the word "registration" in line six, the words "or within such further time as the Commissioner allows".

Section 12
amended.

6. Section 12 of the principal Act is amended—

- (a) by substituting the words "one month" for the words "fourteen days", where they occur—
 - (i) in line fifteen of subsection (1);
 - (ii) in line nine of subsection (2);
 - (iii) in line six of subsection (3);
 - (iv) in line eight of subsection (4);
 - (v) in line two of paragraph (a) of subsection (5);
 - (vi) in line three of paragraph (b) of subsection (5); and
 - (vii) in line six of subsection (6); and
- (b) by adding immediately before the words "a statement" in line six of subsection (7) the words "within one month of his or their so ceasing or within such further time as the Commissioner allows".

Section 14
amended.

7. Section 14 of the principal Act is amended—

- (a) by substituting for the words "section five" in line two of paragraph (a) of subsection (1), the passage "section five or section five A";
- (b) by substituting for the words "section five" in line eleven of subsection (1), the passage "section five or section five A"; and
- (c) by adding after the passage "chambers," in line three of subsection (2) the passage "in the case of The District Court of Western Australia by a Judge in chambers,".

8. Section 25 of the principal Act is amended by substituting for the passage "twelve years." in the last line, the passage "twelve years or which in any case has been lodged for a period of twenty-one years or more." Section 25
amended.

9. Section 26 of the principal Act is amended— Section 26.
amended.

(a) by substituting for subsection (1) the following subsection—

(1) A person shall not, in connection with an invitation to lend or deposit money, being an invitation made by advertisement or otherwise to the public or to any person as a member of the public, use or refer to a business name that—

(a) is registered under this Act;

(b) is required to be registered under this Act; or

(c) would, if business were carried on in the State thereunder, be required to be registered under this Act.

Penalty: One thousand dollars. ; and

(b) by adding after the passage "Companies Act, 1961" in lines three and four of subsection (2), the words "or to an invitation made to a person whose ordinary business it is to lend money".

10. Section 28 of the principal Act is amended by adding after subsection (2) the following subsection— Section 28
amended.

(3) Notwithstanding anything contained in any Act, proceedings for any offence against this Act may be brought within the period of three years after the commission of the alleged offence or, with the consent of the Minister, at any later time. .

Section 32
amended.

11. Subsection (1) of section 32 of the principal Act is amended by adding after paragraph (c), the following paragraph—

(ca) the manner in which applications for the Minister's consent to the registration of business names which may not be registered without his consent may be made and granted, and the fees to be paid to the Commissioner on the making of any such application and on the Minister's giving his consent to the registration of any such name; .

Miscellaneous
amendments.

12. The principal Act is amended as set out in the Schedule to this Act.

THE SCHEDULE

Provision Amended	Amendment
Section 4 (1) After the interpretation "christian name" add the following interpretation— "Commissioner" means the Commissioner for Corporate Affairs under the Companies Act, 1961 and includes any Deputy or Assistant Commissioner for Corporate Affairs; .
Section 4 (1) Delete the interpretation "Registrar".
Section 6 (1) Delete "Registrar" in line one, substitute "Commissioner".
Section 7 (1) Delete "Registrar" in line three, substitute "Commissioner".
Section 7 (3) Delete "Registrar" in line one, substitute "Commissioner".
Section 7 (4) Delete "Registrar" in line one, and again in line three, substitute "Commissioner" in each case.
Section 7 (5) (a) Delete "Registrar" in line one, substitute "Commissioner".
Section 7 (5) (b) Delete "Registrar" in line one, and again in line seven, substitute "Commissioner" in each case.

THE SCHEDULE—continued.

Provision Amended	Amendment
Section 7 (6)	Delete "Registrar" in line three, substitute "Commissioner".
Section 7 (7)	Delete "Registrar" in line one, substitute "Commissioner".
Section 8 (2)	Delete "Registrar" in line three, substitute "Commissioner".
Section 9 (1)	Delete "Registrar" in line four, and again in line six, substitute "Commissioner" in each case.
Section 10 (1)	Delete "Registrar" in line four, and again in line sixteen, substitute "Commissioner" in each case.
Section 10 (2)	Delete "Registrar" in line one, substitute "Commissioner".
Section 10 (3)	Delete "Registrar" in line three, substitute "Commissioner".
Section 10 (4)	Delete "Registrar" in line one, substitute "Commissioner".
Section 11 (1)	Delete "Registrar" in line four, substitute "Commissioner".
Section 11 (3)	Delete "Registrar" in line one, substitute "Commissioner".
Section 11 (4)	Delete "Registrar" in line two, and again in line ten, substitute "Commissioner" in each case.
Section 11 (5)(a)	Delete "Registrar" in line three, substitute "Commissioner".
Section 11 (5)(b)	Delete "Registrar" in line two, substitute "Commissioner".
Section 11 (5)(c)	Delete "Registrar" in line one, substitute "Commissioner".
Section 11 (5)(d)	Delete "Registrar" in line two, substitute "Commissioner".
Section 12 (1)(a)	Delete "Registrar" in line two, substitute "Commissioner".
Section 12 (1)	Delete "Registrar" in lines fourteen, sixteen and twenty, substitute "Commissioner" in each case.

THE SCHEDULE—continued.

Provision Amended	Amendment
Section 12 (2)	Delete "Registrar" in lines eight, ten and twelve, substitute "Commissioner" in each case.
Section 12 (3)	Delete "Registrar" in lines five, seven and eight, substitute "Commissioner" in each case.
Section 12 (4) ...	Delete "Registrar" in line eight and again in line nine, substitute "Commissioner" in each case.
Section 12 (5) (a)	Delete "Registrar" in lines one, four and five, substitute "Commissioner" in each case.
Section 12 (5) (b)	Delete "Registrar" in line four, substitute "Commissioner".
Section 12 (6)	Delete "Registrar" in lines six, eight and nine, substitute "Commissioner" in each case.
Section 12 (7)	Delete "Registrar" in line five, substitute "Commissioner".
Section 12 (8)	Delete "Registrar" in line two, substitute "Commissioner".
Section 12 (9)	Delete "Registrar" in line four, substitute "Commissioner".
Section 12 (10)	Delete "Registrar" in line two, substitute "Commissioner".
Section 13 (1)	Delete "Registrar" in lines one, five and six, substitute "Commissioner" in each case.
Section 13 (1) (b)	Delete "Registrar" in line one, substitute "Commissioner".
Section 13 (2)	Delete "Registrar" in line two and again in line four, substitute "Commissioner" in each case.
Section 15 (1)	Delete "Registrar" in line one, substitute "Commissioner".
Section 15 (2)	Delete "Registrar" in line two and again in lines four and five, substitute "Commissioner" in both cases.

THE SCHEDULE—continued.

Provision Amended	Amendment
Section 16	Delete "Registrar" in line one, substitute "Commissioner".
Section 17	Delete "Registrar" in line two and again in line six, substitute "Commissioner" in each case.
Section 18 (1)	Delete "Registrar" in line one, substitute "Commissioner".
Section 18 (1)(b)	Delete "Registrar" in line one, substitute "Commissioner".
Section 18 (2)	Delete "Registrar" in line one, substitute "Commissioner".
Section 18 (2)(b)	Delete "Registrar" in line one, substitute "Commissioner".
Section 19 (1)	Delete "Registrar" in line one, substitute "Commissioner".
Section 19 (1)(a)	Delete "Registrar" in line one, substitute "Commissioner".
Section 19 (1)(b)	Delete "Registrar" in line one and again in line five, substitute "Commissioner" in each case.
Section 19 (1)(c)	Delete "Registrar" in line one and again in line eight, substitute "Commissioner" in each case.
Section 19 (2)	Delete "Registrar" in line one, substitute "Commissioner".
Section 19 (3)	Delete "Registrar" in line six, substitute "Commissioner".
Section 19 (5)	Delete "Registrar" in line five, substitute "Commissioner".
Section 21 (1)	Delete "Registrar" in line one, substitute "Commissioner".
Section 21 (2)	Delete "Registrar" in line two, substitute "Commissioner".
Section 21 (4)	Delete "Registrar" in line one, substitute "Commissioner".
Section 22	Delete "Registrar" in line two, substitute "Commissioner".
Section 23 (1)	Delete "Registrar" in line one, substitute "Commissioner".

THE SCHEDULE—continued.

Provision Amended	Amendment
Section 23 (2)	Delete "Registrar" in line one, substitute "Commissioner".
Section 25	Delete "Registrar" in line one, substitute "Commissioner".
Section 31	Delete "Registrar" in line one, substitute "Commissioner".
Section 32 (1)(a)	Delete "Registrar" in line two, substitute "Commissioner".
Section 32(1)(b)	Delete "Registrar" in line two, substitute "Commissioner".
Section 32 (1)(e)	Delete "Registrar" in line one, substitute "Commissioner".