



Western Australia

# **Business Names Act 1962**

**Reprinted as at 16 February 2001**



Western Australia

## Business Names Act 1962

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### CONTENTS

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1.	Short title	1
2.	Commencement	1
3.	Repeal, and savings and transitional provisions	1
4.	Interpretation	3
4A.	Arrangements for administration of this Act	5
5.	Certain business names to be registered	5
5A.	Leave of District Court required in certain cases before using business name	7
6.	Register of business names	9
7.	Registration of business names	9
8.	Resident agent	11
9.	Restriction on registration of business names that are undesirable, etc.	12
10.	Power to cancel registration of business names that are undesirable, etc.	12
11.	Renewal of registration	13
12.	Notification of changes of particulars relating to registered business names, cessation of business, etc.	14
13.	Duty to furnish information	18
14.	Disability of person in default	19
15.	Signing of statements	20
16.	Verification of particulars	21
17.	Penalty for false statement	21
18.	Notice of proposed cancellation	21
19.	Cancellation of registration	22
20.	Use and exhibition of business name	24
21.	Commissioner may correct errors in register, etc.	24

Contents

---

22.	Inspection of statements	25
23.	Certificate of registration or non-registration	25
24.	Evidence of registration or non-registration	26
25.	Authority of Commissioner to destroy documents and validation	26
26.	Invitations to the public to make deposits or loans	27
27.	General penalty provisions	27
28.	Default penalty	28
29.	Offences committed by corporations	29
30.	Evidentiary provisions	29
31.	As to service of notices	29
32.	Regulations	30

**Schedule**

**Notes**



Western Australia

Reprinted under the  
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at 16 February 2001

## **Business Names Act 1962**

**An Act to consolidate and amend the law relating to Business Names and for other purposes.**

**1. Short title**

This Act may be cited as the *Business Names Act 1962*<sup>1</sup>.

**2. Commencement**

This Act shall come into operation on a day to be fixed by proclamation<sup>1</sup>.

**3. Repeal, and savings and transitional provisions**

- (1) The Acts mentioned in the Schedule to this Act to the extent to which they are therein expressed to be repealed, are hereby repealed accordingly.
- (2) Without prejudice to the operation of the *Interpretation Act 1918*<sup>2</sup>, except as in this Act expressly or by necessary implication otherwise provided —
  - (a) all persons, things and circumstances appointed or created by or under the repealed Act or existing or continuing under the repealed Act immediately before the coming into operation of this Act shall, under and subject to this Act, continue to have the same status, operation and effect as they respectively would have had if the repealed Act had not been repealed; and

- (b) in particular and without affecting the generality of paragraph (a) —
  - (i) such repeal shall not disturb the continuity of status, operation or effect of any regulation, order, registration, certificate, notice, statement, declaration, application, requirement, consent, obligation, liability or right made, effected, issued, granted, given, presented, passed, fixed, accrued, incurred or acquired or existing or continuing by or under the repealed Act, before the coming into operation of this Act;
  - (ii) any right of action or power of prosecution had by or against a firm, individual or corporation, registered or deemed to be registered or required to have been registered under the repealed Act immediately before the coming into operation of this Act, shall continue to be had and may be enforced, as if this Act had not come into operation; and
  - (iii) all penalties incurred under the repealed Act before the commencement of this Act are enforceable and may be enforced as if this Act had not come into operation.
- (3) A reference in any Act, order, regulation, instrument or document to a firm, individual or corporation registered under the repealed Act or any corresponding previous enactment, shall unless the context otherwise requires be construed as referring also to a firm, the members of which, to an individual who or to a corporation that, as the case may be, is carrying on business under a business name registered under this Act.
- (4) A business name in respect of which a firm, individual or corporation was, immediately before the coming into operation of this Act, registered or deemed to be registered under the repealed Act, shall subject to this Act, upon the coming into

operation of this Act, be deemed to be registered under this Act in relation to each member of the firm, in relation to the individual or in relation to the corporation, as the case may be, and this Act applies to and in relation to the business name accordingly.

**4. Interpretation**

(1) In this Act unless the contrary intention appears —

“**business**” includes trade and profession;

“**business name**” means a name, style, title or designation under which a business is carried on;

“**carrying on business**” includes establishing a place of business in the State, and soliciting or procuring any order from a person in the State and “to carry on business” has a corresponding meaning;

“**christian name**” includes any forename;

“**Commissioner**” has the same meaning as it has in the *Consumer Affairs Act 1971*;

“**corporation**” has the same meaning as in section 5 of the *Companies (Western Australia) Code*<sup>3</sup>;

“**director**” in relation to a corporation, includes any person occupying the position of director of the corporation by whatever name called;

“**firm**” means an unincorporated body of persons (whether consisting of individuals or of corporations or partly of individuals and partly of corporations) associated together for the purpose of carrying on business;

“**individual**” means a natural person and does not include a corporation;

“**initial**” includes a recognised abbreviation of a christian name;

“**register**” means the register of business names kept under this Act or under any corresponding previous enactment;

“**repealed Act**” means the *Business Names Act 1942*;

**s. 4A**

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**“secretary”**, in relation to a corporation, includes any person performing the duties of secretary of the corporation and in relation to a corporation registered under Division 5 of Part XIII of the *Companies (Western Australia) Code*<sup>3</sup>, includes the agent of the corporation appointed for the purpose of that Division;

**“section”** means section of this Act.

- (2) For the purposes of this Act, a person shall not be regarded as carrying on business within the State for the reason only that within the State he —
- (a) is or becomes a party to any action or suit or any administrative or arbitration proceeding, or effects settlement of an action, suit or proceeding or of any claim or dispute;
  - (b) maintains any bank account;
  - (c) effects any sale through an independent contractor;
  - (d) creates evidence of any debt or creates a charge on real or personal property;
  - (e) secures or collects any of his debts or enforces his rights in regard to any securities relating to those debts;
  - (f) conducts an isolated transaction that is completed within a period of 31 days, but not being one of a number of similar transactions repeated from time to time; or
  - (g) invests any of his funds or holds any property.
- (3) For the purposes of this Act, a business name shall be deemed to be registered under this Act in relation to a person, if it appears from the register that the person either alone or together with other persons is carrying on business under that name.

*[Section 4 amended by No. 40 of 1976 s.12; No. 10 of 1982 s.28; No. 10 of 1998 s.21.]*



**4A. Arrangements for administration of this Act**

- (1) The Commissioner may make an arrangement with the Australian Securities and Investments Commission about any matter connected with the administration of this Act.
- (2) In particular, an arrangement may provide —
  - (a) for the performance of functions and the exercise of powers conferred by subsection (3) by the Australian Securities and Investments Commission; or
  - (b) for the performance of functions or the exercise of powers of the Commissioner under this Act by staff members of the Australian Securities and Investments Commission.
- (3) Subject to subsection (4), the Australian Securities and Investments Commission has the functions and powers of the Commissioner under this Act.
- (4) The Australian Securities and Investments Commission must not perform a function or exercise a power conferred by subsection (3) except in accordance with an arrangement under this section.

*[Section 4A inserted by No. 105 of 1990 s.98; amended by No. 26 of 1999 s.64.]*

**5. Certain business names to be registered**

- (1) A person shall not either alone or in association with other persons, carry on business in the State under a business name unless —
  - (a) the business name consists of the name of that person and the name of each other person, if any, in association with whom that person is so carrying on business without any addition; or

- (b) the business name is registered under this Act in relation to that person and each other person, if any, in association with whom that person is so carrying on business,

and where the business name is so registered unless such of the provisions of section 12 as are required to be complied with by or on behalf of the person or persons in relation to whom the name is registered have been complied with.

Penalty: \$200. Default penalty.

- (2) For the purposes of subsection (1) and of section 5A(2) the name of a person consists of —
  - (a) in the case of an individual, his full name or his surname together with —
    - (i) his christian name or names;
    - (ii) the initial or initials of his christian name or names;
    - (iii) a combination of one or more of his christian names and the initial or initials of his remaining christian name or names; or
    - (iv) the christian name or names by which he is commonly known or the initial or initials by which he is commonly known or any combination of one or more of those names and those initials;
  - (b) in the case of a corporation, the corporate name of the corporation.
- (3) The addition to a business name of words indicating that the business is carried on in succession to a former owner of the business shall, for the purposes of subsection (1) and of section 5A(2), be deemed not to be an addition to the business name.

- (4) Where a business is carried on by an official receiver, a trustee in bankruptcy or a trustee under a deed or scheme of arrangement entered into under a law of the Commonwealth relating to bankruptcy, or by a receiver, manager or other person appointed by a court or under the powers contained in any instrument to carry on that business, the business shall, for the purposes of this Act, be deemed to be carried on by the person who carried on the business immediately before the appointment of the receiver, trustee, manager or other person.
- (5) Notwithstanding anything in this Act, a contravention of or failure to comply with any provision of this Act does not operate to avoid any agreement, transaction, act or matter.

*[Section 5 amended by No. 113 of 1965 s.8; No. 40 of 1976 s.3.]*

**5A. Leave of District Court required in certain cases before using business name**

- (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 3 months or more; or
  - (c) of an offence which at the time of his conviction is or was specified in paragraph (c) or referred to in paragraph (d) of section 227(1) of the *Companies (Western Australia) Code*<sup>3</sup>.
- (2) A person to whom this section applies shall not, within the period of 5 years next succeeding any occasion on which he is convicted as referred to in subsection (1) or, where he has served a term of imprisonment imposed pursuant to any such conviction, within the period of 5 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) so to carry on business.

Penalty: \$400 or imprisonment for 6 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 28 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 5.
- (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 5A inserted by No. 40 of 1976 s.4; amended by No. 10 of 1982 s.28.]*

**6. Register of business names**

- (1) The Commissioner shall keep a register of business names registered under this Act, in such form as he thinks fit.
- (2) A statement lodged under this Act in relation to a business name registered under this Act, whether lodged before or after the registration, shall for the purposes of this Act be deemed to be incorporated with and to form part of the register.
- (3) The register of the business names of firms, individuals and corporations registered or deemed to be registered under the repealed Act shall be deemed to be incorporated with and to form part of the register kept under this Act.

*[Section 6 amended by No. 40 of 1976 s.12.]*

**7. Registration of business names**

- (1) An application for the registration of a business name shall be made by lodging with the Commissioner a statement in the prescribed form, which shall be signed by the person or persons carrying on or proposing to carry on business in the State under that name, shall be accompanied by the prescribed fee, and shall set out —
  - (a) the business name;
  - (b) a concise description of the true nature of the business carried on or proposed to be carried on under that name by the applicant or applicants;
  - (c) the address of each place in the State where the business is or is proposed to be carried on showing, if the business is or is proposed to be carried on at more than one place in the State, which of those places is the principal place of business;
  - (d) the christian names and surname and any former christian names or surname and the usual place of residence of each applicant who is an individual and the

**s. 7**

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- corporate name and the place of the registered office in the State of each applicant that is a corporation;
- (e) the date or proposed date of commencement of the carrying on of business in the State under the business name by the applicant or applicants; and
  - (f) where the business name is a name adopted by the applicant or applicants in substitution for another name, that other name.
- (2) If an applicant is an infant, he shall be so described in the statement and the date of his birth shall be set out in the statement.
  - (3) Subject to this Act, the Commissioner shall, upon the lodging of a statement under subsection (1) in relation to a business name, register the business name.
  - (4) The Commissioner shall, upon registering a business name, issue a certificate of registration in the prescribed form signed by the Commissioner.
  - (5)
    - (a) The Commissioner may upon payment of the prescribed fee issue a further certificate of registration.
    - (b) Where the Commissioner is duly notified in accordance with section 12(1) of particulars of a change occurring in relation to the place or places in the State at which a business is carried on under a business name registered under this Act or in the address of any such place, the Commissioner shall issue, without any fee being payable therefor, a certificate of registration including those particulars in substitution for the previous certificate of registration.
  - (6) A business name shall not be registered under this Act if the statement referred to in subsection (1) is lodged with the Commissioner on a date preceding by more than 2 months the date shown in the statement as the proposed date of commencement of carrying on business.

- (7) The Commissioner may refuse to register a business name, if he is not satisfied that the particulars set out in the statement lodged under subsection (1) are correct.

*[Section 7 amended by No. 40 of 1976 s.12.]*

**8. Resident agent**

Where a business name is required to be registered under this Act and the person or all the persons carrying on or proposing to carry on business in the State under that name, resides or reside outside the State, or has or have no fixed address within the State, the statement referred to in section 7(1) shall —

- (a) include the name and address of some person resident in the State who in relation to the carrying on of business under that name —
- (i) has consented in writing to be the resident agent of the person or persons for the purposes of this Act; and
  - (ii) is authorised in writing by the person or persons to accept service on behalf of the person or persons of any notices for the purposes of this Act and of any process;
- and
- (b) in addition, be signed by the person who has consented to be the resident agent.

- (2) The address shown as the address of the resident agent appointed for the purposes of this Act in any statement lodged with the Commissioner under this Act by the person or persons in relation to whom a business name is registered shall, for the purpose of serving any notice on the person or persons under this Act, be deemed to be the address of a place where business is carried on by the person or persons under that name.

*[Section 8 amended by No. 40 of 1976 s.12.]*

**9. Restriction on registration of business names that are undesirable, etc.**

- (1) Except with the consent of the Minister, a business name shall not be registered under this Act if the business name is a name that is, in the opinion of the Commissioner, undesirable or is a name or a name of a kind that the Minister has, for the purposes of this Act, directed the Commissioner not to accept for registration.
- (2) The Minister shall cause a direction given by him under subsection (1) to be published in the *Government Gazette* and a copy of the direction to be forwarded to the Attorney-General of the Commonwealth and the Attorney-General of each State of the Commonwealth.

*[Section 9 amended by No. 40 of 1976 s.12.]*

**10. Power to cancel registration of business names that are undesirable, etc.**

- (1) If a business name, that could not be registered under this Act without contravention of section 9(1), is registered through inadvertence or otherwise, the Commissioner may send by post a notice addressed to the person or persons in relation to whom the name is so registered, at the place shown in the register as the place where business is carried on under that name —
  - (a) stating that he proposes to cancel the registration of that name upon the expiration of such period (being a period of not less than 28 days) as is specified in the notice; and
  - (b) setting out his reasons for the proposes cancellation,and upon the expiration of that period the Commissioner may cancel the registration of that name.
- (2) The Commissioner shall not, except with the approval of the Minister, exercise his powers under subsection (1) with respect to a business name that is deemed to be registered under this Act by virtue of section 3(4).



- (3) The Minister may at any time before the expiration of the period specified in a notice given by the Commissioner under subsection (1) annul the notice.
- (4) The Commissioner may remit any fee payable in respect of an application for the registration of a new business name the registration of which is cancelled under subsection (1).

*[Section 10 amended by No. 40 of 1976 s.12.]*

**11. Renewal of registration**

- (1) The registration of a business name remains in force for a period of 3 years, but the registration may from time to time be renewed by lodging with the Commissioner, at any time within the period of one month before or after the expiry of the registration or within such further time as the Commissioner allows, a statement in the prescribed form, signed by the person or one of the persons in relation to whom the name is registered, together with the prescribed fee.
- (2) The renewal of a registration shall be deemed to have been effected for a further period of 3 years as from the day on which the previous registration expires or has expired, as the case may be.
- (3) The Commissioner shall before or after the expiration of the registration of a business name, but not earlier than one month before the expiration, send by post to the person or persons in relation to whom the business name is or was registered, at the place shown in the register as the place where business is carried on under that name, a notice of the date on which the registration is due to expire or has expired, as the case may be.
- (4) Where the registration of a business name has expired the Commissioner shall not, except where he is of the opinion that owing to the nature of the business and the locality in which it is carried on the public are not likely to be misled, accept for registration from any person or persons other than the person or

**s. 12**

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persons in relation to whom the business name was registered any business name that is identical with that business name or that, in the opinion of the Commissioner, so nearly resembles it as to be calculated to deceive, until the expiration of one month after the sending of the notice referred to in subsection (3).

- (5) Notwithstanding the provisions of subsection (1), the following provisions apply in relation to a business name that is deemed to be registered under this Act by virtue of being registered or having been deemed to have been registered under the repealed Act —
- (a) the registration of the business name remains in force, subject to this Act, until a date fixed by the Commissioner;
  - (b) notice in writing of the date so fixed shall be posted by the Commissioner to the person or persons in relation to whom the business name is registered at the place shown in the register as the place where business is carried on under that name;
  - (c) the date fixed by the Commissioner shall be a date not less than one month after the notice in writing has been sent by post to such person or persons; and
  - (d) no such notice in writing shall be sent by the Commissioner until the expiration of a period of at least 3 years from the date upon which the name was registered or deemed to be registered under the repealed Act.

*[Section 11 amended by No. 40 of 1976 ss.5 and 12.]*

**12. Notification of changes of particulars relating to registered business names, cessation of business, etc.**

- (1) Where a business name is registered under this Act and a change occurs —
- (a) that renders the description of the nature of the business lodged with the Commissioner insufficient to disclose the true nature of the business;

- (b) in relation to the place or places in the State at which business is carried on under that name or in the address of any such place; or
- (c) in the registered particulars relating to the resident agent of the person or persons in relation to whom the name is registered,

there shall be lodged with the Commissioner within one month thereafter or within such further time as the Commissioner allows, a statement in the prescribed form, signed by the person or one of the persons in relation to whom the name is registered at the time of the change, notifying the Commissioner of particulars of and of the date of the change.

- (2) Where a change occurs in the christian names or surname or the place of residence of any person being an individual in relation to whom a business name is registered under this Act or in the corporate name or the place of the registered office in the State of a person being a corporation in relation to which a business name is registered under this Act, there shall be lodged with the Commissioner within one month thereafter, or within such further time as the Commissioner allows, a statement in the prescribed form signed by that person notifying the Commissioner of particulars of and of the date of the change.
- (3) Where a business name is registered under this Act in relation to a person or persons and that person ceases or all or any of those persons cease to carry on business in the State under that name, there shall be lodged with the Commissioner within one month thereafter, or within such further time as the Commissioner allows, a statement in the prescribed form notifying the Commissioner of the cessation and of the date thereof, signed by each person who was carrying on business under that name immediately before the cessation or in the case of a deceased person by his personal representative.
- (4) Where a business name is registered under this Act in relation to a person or persons and another person or other persons

commences or commence to carry on business in the State under that name in place of or in association with any person or persons in relation to whom the name is already registered, there shall be lodged with the Commissioner within one month thereafter, or within such further time as the Commissioner allows, a statement in the prescribed form, signed by each person carrying on business under that name immediately after that person commenced carrying on business under that name setting out the date on which that other person so commenced to carry on business and if that person is —

- (a) an individual, the christian names and surname and any former christian names or surname and the usual place of residence of that person and where that person is an infant, in addition to the particulars referred to in this paragraph, he shall be so described in the statement and the date of his birth shall be set out therein; or
  - (b) a corporation, the corporate name and the place of the registered office in the State of the corporation.
- (5) Where a business name is registered under this Act and a person appointed the resident agent of the person or persons in relation to whom the name is registered ceases to be the resident agent of the person or persons for the purposes of this Act —
- (a) there shall be lodged with the Commissioner, within one month after such cessation, or within such further time as the Commissioner allows, a statement in the prescribed form notifying the Commissioner of the cessation and of the date thereof, signed by the person or one of the persons in relation to whom the name is registered or by the person so ceasing or his personal representative; and
  - (b) the person or persons in relation to whom the business name is registered shall, within one month after such cessation or within such further time as the Commissioner allows, appoint in place of or in succession to the person so ceasing another person as the

resident agent of the person or persons for the purposes of this Act.

- (6) Where a business name is registered under this Act and another person is appointed in place of or in succession to a person who has ceased to be the resident agent of the person or persons in relation to whom the name is registered, there shall be lodged with the Commissioner, within one month after that appointment or within such further time as the Commissioner allows, a statement in the prescribed form, notifying the Commissioner of the appointment and of the date thereof —
- (a) signed by the person or by one of the persons in relation to whom the name is registered and by the other person so appointed;
  - (b) showing that the other person so appointed —
    - (i) is, in relation to the carrying on of business under that name, authorised by the person or persons in relation to whom the name is registered to accept on his or their behalf any notice for the purposes of this Act and of any process; and
    - (ii) has consented in writing to act as the resident agent for that person or those persons, as the case requires.
- (7) Where a business name is registered under this Act and the person or all the persons, in relation to whom the name is registered, ceases or cease to reside within the State or to have a fixed address in the State, there shall be lodged with the Commissioner within one month of his or their so ceasing or within such further time as the Commissioner allows a statement in the prescribed form stating the name and address of some person resident in the State who, in relation to the carrying on of business under that name —
- (a) has consented in writing to be the resident agent of the person or persons for the purposes of this Act; and

**s. 13**

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- (b) is authorised in writing by the person or persons to accept service on behalf of the person or persons of any notices for the purposes of this Act and of any process, signed by that person or one of those persons and by the person so appointed.
- (8) If a statement required by a provision of this section to be lodged with the Commissioner is not lodged in accordance with the provision, or if lodged does not comply with the provision, each person required or authorised by the provision to sign the statement is, unless he proves that he took all reasonable steps to ensure compliance with the provision, guilty of an offence. Penalty: \$200. Default penalty.
- (9) Where, by reason of a person commencing to carry on business under a business name registered under this Act, a statement is lodged with the Commissioner in accordance with and within the time prescribed by subsection (4) neither that person nor any other person is guilty of an offence against section 5, by reason only that before the lodging of the statement he carried on business under that name.
- (10) A statement required to be lodged with the Commissioner under this section with respect to any matter may be combined with a statement required to be lodged under this section with respect to another matter.
- (11) A statement lodged under this section shall be accompanied by the prescribed fee.

*[Section 12 amended by No. 113 of 1965 s.8; No. 40 of 1976 ss.6 and 12.]*

**13. Duty to furnish information**

- (1) The Commissioner may by notice in writing require any person to furnish within a period specified in the notice (being a period of not less than 28 days), or within such further period as the

Commissioner may allow, such information as appears to the Commissioner to be necessary to enable him to ascertain whether or not a person —

- (a) is carrying on business either alone or in association with other persons under a business name that is required to be registered under this Act; or
  - (b) has failed to lodge with the Commissioner a statement required to be lodged under this Act.
- (2) A person required under subsection (1) to furnish information to the Commissioner shall, within the period specified in the notice or within such further period as the Commissioner has allowed, furnish such information as it is within his power to furnish and shall not furnish any information that to his knowledge is false in any material particular.

Penalty: \$200.

- (3) A person is not excused from furnishing any information where required to do so under subsection (1) on the ground that the information might tend to incriminate him or make him liable to a penalty, but the information furnished by him is not admissible in evidence against him in any proceedings civil or criminal.

*[Section 13 amended by No. 113 of 1965 s.8; No. 40 of 1976 s.12.]*

**14. Disability of person in default**

- (1) Where a person who —
- (a) is carrying on business under a business name in contravention of section 5 or section 5A; or
  - (b) being required to lodge a statement under section 12 in relation to a business name, fails to lodge that statement,
- commences any suit or action in that business name or in respect of a cause of action arising out of any dealing in or

under that business name, the court before which the suit or action is commenced may order the person to cease to contravene section 5 or section 5A or to cause the statement to be lodged, as the case may be, and may stay all proceedings in the suit or action until the order is complied with or may allow the proceedings to be continued on an undertaking being given by the person that he will comply with the order within such time as is limited by the court.

- (2) The power given by this section to a court may be exercised in the case of the Supreme Court by a Judge in chambers, in the case of The District Court of Western Australia by a Judge in chambers, 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 magistrate in chambers or by 2 or more justices sitting in petty sessions.

*[Section 14 amended by No. 40 of 1976 s.7.]*

**15. Signing of statements**

- (1) A statement lodged with the Commissioner under this Act shall be deemed to be signed by a person who is required to sign the statement if —
- (a) in the case of an individual, it is signed on his behalf by a person authorised in writing to so sign the statement; or
  - (b) in the case of a corporation, it is signed by a director or manager or the secretary of the corporation.
- (2) Notwithstanding any other provision of this Act, where the Commissioner is satisfied that it is not practicable to obtain the signature of a person required by this Act to sign a statement, the Commissioner may accept the statement for registration without its being signed by that person, but a person is not relieved of the requirement to sign a statement and a statement not signed by any person is not, by reason only of its



registration under this Act, evidence relating to that person's interest in a business.

*[Section 15 amended by No. 40 of 1976 s.12.]*

**16. Verification of particulars**

The Commissioner may, in a particular case if he thinks fit, refuse to accept a statement required to be lodged with him under this Act, unless the particulars set out in the statement are verified by a statutory declaration made by a person who signed the statement.

*[Section 16 amended by No. 40 of 1976 s.12.]*

**17. Penalty for false statement**

A person shall not sign or lodge with the Commissioner a statement made or purporting to be made for the purposes of this Act that to his knowledge is false in any material particular and a person shall not authorise or permit the lodging with the Commissioner of such a statement that to his knowledge is false in any material particular.

Penalty: \$1 000.

*[Section 17 amended by No. 113 of 1965 s.8; No. 40 of 1976 s.12; No. 78 of 1995 s.147.]*

**18. Notice of proposed cancellation**

- (1) Where the Commissioner has reasonable cause to believe that a person or persons, in relation to whom a business name is registered under this Act, is not or are not carrying on business in the State under that name, he may send by post a notice addressed to the person or persons at the place shown in the register as the place where business is carried on under that name —
  - (a) enquiring whether the person is or the persons are carrying on business under the name; and

**s. 19**

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- (b) stating that unless the Commissioner is satisfied within one month from the date of the notice that business is being carried on in the State by that person or those persons under that name,

the registration of the business name may be cancelled.

- (2) Where the Commissioner has reasonable cause to believe that any provision of section 12 that is required to be complied with by or on behalf of the person or persons in relation to whom a business name is registered under this Act has not been complied with, he may send by post a notice addressed to the person or persons at the place shown in the register as the place where business is carried on under that name stating that unless —
  - (a) within one month from the date of the notice that provision is complied with; or
  - (b) the Commissioner is satisfied that there was in fact no failure to comply with the provision,

the registration of the business name may be cancelled.

*[Section 18 amended by No. 40 of 1976 s.12.]*

**19. Cancellation of registration**

- (1) The Commissioner may cancel the registration of a business name —
  - (a) if there is lodged with the Commissioner a statement under section 12 notifying him that the person or all the persons in relation to whom the business name is registered has or have ceased to carry on business in the State under that name and it does not appear from that statement, or another statement accompanying that statement, that another person has or other persons have commenced to carry on business in the State under that name;
  - (b) if the Commissioner has sent a notice to any person or persons in respect of the business name under section 18(1) and that person does not, or those persons do

- not, satisfy the Commissioner within one month from the date of the notice that business is being carried on in the State by that person or those persons under that name;
- (c) if the Commissioner has sent a notice to any person or persons under section 18(2) and, within one month after the date of the notice, the provision of section 12 to which the notice relates has not been complied with, or the person does not or those persons do not satisfy the Commissioner that there was no failure to comply with the provision; or
  - (d) if the business name is registered in relation to a corporation only and the name of the corporation has been struck off any register of corporations kept under the *Companies (Western Australia) Code*<sup>3</sup>, or the corporation has been dissolved.
- (2) The Commissioner may on any grounds that he thinks sufficient revoke any cancellation by him of the registration of a business name and in that event the business name shall be deemed to have continued to be registered as if the registration had not been cancelled.
  - (3) Where the registration of a business name has been cancelled under this section, a person in relation to whom the business name was registered immediately before the cancellation may apply to the Supreme Court for an order directing the Commissioner to restore the registration of the business name.
  - (4) On an application under subsection (3), the Supreme Court may, if it is satisfied that the applicant is carrying on business under the business name and that it is just and equitable so to do, make the order applied for upon such terms as the Court thinks fit.
  - (5) Upon the making of an order by the Supreme Court under subsection (4), the business name shall be deemed to have continued to be registered as if the registration has not been cancelled and the Commissioner, upon the lodging with him of an office copy of the order, shall make such entries and

**s. 20**

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alterations in the register as he considers necessary for the purposes of the order.

*[Section 19 amended by No. 40 of 1976 s.12; No. 10 of 1982 s.28.]*

**20. Use and exhibition of business name**

Where a business name is registered under this Act —

- (a) a person or persons, in relation to whom a business name is registered, shall not issue or sign, in connection with the carrying on of that business, any business letter, statement of account, invoice, official notice, publication, order for goods or receipt unless the business name appears in legible characters thereon;
- (b) the business name shall at all times be displayed in a conspicuous position on the outside of every place at which business is carried on under that name; and
- (c) the certificate of registration of the business name shall at all times be exhibited in a conspicuous position at the place where business is carried on under that name or if there is more than one such place at the principal place where business is so carried on,

and in the event of a contravention of this section each person carrying on business under that name is, unless he proves that he took all reasonable steps to ensure compliance with this section, guilty of an offence.

Penalty: \$100. Default penalty.

*[Section 20 amended by No. 113 of 1965 s.8.]*

**21. Commissioner may correct errors in register, etc.**

- (1) The Commissioner may on such evidence as to him appears sufficient correct an entry in the register or in a certificate of registration of a business name.

- (2) When correcting an error under subsection (1), the Commissioner shall not erase or render illegible the original writing and shall affix the date upon which the correction was made together with his initials.
- (3) An entry or certificate corrected under this section has the same validity and effect as if the error had not been made.
- (4) The Commissioner may accept and register a statement lodged to correct an error in or to supply any particular omitted from a statement previously lodged and registered; and in that event the statement previously lodged and that lodged under this subsection shall be read as one and shall both be incorporated with and form part of the register.

*[Section 21 amended by No. 40 of 1976 s.12.]*

**22. Inspection of statements**

A person may, on payment of the prescribed fee, inspect any statement lodged with the Commissioner under this Act or filed under any corresponding previous enactment, and may make a copy thereof or take extracts therefrom.

*[Section 22 amended by No. 40 of 1976 s.6.]*

**23. Certificate of registration or non-registration**

- (1) The Commissioner shall upon request by a person and payment of the prescribed fee issue to that person —
  - (a) a copy of or extract from the register or a copy of or extract from a document forming part of the register certified under his hand to be a true copy or extract; or
  - (b) a certificate under his hand that a business name was or was not, on a date or during a period specified in the certificate, registered under this Act in relation to a person, or that a firm, individual or corporation was or was not, on a date or during a period specified in the certificate, registered under any corresponding previous enactment.

**s. 24**

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- (2) The Commissioner shall not be required to issue a certificate under subsection (1)(b) in respect of a date or a period ending on a date earlier than the commencement of this Act or more than 12 years before the date of the receipt of the request.

*[Section 23 amended by No. 40 of 1976 s.12.]*

**24. Evidence of registration or non-registration**

A document purporting to be —

- (a) a certificate of registration issued under this Act;
- (b) a copy of or extract from the register or a copy of or extract from a document forming part of the register issued under section 23(1)(a);
- (c) a certificate issued under section 23(1)(b); or
- (d) a combination of 2 or more of the certificates, copies or extracts referred to in paragraph (a), (b) or (c),

is in all courts and before all person having authority to hear, receive and examine evidence prima facie evidence of any matter contained or set out therein.

**25. Authority of Commissioner to destroy documents and validation**

The Commissioner may, if in his opinion it is no longer necessary or desirable to retain them, destroy or give to the State Library of Western Australia any statement or notice lodged, filed, received or registered under this Act or under any corresponding previous enactment where the registration of the business name or of the firm, individual or corporation, as the case may be, in respect of which the statement or notice was lodged, filed, received or registered has not been in force at any time during the preceding 12 years or which in any case has been lodged for a period of 21 years or more.

*[Section 25 amended by No. 40 of 1976 ss.8 and 12.]*

**26. Invitations to the public to make deposits or loans**

- (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: \$1 000.

- (2) This section does not apply to —
- (a) an invitation to the public made by a public company in conformity with the requirements of the *Companies (Western Australia) Code*<sup>3</sup>;
  - (b) an invitation made to a person whose ordinary business it is to lend money; or
  - (c) a prescribed invitation or class of invitations or an invitation made to a prescribed person or class of persons.

[Section 26 amended by No. 113 of 1965 s.8; No. 40 of 1976 s.9; No. 10 of 1982 s.28; No. 48 of 1983 s.2.]

**27. General penalty provisions**

- (1) A person who —
- (a) does that which by or under this Act he is forbidden to do;
  - (b) does not do that which by or under this Act he is required or directed to do; or
  - (c) otherwise contravenes or fails to comply with any provision of this Act,

is guilty of an offence against this Act.

- (2) A person who is guilty of an offence against this Act is liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or punishment for the offence.
- (3) The penalty or punishment, pecuniary or other, set out in or at the foot of any section or part of a section indicates that the offence is punishable upon conviction by a penalty or punishment not exceeding that so set out and where the penalty or punishment is expressed to apply to a part only of the section it applies to that part only.

**28. Default penalty**

- (1) Where in or at the foot of any section or part of a section there appears the expression "Default penalty" it indicates that any person who is convicted of an offence against this Act in relation to that section or part is guilty of a further offence against this Act if the offence continues after he is so convicted and liable to an additional penalty for each day during which the offence so continues of not more than \$20.
- (2) Where an offence is committed by a person by reason of his failure to comply with a provision of this Act by or under which he is required or directed to do anything within a particular period that offence, for the purpose of subsection (1), shall be deemed to continue so long as the thing so required or directed to be done by him remains undone notwithstanding that the period has elapsed.
- (3) Notwithstanding anything contained in any Act, proceedings for any offence against this Act may be brought within the period of 3 years after the commission of the alleged offence or, with the consent of the Minister, at any later time.

*[Section 28 amended by No. 113 of 1965 s.8; No. 40 of 1976 s.10.]*



**29. Offences committed by corporations**

Where a person guilty of an offence against this Act —

- (a) is a corporation; or
- (b) is a person who purported to act for or on behalf of a corporation,

any director, manager, secretary or other officer of the corporation who was knowingly a party to the offence is also guilty of that offence.

**30. Evidentiary provisions**

- (1) If, in any proceedings for an offence against this Act, proof is given that a business name has been displayed on any premises, and evidence is given from which the court may infer that the business name has reference to any business carried on at the premises, the person or persons carrying on the business shall, in the absence of proof to the contrary, be deemed to be carrying on the business under that business name.
- (2) Proceedings may be taken and prosecuted in any court of competent jurisdiction against any person or persons in the business name under which the person is or the persons are carrying on business, if that business name is not registered under this Act and the name is, for the purpose of the proceedings, a sufficient designation of the person or persons in all writs, summonses, complaints and other legal documents and instruments, and any judgment obtained or order made in those proceedings may be enforced against that person or against those persons or any of those persons, as the case may be.
- (3) Nothing in this section shall be construed as exempting any person from compliance with any provision of this Act.

**31. As to service of notices**

Where by this Act the Commissioner is required or permitted to send a notice to the person or persons in respect of whom the

business name is registered at the place where business is carried on under a business name, the notice may be sent by post addressed to the business name —

- (a) at the place shown in the register as the place where business is so carried on; or
- (b) where more than one place is shown in the register as the place where business is carried on —
  - (i) at the place shown in the register as the principal place where business is so carried on; or
  - (ii) if no place is so shown as the principal place, at the place shown that appears first in the register as a place where business is so carried on;

or

- (c) if it appears from the register that there is, for the purposes of this Act, a resident agent, at the place shown in the register as the address of the resident agent in the State.

*[Section 31 amended by No. 40 of 1976 s.12.]*

**32. Regulations**

- (1) The Governor may make regulations not inconsistent with this Act prescribing all matters that are required or permitted to be prescribed or that 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 —
  - (a) the fees to be paid to the Commissioner under this Act;
  - (b) the conditions under and subject to which fees may be waived by the Commissioner or the Minister;
  - (c) the imposition of additional fees on the late lodgment of documents;

- (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;
  - (d) the forms to be used under this Act; the method of verifying any information required in those forms; and the completion or preparation of those forms, as the case requires, in accordance with the directions contained therein;
  - (e) the duties of the Commissioner for the purposes of this Act; and
  - (f) generally the conduct and regulation of registration under this Act.
- (2) The regulations may prescribe penalties not exceeding \$40 for any breach thereof.

*[Section 32 amended by No. 113 of 1965 s.8; No. 40 of 1976 ss.11 and 12; No. 48 of 1983 s.3.]*

**Schedule**

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**Schedule**

<b>Number of Act</b>	<b>Title of Act</b>	<b>Extent of Repeal</b>
2 of 1943	<i>Business Names Act 1942</i>	The whole.
11 of 1946	<i>Business Names Act Amendment Act 1946</i>	The whole.



**Notes**

<sup>1</sup> This reprint is a compilation as at 16 February 2001 of the *Business Names Act 1962* and includes all amendments effected by the other Acts referred to in the following Table.

**Table of Acts**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Miscellaneous</b>
<i>Business Names Act 1962</i>	8 of 1962	27 September 1962	Proclaimed 12 October 1962 (see section 2 and <i>Gazette</i> 12 October 1962 p.3366)	
<i>Decimal Currency Act 1965</i>	113 of 1965	21 December 1965	Sections 4 to 9: 14 February 1966 (see section 2(2)); balance on assent	
<i>Business Names Act Amendment Act 1976</i>	40 of 1976	9 June 1976	Proclaimed 6 August 1976 (see section 2 and <i>Gazette</i> 6 August 1976 p.2657)	
<i>Companies (Consequential Amendments) Act 1982, section 28</i>	10 of 1982	14 May 1982	1 July 1982 (see section 2(1) and <i>Gazette</i> 25 June 1982 p.2079)	
<i>Business Names Amendment Act 1983</i>	48 of 1983	5 December 1983	5 December 1983	
<i>Corporations (Western Australia) Act 1990, section 98</i>	105 of 1990	2 January 1991	1 January 1991 (see section 2)	
<i>Sentencing (Consequential Provisions) Act 1995, section 147</i>	78 of 1995	16 January 1996	Proclaimed 4 November 1996 (see section 2 and <i>Gazette</i> 25 October 1996 p.5632)	

## Business Names Act 1962

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Short title	Number and year	Assent	Commencement	Miscellaneous
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> , section 21	10 of 1998	30 April 1998	30 April 1998 (see section 2(1))	
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> , section 64	26 of 1999	29 June 1999	Proclaimed 1 July 1999 (see section 2(1) and <i>Gazette</i> 30 June 1999 p.2905)	

<sup>2</sup> Repealed by the *Interpretation Act 1984* (No. 12 of 1984) s.77(1).

<sup>3</sup> In respect of matters arising after 1 January 1991, the operation of the *Companies (Western Australia) Code* is subject to the provisions in Division 2 of Part 13 of the *Corporations (Western Australia) Act 1990* (No. 105 of 1990).