

Western Australia

Business Names Act 1962

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Business Names Act 1962

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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*¹.

2. Commencement

This Act shall come into operation on a day to be fixed by proclamation¹.

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- (1) The Acts mentioned in the Schedule to this Act to the extent to which they are therein expressed to be repealed, are hereby repealed accordingly.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*², 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 - (a) all persons, things and circumstances appointed or created by or under the repealed Act or existing or continuing under the repealed Act immediately before the coming into operation of this Act shall, under and subject to this Act, continue to have the same status, operation and effect as they respectively would have had if the repealed Act had not been repealed; and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granted, given, presented, passed, fixed, accrued, incurred or acquired or existing or continuing by or under the repealed Act, before the coming into operation of this Act;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a firm, individual or corporation, registered or deemed to be registered or required to have been registered under the repealed Act immediately before the coming into operation of this Act, shall continue to be had and may be enforced, as if this Act had not come into operation; and
 - (iii) all penalties incurred under the repealed Act before the commencement of this Act are enforceable and may be enforced as if this Act had not come into operation.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in any Act, order, regulation, instrument or document to a firm, individual or corporation registered under the repealed Act or any corresponding previous enactment, shall unless the context otherwise requires be construed as referring also to a firm, the members of which, to an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 means the person for the time being designated as the Commissioner under section 4AA;

corporation means a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth, other than an exempt body within the meaning of section 66A of that Act;

Department means the department of the Public Service principally assisting in the administration of this Act;

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*;

secretary, includes —

- (a) any person performing the duties of secretary of the corporation; and
- (b) the local agent of a foreign corporation within the meaning of the *Corporations Act 2001* of the Commonwealth;

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; No. 20 of 2003 s. 7; No. 28 of 2006 s. 55.]

4AA. Commissioner

- (1) The Minister is required, by notice published in the *Gazette*, to designate a person who is an executive officer of the Department as the Commissioner for the purposes of this Act.
- (2) The Commissioner may be referred to by a title specified by the Minister by notice published in the *Gazette*.
- (3) In this section —
executive officer has the meaning given by section 3(1) of the *Public Sector Management Act 1994*.

[Section 4AA inserted by No. 28 of 2006 s. 56.]

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;

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- (b) of an offence involving fraud or dishonesty punishable on conviction with imprisonment for 3 months or more; or
 - (c) of an offence under —
 - (i) section 108, 229, 554, 555, 556, 559 or 560 of the *Companies (Western Australia) Code*, section 44 of the *Companies (Acquisition of Shares) (Western Australia) Code* or section 129 of the *Securities Industry (Western Australia) Code*;
 - (ii) any provision of an equivalent law of another State or of a Territory of the Commonwealth that corresponds with any of the provisions in subparagraph (i);
 - (iii) any provision of a law of the State, of another State or of a Territory of the Commonwealth that was in effect before the provisions in subparagraph (i) and that corresponds with any of the provisions in subparagraph (i);
 - (iv) any provision of the Corporations Law that corresponds with any of the provisions in subparagraph (i); or
 - (v) any provision of the *Corporations Act 2001* of the Commonwealth that corresponds with any of the provisions in subparagraph (i).
- (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.

- (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; No. 20 of 2003 s. 8; No. 50 of 2003 s. 41(2).]

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

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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;
- (ca) the address of the place in the State where a notice given under this Act may be served;
- (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 corporate name and the place of the registered office 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; No. 74 of 2003 s. 31(2) and (3).]

[8. Deleted by No. 74 of 2003 s. 31(4).]

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 Minister of the Commonwealth, the Minister of each State other than this State and the Minister of a Territory, responsible for the administration of an Act that relates to the registration of business names.

[Section 9 amended by No. 40 of 1976 s. 12; No. 74 of 2003 s. 31(5).]

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 proposed 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.
 - (1a) If, and to the extent that, the fee referred to in subsection (1) is a tax, this subsection imposes the tax.
 - (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

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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 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 s. 5 and 12; No. 63 of 2003 s. 4.]

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 relation to the address of the place in the State where a notice given under this Act may be served,

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 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,

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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 of the corporation.

[(5)-(7) deleted]

- (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 s. 6 and 12; No. 74 of 2003 s. 31(6)-(9).]

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

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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.

- (1a) Subsection (1) applies as if the State Administrative Tribunal were a court and a proceeding before it were an action.
- (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 or in the case of the Magistrates Court a magistrate in chambers.

- (3) The power given by this section to the State Administrative Tribunal is exercisable only by a person who is a judicial member or a senior member, as defined in section 3(1) of the *State Administrative Tribunal Act 2004*.

[Section 14 amended by No. 40 of 1976 s. 7; No. 55 of 2004 s. 90; No. 59 of 2004 s. 141.]

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

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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
 - (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

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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 corporation has been deregistered under the *Corporations Act 2001* of the Commonwealth.
- (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 State Administrative Tribunal for a review of the Commissioner's decision to cancel the registration of the business name.
- (4) The time within which the application may be made is unlimited.
- (5) If the State Administrative Tribunal sets aside the Commissioner's decision to cancel the registration of the business name, 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 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; No. 20 of 2003 s. 9; No. 55 of 2004 s. 91.]

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

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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.

(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 s. 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.

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- (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 *Corporations Act 2001* of the Commonwealth;
 - (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; No. 20 of 2003 s. 10.]

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 —

- (aa) at the place shown in the register as the place in the State where a notice given under this Act may be served;
- (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.

[Section 31 amended by No. 40 of 1976 s. 12; No. 74 of 2003 s. 31(10).]

31A. Delegation by Commissioner

- (1) The Commissioner may delegate to any other person employed in the Department any power or duty of the Commissioner under another provision of this Act.
- (2) The delegation must be in writing signed by the Commissioner.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Commissioner to perform a function through an officer or agent.

[Section 31A inserted by No. 28 of 2006 s. 57.]

31B. Information officially obtained to be confidential

- (1) A person who misuses information obtained by reason of any function that person has, or at any time had, in the administration of this Act commits an offence.
Penalty: \$20 000.
- (2) A person misuses information if it is, directly or indirectly, recorded, used, or disclosed to another person, other than —
 - (a) in the course of duty;

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- (b) under this Act;
 - (c) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence;
 - (d) in a manner that could not reasonably be expected to lead to the identification of any person to whom the information refers; or
 - (e) with the consent of the person to whom the information relates, or each of them if there is more than one.
- (3) In this section —
information means information concerning the affairs of a person.

[Section 31B inserted by No. 28 of 2006 s. 57.]

31C. Protection from liability for wrongdoing

- (1) A person is not liable for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.
- (2) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

[Section 31C inserted by No. 28 of 2006 s. 57.]

31D. Application of certain provisions of the *Consumer Affairs Act 1971*

Sections 19, 20, 21, 22 and 23A of the *Consumer Affairs Act 1971* apply, with such modifications as are necessary, to and

in relation to the functions of the Commissioner and persons and matters affected by the exercise of those functions as if the sections were part of this Act.

[Section 31D inserted by No. 28 of 2006 s. 57.]

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.

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- (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 s. 11 and 12; No. 48 of 1983 s. 3.]

Schedule

Number of Act	Title of Act	Extent of Repeal
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

- ¹ This is a compilation of the *Business Names Act 1962* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Business Names Act 1962</i>	8 of 1962	27 Sep 1962	12 Oct 1962 (see s. 2 and <i>Gazette</i> 12 Oct 1962 p. 3366)
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
Reprint of the <i>Business Names Act 1962</i> authorised 17 Mar 1971 (includes amendments listed above)			
<i>Business Names Act Amendment Act 1976</i>	40 of 1976	9 Jun 1976	6 Aug 1976 (see s. 2 and <i>Gazette</i> 6 Aug 1976 p. 2657)
<i>Companies (Consequential Amendments) Act 1982</i> s. 28	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079)
<i>Business Names Amendment Act 1983</i>	48 of 1983	5 Dec 1983	5 Dec 1983
<i>Corporations (Western Australia) Act 1990</i> s. 98	105 of 1990	2 Jan 1991	1 Jan 1991 (see s. 2)
<i>Sentencing (Consequential Provisions) Act 1995</i> s. 147	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 21	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> s. 64	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
Reprint of the <i>Business Names Act 1962</i> as at 16 Feb 2001 (includes amendments listed above)			
<i>Corporations (Consequential Amendments) Act (No. 2) 2003</i> Pt. 3	20 of 2003	23 Apr 2003	15 Jul 2001 (see s. 2(1) and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)

Short title	Number and year	Assent	Commencement
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 41</i>	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Business Names Amendment Act 2003</i>	63 of 2003	26 Nov 2003	26 Nov 2003 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 31</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 15³</i>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
Reprint 3: The Business Names Act 1962 as at 28 Oct 2005 (includes amendments listed above)			
<i>Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 4 Div. 3⁴</i>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)

² Repealed by the *Interpretation Act 1984* s. 77(1).

³ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

⁴ The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 4 Div. 23 reads as follows:

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Division 23 — Transitional provisions

151. Commissioner for Fair Trading

- (1) On commencement, the person holding the office of Commissioner for Fair Trading immediately before commencement is to be taken to have been designated as the Commissioner or Registrar (as the case requires) for the purposes of each of the following enactments —

- (a) the Associations Incorporation Act 1987;
 - (b) the *Business Names Act 1962*;
 - (c) the *Chattel Securities Act 1987*;
 - (d) the *Companies (Co-operative) Act 1943*;
 - (e) Part 8 of the *Competition Policy Reform (Western Australia) Act 1996*;
 - (f) the *Consumer Affairs Act 1971*;
 - (g) the *Co-operative and Provident Societies Act 1903*;
 - (h) the *Credit Act 1984*;
 - (i) the *Credit (Administration) Act 1984*;
 - (j) the *Employment Agents Act 1976*;
 - (k) the *Hire-Purchase Act 1959*;
 - (l) the *Limited Partnerships Act 1909*;
 - (m) the *Motor Vehicle Dealers Act 1973*;
 - (n) the *Petroleum Products Pricing Act 1983*;
 - (o) the *Petroleum Retailers Rights and Liabilities Act 1982*;
 - (p) the *Residential Tenancies Act 1987*;
 - (q) the *Retirement Villages Act 1992*;
 - (r) the *Travel Agents Act 1985*.
- (2) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under a provision of the *Consumer Affairs Act 1971* for the purposes of another enactment listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted —
- (a) by, to or in relation to, the Commissioner or Registrar (as the case requires) as defined in that other enactment as in force after commencement; and
 - (b) where relevant, under the corresponding provision of that other enactment as in force after commencement.
- (3) To the extent that a thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading (including in his or her capacity as the Prices Commissioner) before commencement under, or for the purposes of, an enactment listed in subsection (1) is not covered by subsection (2), it has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the Commissioner or Registrar (as the case requires) as defined in that enactment as in force after commencement.

- (4) A thing done or omitted to be done by, to or in relation to, the Commissioner for Fair Trading before commencement under, or for the purposes of, an enactment not listed in subsection (1) has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.
- (5) A reference in an enactment to the Commissioner for Fair Trading is to have effect after commencement as if it had been amended to be a reference to —
 - (a) in the case of an enactment listed in subsection (1) or subsidiary legislation made under such an enactment — the Commissioner or Registrar (as the case requires) as defined in the enactment as in force after commencement; or
 - (b) in the case of any other enactment or subsidiary legislation — the Commissioner as defined in the *Consumer Affairs Act 1971* as in force after commencement.

152. Commissioner for Corporate Affairs and Registrar of Co-operative and Financial Institutions

- (1) A thing done or omitted to be done by, to or in relation to, the Commissioner for Corporate Affairs before commencement under, or for the purposes of, the *Companies (Co-operative) Act 1943* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.
- (2) A thing done or omitted to be done by, to or in relation to, the Registrar of Co-operative and Financial Institutions before commencement under, or for the purposes of, the *Co-operative and Provident Societies Act 1903* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.

153. *Consumer Affairs Act 1971*

Each office in existence immediately before commencement because of section 15(1) of the *Consumer Affairs Act 1971* does not cease merely because that subsection is repealed by this Act.

154. *Petroleum Products Pricing Act 1983*

Each office in existence immediately before commencement because of section 5(2)(b) of the *Petroleum Products Pricing*

Act 1983 does not cease merely because that paragraph is deleted by this Act.

155. Interpretation

In this Division —

commencement means the time at which this Division comes into operation;

Commissioner for Fair Trading means the Commissioner for Fair Trading referred to in section 15 of the *Consumer Affairs Act 1971* as in force before commencement;

Prices Commissioner means the Prices Commissioner referred to in section 5(1) of the *Petroleum Products Pricing Act 1983* as in force before commencement.

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