



New South Wales

Business Names Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make provision with respect to the registration and use of business names. The Bill repeals the *Business Names Act 1962*, makes consequential amendments to other Acts and enacts savings and transitional provisions.

The principal differences between the proposed Act and the *Business Names Act 1962* are as follows:

- (a) businesses that are carried on exclusively over the Internet will no longer be required to register their business names or display them at their places of business,
- (b) a business name will be able to be registered in the name of any person who carries on business in New South Wales, whether or not the person carries on business in New South Wales under that name,

- (c) there will no longer be any need for a person who resides interstate to appoint a resident agent with respect to a business name registered in the person's name,
- (d) there will be a right of appeal to the Administrative Decisions Tribunal against decisions of the Director-General of Fair Trading (the *Director-General*) under the proposed Act.

Outline of provisions

Part 1 Preliminary

Clause 1 specifies the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act (apart from provisions that depend on uncommenced provisions of other Acts) on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions for the purposes of the proposed Act.

Part 2 Registration of business names

Division 1 Registration

Clause 4 prohibits a person from carrying on business in New South Wales under an unregistered business name. The prohibition does not apply to persons who carry on business under their own names or to persons who carry on business exclusively over the Internet. The maximum penalty for an offence under the proposed section is 50 penalty units (\$5,500).

Clause 5 provides for the registration of business names in accordance with the procedures set out in the *Licensing and Registration (Uniform Procedures) Act 2002*.

Clause 6 sets out the grounds on which registration of a business name may be refused.

Clause 7 provides that a business name is not to be registered in the name of a person who is not carrying on business in New South Wales.

Clause 8 provides that a business name is not to be registered in the name of a person who has recently been found guilty or convicted of certain kinds of offence except with the leave of the District Court.

Clause 9 provides for a person to be notified if his or her registered business name is identical to, or closely resembles, a previously registered business name, and further provides that the giving of such notice is evidence that he or she has been made aware of that fact.

Clause 10 provides that registration of a business name has effect for 3 years.

Division 2 Notification of changes in relation to business names

Clause 11 requires notice that a person has commenced to carry on business under a registered business name to be given to the Director-General within one month after that fact.

Clause 12 requires notice that a person has ceased to carry on business under a registered business name to be given to the Director-General within one month after that fact.

Clause 13 requires notice that a person in whose name a business name is registered is no longer carrying on business in New South Wales to be given to the Director-General within one month after that fact.

Clause 14 requires notice of any change in the particulars registered in relation to a business name to be given to the Director-General within one month after the change occurs.

Clause 15 requires notice of any change in the particulars registered in relation to a person in whose name a business name is registered to be given to the Director-General within one month after the change occurs.

Clause 16 allows several notices under the proposed Division to be combined in the one document, allows the Director-General to extend the time for giving notifications under the proposed Division and provides for what is to be taken as a continuing offence under the proposed Division.

Division 3 Cancellation of registration

Clause 17 sets out the grounds on which registration of a business name may be cancelled generally.

Clause 18 sets out the grounds on which registration of a business name may be amended so as to remove the name of a person in whose name the business name is registered.

Clause 19 provides a right of review by the Administrative Decisions Tribunal in relation to decisions by the Director-General under the proposed Division.

Division 4 General

Clause 20 provides for the establishment and maintenance of a register of business names for the purposes of the proposed Act.

Clause 21 enables the Minister to publish an order in the Gazette prohibiting the registration of certain kinds of business name. Such an order may be made on the Minister's own initiative (in which case notice of the order is to be given to the Minister's interstate counterparts) or as a consequence of receiving notice that a similar kind of order has been made by one of the Minister's interstate counterparts.

Clause 22 makes it clear that registration of a business name does not authorise a person to use that name if the use of that name is prohibited by some other Act or law.

Clause 23 ensures that persons carrying on business in contravention of the proposed Act are in no more advantageous a position, as regards legal proceedings taken by or against them, than persons who are not in contravention of the proposed Act.

Clause 24 obliges a person who is carrying on business under a registered business name (unless exclusively by means of the Internet) to include the business name on all business correspondence, to display the business name at each of the person's places of business and to display the relevant certificate of registration for the business name at the person's principal place of business.

Clause 25 prohibits the use of a business name in any public invitation for loans or deposits. The prohibition does not apply to a person whose business is moneylending or to a company that is raising money in accordance with the *Corporations Act 2001* of the Commonwealth.

Clause 26 gives evidentiary weight to certificates issued by the Director-General (or a person authorised by the Director-General) as to the contents of the register of business names.

Clause 27 provides that evidence that a person carries on business from premises on which a business name is displayed is evidence that the person carries on business under that name.

Part 3 Administration

Division 1 Power to require information and documents

Clause 28 empowers the Director-General to require production of information and documents, on pain of a penalty of 20 penalty units (\$2,200). Self-incrimination does not excuse a person for failing to comply with such a requirement, but information so obtained cannot be used against the person unless the information is deliberately false.

Division 2 Power to enter premises

Clause 29 confers a power of entry on authorised officers investigating suspected contraventions of the proposed Act.

Clause 30 imposes certain obligations on an authorised officer exercising a power of entry.

Clause 31 provides for the payment of compensation to persons who suffer damage as a result of an authorised officer's exercise of a power of entry to premises.

Division 3 General

Clause 32 provides for the issuing of penalty notices with respect to offences under the proposed Act.

Clause 33 makes it an offence to obstruct or hinder an authorised officer in the exercise of the officer's functions under the proposed Act.

Clause 34 provides for the appointment of authorised officers for the purposes of the proposed Act.

Clause 35 provides for the delegation of the Director-General's functions under the proposed Act.

Clause 36 absolves certain persons from personal liability for anything done or omitted to be done by them in the execution of the proposed Act.

Part 4 Miscellaneous

Clause 37 is a standard provision with respect to directors' liability for offences committed by corporations.

Clause 38 facilitates the service of documents under the proposed Act.

Clause 39 allows proceedings for offences against the proposed Act to be taken up to 3 years after they occur.

Clause 40 empowers the Governor to make regulations for the purposes of the proposed Act.

Clause 41 is a formal provision repealing the *Business Names Act 1962*.

Clause 42 is a formal provision giving effect to a Schedule of amendments to other Acts (Schedule 1).

Clause 43 is a formal provision giving effect to a Schedule of savings, transitional and other provisions (Schedule 2).

Clause 44 is formal provision requiring the proposed Act to be reviewed at the end of 5 years from its date of assent.

Schedule 1 Amendment of other legislation

Schedule 1 amends the following legislation consequent on the enactment of the proposed Act:

- (a) the *Business Names Act 2002*,
- (b) the *Fines Act 1996*,
- (c) the *Gaming Machines Act 2001*,
- (d) the *Home Building Act 1989*,
- (e) the *Licensing and Registration (Uniform Procedures) Act 2002*,
- (f) the *Motor Dealers Act 1974*,
- (g) the *Motor Vehicle Repairs Act 1980*,
- (h) the *Partnership Act 1892*,
- (i) the *Printing and Newspapers Act 1973*,
- (j) the *Property, Stock and Business Agents Act 1941*,
- (k) the *Property, Stock and Business Agents Act 2002*,
- (l) the *Travel Agents Act 1986*.

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act, including a provision (clause 1) that allows the regulations under the proposed Act to make further provision of a savings or transitional nature.



New South Wales

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New South Wales

Business Names Bill 2002

No. , 2002

A Bill for

An Act with respect to the registration and use of business names; to repeal the *Business Names Act 1962*; and for other purposes.

Clause 1 Business Names Bill 2002

Part 1 Preliminary

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Business Names Act 2002*. 4

2 Commencement 5

(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsections (2)–(4). 6
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(2) Schedule 1.1 commences on the commencement of section 5, or on the commencement of section 204B of the *Police Act 1990*, whichever is the later. 8
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(3) Schedule 1.4 [4] and [5] commence on the commencement of section 5, or on the commencement of Part 2D of the *Home Building Act 1989*, whichever is the later. 11
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(4) Schedule 1.11 commences on the commencement of section 5, or on the commencement of section 30 of the *Property, Stock and Business Agents Act 2002*, whichever is the later. 14
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3 Definitions 17

(1) In this Act: 18

authorised officer means an authorised officer appointed under section 34. 19
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business includes trade and profession. 21

business name includes any name, style, title or designation under which business is carried on. 22
23

Department means the Department of Fair Trading. 24

Director-General means the Director-General of the Department. 25

foreign language character means any character or symbol that is not an English language letter, numeral or punctuation mark. 26
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on-line service means an internet carriage service within the meaning of the *Broadcasting Services Act 1992* of the Commonwealth. 28
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- proper address*** means: 1
- (a) in relation to an individual, the individual's usual place of residence, and 2
 - (b) in relation to a corporation, the address of the corporation's registered office within the meaning of the *Corporations Act 2001* of the Commonwealth. 3
- proper name*** means: 4
- (a) in relation to an individual: 5
 - (i) the individual's full name, or 6
 - (ii) the individual's family name, together with the initials or abbreviations of one or more of the individual's given names, and 7
 - (b) in relation to a corporation, the corporation's corporate name. 8
- Register*** means the register of business names referred to in section 20. 9
- registered*** means registered under the *Licensing and Registration (Uniform Procedures) Act 2002*, as applied by section 5. 10
- registered particulars*** means: 11
- (a) in relation to a person in whose name a business name is registered, the particulars referred to in section 20 (2), and 12
 - (b) in relation to a business for which a business name is registered, the particulars referred to in section 20 (3). 13
- (2) In this Act, a reference to ***carrying on business*** includes a reference to establishing a place of business and soliciting orders for goods or services, but does not include: 14
- (a) taking or defending any legal proceedings, or 15
 - (b) establishing or maintaining an account with an authorised deposit-taking institution, or 16
 - (c) effecting any purchase or sale through an independent contractor, or 17
 - (d) creating evidence of any debt or creating any charge on real or personal property, or 18
 - (e) collecting any debt, securing any debt or enforcing a security with respect to any debt, or 19
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Clause 3 Business Names Bill 2002

Part 1 Preliminary

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| (f) | conducting an isolated transaction over a period of not more than 31 days, or | 1 |
| (g) | investing funds or holding property. | 2 |
| (3) | Notes in the text of this Act do not form part of the Act. | 3 |
| | | 4 |

Part 2	Registration of business names	1
Division 1	Registration	2
4	Business names to be registered	3
(1)	A person must not carry on business in New South Wales under any business name unless the business name is registered in the name of that person and of each other person (if any) with whom that person is carrying on that business.	4 5 6 7
	Maximum penalty: 50 penalty units.	8
(2)	This section does not prevent a person from carrying on business:	9
(a)	under the proper name of that person and of each other person (if any) with whom that person is carrying on that business, or	10 11
(b)	under a registered business name, or under a name referred to in paragraph (a), to which are added words that indicate that the business to which the name relates is being carried on in succession to a former owner of the business, or	12 13 14 15
(c)	under a registered business name that is not yet registered in the name of that person, but only during the one-month period referred to in section 11 (1), or	16 17 18
(d)	under an unregistered business name that contains foreign language characters, so long as the person also carries on the business under a registered business name that is an English language equivalent of the unregistered business name, or	19 20 21 22
(e)	under any unregistered business name, so long as all orders for the goods or services provided by the business are received exclusively by means of an on-line service.	23 24 25
(3)	For the purposes of this section, a business carried on by a receiver, manager, administrator or trustee appointed pursuant to any agreement or court order, or pursuant to any Act or law, is taken to be carried on by the person in respect of whom he or she is appointed.	26 27 28 29 30
5	Application to registration of Licensing and Registration (Uniform Procedures) Act 2002	31 32
(1)	The Director-General may grant registration of a business name in the name of one or more persons.	33 34

- (2) Part 3 of the *Licensing and Registration (Uniform Procedures) Act 2002 (the applied Act)* applies to and in respect of registration of a business name, subject to the modifications and limitations prescribed by or under this Act. 1
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Note. See clause 3 of Schedule 2, which temporarily suspends the provisions of the applied Act in relation to the making of applications by way of electronic communication. 5
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- (3) For the purpose of applying Part 3 of the applied Act to registration of a business name: 8
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- (a) the references in section 35 (1) of that Act to “18 years” are to be read as references to “16 years”, and 10
11
- (b) registration may be transferred under that Act, and 12
- (c) section 39 of that Act does not have effect. 13
- (4) Registration of a business name is taken to be fixed-term registration for the purposes of Part 3 of the applied Act. 14
15
- (5) Subject to this section, the regulations may make provision for or with respect to such matters concerning registration of a business name as are relevant to the operation of Part 3 of the applied Act. 16
17
18
- 6 Refusal of registration of certain business names** 19
- (1) A business name is not to be registered if the name contains foreign language characters. 20
21
- (2) Unless the Minister so directs, a business name is not to be registered: 22
23
- (a) if registration of the name is prohibited by an order in force under section 21, or 24
25
- (b) if the Director-General is of the opinion that the name is undesirable. 26
27
- (3) A business name is not to be registered if the Director-General is of the opinion: 28
29
- (a) that the name is identical to, or closely resembles, an existing registered business name under which business is being carried on, and 30
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32
- (b) that the public would be likely to be misled if business were to be carried on under both names. 33
34
- (4) If the Director-General refuses to register a business name, the Director-General may, subject to this section, register an alternative business name nominated by the applicant. 35
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7 Refusal of registration of persons not carrying on business in New South Wales	1 2
A business name is not to be registered in the name of a person who is not carrying on business in New South Wales unless the Director-General is satisfied that the person intends to carry on business in New South Wales in the immediate future.	3 4 5 6
8 Refusal of registration of persons found guilty or convicted of certain offences	7 8
(1) A business name is not to be registered in the name of a person who, within the last 5 years:	9 10
(a) has been found guilty or convicted of a prescribed offence, or	11
(b) has been released from custody (whether on parole or at the end of a term of imprisonment) in respect of a sentence of imprisonment for a prescribed offence of which the person has at any time previously been found guilty or convicted,	12 13 14 15
except with the leave of the District Court.	16
(2) An application for leave may not be dealt with until 28 days after notice of the application has been given to the Minister.	17 18
(3) The Minister may be represented at the hearing of, and may oppose, an application for leave.	19 20
(4) No appeal lies against the decision of the District Court on an application for leave.	21 22
(5) In this section, <i>prescribed offence</i> means:	23
(a) an indictable offence in connection with the promotion, formation or management of a corporation, or	24 25
(b) an offence involving fraud or dishonesty punishable by imprisonment for 3 months or more, or	26 27
(c) an offence under section 184, 590, 592, 595, 670A, 728 or 1307 of the <i>Corporations Act 2001</i> of the Commonwealth, under Part 7.11 of that Act or under any other provision of that Act prescribed by the regulations under this Act, or	28 29 30 31
(d) an offence to which section 5A of the <i>Business Names Act 1962</i> applied at the time of the relevant finding of guilt or conviction, or	32 33 34
(e) an offence that was a prescribed offence at the time of the relevant finding of guilt or conviction.	35 36

9 Notice may be given of registration of identical business names	1
(1) The Director-General may cause written notice to be given to any person in whose name a business name is newly registered that another business name identical to, or closely resembling, the newly registered business name (being a business name specified in the notice) is already registered.	2 3 4 5 6
(2) A copy of each such notice is to be kept in the Register.	7
(3) Evidence that a person was given notice under this section is evidence that the person was made aware, when the notice was given, that some other person was carrying on business under the business name specified in the notice.	8 9 10 11
10 Duration of registration	12
Registration of a business name has effect for the period of 3 years from the date on which the name is registered.	13 14
Division 2 Notification of changes in relation to business names	15 16
11 Notification of additional persons commencing to carry on business under registered business name	17 18
(1) Within one month after a person commences to carry on business in New South Wales under a registered business name, notice of that fact is to be given to the Director-General.	19 20 21
(2) If notice is not given in accordance with subsection (1), each person in whose name the business name is registered is guilty of an offence.	22 23 24
Maximum penalty:	25
(a) for a first offence, 20 penalty units, and	26
(b) for a second or subsequent offence, 20 penalty units plus 0.5 penalty units for each day for which the offence continues.	27 28
12 Notification of persons ceasing to carry on business under registered business name	29 30
(1) Within one month after a person ceases to carry on business in New South Wales under a registered business name, notice of that fact is to be given to the Director-General.	31 32 33

(2)	If notice is not given in accordance with subsection (1), each person in whose name the business name is registered is guilty of an offence.	1 2 3
	Maximum penalty:	4
(a)	for a first offence, 20 penalty units, and	5
(b)	for a second or subsequent offence, 20 penalty units plus 0.5 penalty units for each day for which the offence continues.	6 7
13	Notification of persons ceasing to carry on business in New South Wales	8 9
(1)	Within one month after a person in whose name a business name is registered ceases to carry on business in New South Wales, notice of that fact is to be given to the Director-General.	10 11 12
(2)	If notice is not given in accordance with subsection (1), the person who has ceased to carry on business in New South Wales is guilty of an offence.	13 14 15
	Maximum penalty:	16
(a)	for a first offence, 20 penalty units, and	17
(b)	for a second or subsequent offence, 20 penalty units plus 0.5 penalty units for each day for which the offence continues.	18 19
14	Notification of changes in relation to business	20
(1)	Within one month after:	21
(a)	business is commenced to be carried on in New South Wales under a registered business name, or	22 23
(b)	business ceases to be carried on in New South Wales under a registered business name, or	24 25
(c)	there is any other change in the registered particulars for the business for which a business name is registered,	26 27
	notice of the change is to be given to the Director-General.	28
(2)	If notice is not given in accordance with subsection (1), each person in whose name the business name is registered is guilty of an offence.	29 30 31
	Maximum penalty:	32
(a)	for a first offence, 20 penalty units, and	33

(b)	for a second or subsequent offence, 20 penalty units plus 0.5 penalty units for each day for which the offence continues.	1 2
15	Notification of changes in relation to person in whose name business name is registered	3 4
(1)	Within one month after any change in the registered particulars for a person in whose name a business name is registered, notice of the change is to be given to the Director-General.	5 6 7
(2)	If notice is not given in accordance with subsection (1), the person in relation to whom the change has occurred is guilty of an offence.	8 9
	Maximum penalty:	10
(a)	for a first offence, 20 penalty units, and	11
(b)	for a second or subsequent offence, 20 penalty units plus 0.5 penalty units for each day for which the offence continues.	12 13
16	General	14
(1)	Two or more notices under this Division may be combined in a single document.	15 16
(2)	The Director-General may allow further time for the giving of notice required by this Division, and any notice given within that further time is taken to have been duly given.	17 18 19
(3)	An offence under this Division of failing to give notice within a specified period is taken to continue for each day after the end of that period during which the notice remains not given.	20 21 22
Division 3	Cancellation of registration	23
17	Cancellation of registration in relation to business name generally	24
(1)	The Director-General may cancel the registration of a business name:	25 26
(a)	if the business name has been registered in contravention of section 6, whether by inadvertence or otherwise, or	27 28
(b)	if the requirements of section 11, 12, 13 or 14 have not been complied with in relation to the business name.	29 30
(2)	The Director-General may also cancel the registration of a business name:	31 32

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| (a) | if none of the persons in whose names the business name is registered has carried on business in New South Wales during the previous 2 months, and | 1
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| (b) | if the Director-General is of the opinion that none of those persons intends to carry on business in New South Wales in the immediate future. | 4
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| (3) | The Director-General may also cancel the registration of a business name: | 7
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| (a) | if none of the persons in whose names the business name is registered has carried on business under that name in New South Wales during the previous 2 months, and | 9
10
11 |
| (b) | if the Director-General has received, but not yet determined, an application by some other person to register a business name that is identical to, or closely resembles, that name, and | 12
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14 |
| (c) | if the Director-General is of the opinion that the public would be likely to be misled if business were to be carried on in New South Wales under both names. | 15
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17 |
| (4) | Action may not be taken under this section with respect to a business name unless the Director-General: | 18
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| (a) | has caused notice of the proposed action (including reasons for the proposed action) to be given to each person in whose name the business name is registered, and | 20
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22 |
| (b) | has given each such person at least 28 days within which to make written submissions to the Director-General in relation to the proposed action, and | 23
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25 |
| (c) | has taken all such submissions into consideration. | 26 |
| 18 | Cancellation of registration in relation to person in whose name business name is registered | 27
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| (1) | The Director-General may amend the registered particulars with respect to a registered business name so as to remove the name of a person in whose name the business name is registered: | 29
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31 |
| (a) | if the person is found guilty or convicted of a prescribed offence within the meaning of section 8, or | 32
33 |
| (b) | if the requirements of section 15 have not been complied with in relation to the person. | 34
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- (2) The Director-General may also amend the registered particulars with respect to a registered business name so as to remove the name of a person in whose name the business name is registered:
- (a) if the person has not carried on business in New South Wales during the previous 2 months, and
 - (b) if the Director-General is of the opinion that the person does not intend to carry on business in New South Wales in the immediate future.
- (3) Action may not be taken under this section with respect to a business name unless the Director-General:
- (a) has caused notice of the proposed action (including reasons for the proposed action) to be given to the person whose name is proposed to be removed, and
 - (b) has given that person at least 28 days within which to make written submissions to the Director-General in relation to the proposed action, and
 - (c) has taken all such submissions into consideration.

19 Applications to Administrative Decisions Tribunal for review

A person aggrieved by a decision made by the Director-General under this Division to cancel, whether generally or in relation to that person, the registration of a business name that is registered in that person's name may apply to the Administrative Decisions Tribunal for a review of the decision.

Division 4 General

20 Register of business names

- (1) The Director-General is to establish and maintain a register of business names (*the Register*) for the purposes of this Act, and for the purposes of Part 3 of the *Licensing and Registration (Uniform Procedures) Act 2002*, as applied by this Act.
- (2) For each registered business name there are to be recorded in the Register:
- (a) the proper name and proper address of each person in whose name the business name is registered, and
 - (b) an address for service of notices in relation to each such person, and

(c)	such other particulars as are required by the regulations to be recorded in the Register in relation to each such person.	1 2
(3)	For each registered business name under which business is carried on in New South Wales there are also to be recorded in the Register:	3 4
(a)	the date on which business commenced to be carried on under that name, and	5 6
(b)	the date on which business ceased to be carried on under that name, and	7 8
(c)	the nature of the business carried on under that name, and	9
(d)	the address of each place at or from which business is carried on under that name, and	10 11
(e)	such other particulars as are required by the regulations to be recorded in the Register in relation to the business carried on under that name.	12 13 14
(4)	The regulations may make provision with respect to the manner and form in which the Register is to be maintained.	15 16
(5)	The Director-General is to ensure that the Register is made available for public inspection during normal business hours at such places as may be prescribed by the regulations.	17 18 19
	Note. See also section 49 of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i> with respect to the particulars to be recorded in the Register.	20 21 22
21	Minister may prohibit registration of certain business names	23
(1)	The Minister, by order published in the Gazette:	24
(a)	on his or her own initiative, or	25
(b)	as a consequence of receiving notice of the kind referred to in subsection (2) pursuant to a corresponding law,	26 27
	may prohibit the registration as a business name of any name or class of names specified in the order.	28 29
(2)	On making an order as referred to in subsection (1) (a), the Minister must cause notice of the order to be given to each Minister administering a corresponding law.	30 31 32
(3)	In this section, <i>corresponding law</i> means a law declared by the regulations to be a corresponding law for the purposes of this section.	33 34 35

22	Registration does not authorise contravention of other laws	1
	Registration of a business name under this Act does not authorise a person to carry on business under that name if the person is prohibited by some other Act or law from carrying on business under that name.	2 3 4 5
23	Effect of certain contraventions on legal proceedings	6
(1)	This section applies to a business name under which business is being carried on by a person in contravention of this Act, being:	7 8
(a)	an unregistered business name, or	9
(b)	a business name that is not registered in that person's name, or	10
(c)	a registered business name in respect of which that person has failed to comply with a requirement of this Act with respect to the notification of any matter.	11 12 13
(2)	Legal proceedings commenced by a person carrying on business under a business name in respect of which there is a contravention referred to in subsection (1) are not invalid merely because of the contravention, but the court before which the proceedings are taken:	14 15 16 17
(a)	may adjourn the proceedings until the contravention is remedied, or	18 19
(b)	may continue to hear and determine the proceedings on an undertaking by the person to remedy the contravention within such time as the court may direct.	20 21 22
(3)	Legal proceedings taken against a person carrying on business under a business name in respect of which there is a contravention referred to in subsection (1) are not invalid merely because of the contravention, and:	23 24 25 26
(a)	that business name is taken to be sufficient designation of that person in any process or other legal document or instrument, and	27 28 29
(b)	any judgment or order given in the proceedings may be enforced against that person.	30 31
24	Use of business name	32
(1)	The following provisions apply to and in respect of any business that is carried on under a registered business name:	33 34
(a)	a person in whose name the business name is registered must not issue or sign any letter, statement, invoice, notice,	35 36

publication, order for goods or services, receipt or other business document in connection with the carrying on of business under that name unless that name appears in legible characters on the document,	1 2 3 4
(b) the business name must at all times be displayed, so as to be conspicuous to the public, at each place at which business is carried on under the business name,	5 6 7
(c) the certificate of registration issued in respect of the business name under section 49 of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i> must at all times be exhibited, so as to be conspicuous to the public, at the principal place at which business is carried on under that name.	8 9 10 11 12
(2) The provisions of subsection (1) (b) and (c) do not apply to a business in which all orders for the goods or services provided by the business are received exclusively by means of an on-line service.	13 14 15 16
(3) If there is any contravention of subsection (1), each person in whose name the business name is registered is guilty of an offence.	17 18
Maximum penalty:	19
(a) for a first offence, 20 penalty units, and	20
(b) for a second or subsequent offence, 20 penalty units plus 0.5 penalty units for each day for which the offence continues.	21 22
25 Invitations to the public to make deposits or loans	23
(1) A person must not, in or in connection with an invitation to the public to lend or deposit money, use or refer to:	24 25
(a) a registered business name, or	26
(b) a business name that, if business were carried on in New South Wales under that name, would be required to be registered.	27 28 29
Maximum penalty: 20 penalty units.	30
(2) This section does not apply to:	31
(a) an invitation to the public that is made in accordance with the <i>Corporations Act 2001</i> of the Commonwealth, or	32 33
(b) an invitation made to a person whose ordinary business is to lend money.	34 35

26 Evidentiary certificates	1
A certificate:	2
(a) that is signed by the Director-General, or by an officer of the Department authorised by the Director-General in that regard, and	3 4 5
(b) that certifies that, on a specified date or during a specified period, the particulars contained in the Register as to specified matters were as so specified,	6 7 8
is admissible in any proceedings and is evidence of the matters so certified.	9 10
Note. See also section 55 of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i> with respect to evidentiary certificates.	11 12
27 Evidence as to carrying on business under business name	13
In any proceedings for an offence against this Act, evidence that a person has carried on business at premises on which a business name is displayed is evidence that the person has carried on business under that name.	14 15 16 17

Part 3	Administration	1
Division 1	Power to require information and documents	2
28	Power to require information and documents	3
(1)	The Director-General may, by notice in writing served on any person, require the person to do either or both of the following within such time as is specified in the notice:	4
(a)	to furnish the Director-General with such information as the person possesses in connection with the use of any business name,	5 6 7 8 9
(b)	to produce to the Director-General such documents as the person possesses in connection with the use of any business name.	10 11 12
(2)	A person must not fail to comply with a requirement under this section.	13 14
	Maximum penalty: 20 penalty units.	15
	Note. The furnishing of false or misleading information and the production of false or misleading documents are offences under Division 3 of Part 5 of the <i>Crimes Act 1900</i> .	16 17 18
(3)	A person is not excused from furnishing information or producing a document pursuant to a requirement under this section on the ground that to do so may tend to incriminate the person, but any information so furnished or document so produced is not admissible in evidence against the person in any criminal proceedings other than proceedings for an offence under Division 3 of Part 5 of the <i>Crimes Act 1900</i> .	19 20 21 22 23 24 25
Division 2	Power to enter premises	26
29	Power to enter land	27
(1)	An authorised officer:	28
(a)	may enter any premises, other than any part of premises used for residential purposes, and	29 30
(b)	may inspect, and take copies of or extracts from, any document that relates to the carrying on of business at or from the premises,	31 32 33
	for the purpose of ascertaining whether the provisions of this Act are being complied with.	34 35

- (2) The power of entry conferred by subsection (1) may only be exercised while business is being carried on, or during the hours that business is usually carried on, at or from the premises. 1
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30 Manner in which power of entry to be exercised 4

- (1) The powers conferred on an authorised officer by this Division may not be exercised in relation to any premises unless: 5
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- (a) the officer is in possession of a certificate of authority, issued in accordance with the regulations, that evidences his or her authority to exercise those powers, and 7
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- (b) the occupier of the premises has been given at least 24 hours' notice that those powers are to be exercised. 10
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- (2) Reasonable force may be used for the purpose of effecting entry under this Division. 12
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31 Damage to be minimised 14

- (1) In exercising the powers conferred by this Division, an authorised officer must do as little damage as possible. 15
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- (2) The Director-General must compensate all interested parties for any damage caused by an authorised officer as a consequence of the exercise of the powers conferred by this Division. 17
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- (3) Subsection (2) does not apply to the extent to which the occupier of the premises has obstructed or hindered the authorised officer in the exercise of the powers conferred by this Division. 20
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Division 3 General 23

32 Penalty notices 24

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act, being an offence prescribed by the regulations as a penalty notice offence. 25
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- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section. 29
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- (3) A penalty notice may be served personally or by post. 34

(4)	If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.	1 2 3
(5)	Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.	4 5 6 7
(6)	The regulations may:	8
	(a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and	9 10 11
	(b) prescribe the amount of penalty payable for the offence if dealt with under this section, and	12 13
	(c) prescribe different amounts of penalties for different offences or classes of offences.	14 15
(7)	The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.	16 17 18
(8)	This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.	19 20 21
33	Obstruction of authorised officers	22
	A person must not obstruct or hinder an authorised officer in the exercise of that officer's functions under this Act.	23 24
	Maximum penalty: 25 penalty units.	25
	Note. See also section 31 (3), which limits a person's liability to pay compensation for damage done in the exercise of the person's powers under Division 2 where the person has been obstructed or hindered in the exercise of those powers.	26 27 28 29
34	Authorised officers	30
	The Director-General may appoint any member of staff of the Department as an authorised officer for the purposes of this Act.	31 32
35	Delegation of functions	33
	The Director-General may delegate to any person any of the Director-General's functions under this Act, other than this power of delegation.	34 35 36

36 Exclusion of personal liability

Anything done or omitted to be done:

- (a) by the Director-General, or a person acting under the direction of the Director-General, or
- (b) by an authorised officer,

does not subject the Director-General, person or authorised officer personally to any action, liability, claim or demand if the thing was done, or omitted to be done, in good faith for the purpose of executing this Act.

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Part 4	Miscellaneous	1
37	Offences by corporations	2
(1)	If a corporation contravenes, whether by act or omission, any provision of this Act, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.	3 4 5 6 7
(2)	A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.	8 9 10
(3)	Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act.	11 12
38	Service of documents	13
(1)	A document that is authorised or required by this Act or the regulations to be served on any person may be served:	14 15
(a)	in the case of a natural person:	16
(i)	by delivering it to the person personally, or	17
(ii)	by sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or	18 19 20 21 22
(iii)	by sending it by facsimile transmission to the facsimile number of the person, or	23 24
(b)	in the case of a body corporate:	25
(i)	by leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or	26 27 28 29 30
(ii)	by sending it by facsimile transmission to the facsimile number of the body corporate.	31 32
(2)	In the case of a business name that is registered in relation to more than one person, service of such a document on any one of them is taken to be service on all of them.	33 34 35

(3)	Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.	1 2 3
39	Proceedings for offences may be taken up to 3 years later	4
	Proceedings for an offence against this Act may be taken at any time during the period of 3 years after the date on which it is alleged that the offence was committed.	5 6 7
40	Regulations	8
	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	9 10 11 12
41	Repeal	13
	The <i>Business Names Act 1962</i> is repealed.	14
42	Amendment of other legislation	15
	Each Act and instrument referred to in Schedule 1 is amended as set out in that Schedule.	16 17
43	Savings, transitional and other provisions	18
	Schedule 2 has effect.	19
44	Review of Act	20
(1)	The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	21 22 23
(2)	The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.	24 25
(3)	A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.	26 27 28

Schedule 1 Amendment of other legislation	1
(Section 42)	2
1.1 Business Names Act 2002	3
[1] Section 6 Refusal of registration of certain business names	4
Insert after section 6 (2):	5
(2A) A business name that includes the word “police” is not to be registered unless the use of that name is the subject of a consent granted under section 204B of the <i>Police Act 1990</i> .	6 7 8
[2] Section 17 Cancellation of registration in relation to business name generally	9 10
Insert after section 17 (1) (b):	11
, or	12
(c) in the case of a business name that includes the word “police”, if the Director-General receives notice that consent to the use of that name has been revoked under section 204B of the <i>Police Act 1990</i> .	13 14 15 16
1.2 Fines Act 1996 No 99	17
Schedule 1 Statutory provisions under which penalty notices issued	18 19
Omit “ <i>Business Names Act 1962</i> , section 28A”.	20
Insert instead “ <i>Business Names Act 2002</i> , section 32”.	21
1.3 Gaming Machines Act 2001 No 127	22
[1] Section 43 Prohibition on publishing gaming machine advertising	23
Omit section 43 (7). Insert instead:	24
(7) This section prevails over the <i>Business Names Act 2002</i> .	25
[2] Section 44 Prohibition on displaying gambling-related signs	26
Omit section 44 (7). Insert instead:	27
(7) This section prevails over the <i>Business Names Act 2002</i> .	28

1.4 Home Building Act 1989 No 147	1
[1] Section 7 Form of contracts	2
Omit “ <i>Business Names Act 1962</i> ” from section 7 (7).	3
Insert instead “ <i>Business Names Act 2002</i> ”.	4
[2] Section 16D Form of contracts for kit homes	5
Omit “ <i>Business Names Act 1962</i> ” from section 16D (7).	6
Insert instead “ <i>Business Names Act 2002</i> ”.	7
[3] Section 18 Representations, generally	8
Omit “ <i>Business Names Act 1962</i> ” from section 18 (2).	9
Insert instead “ <i>Business Names Act 2002</i> ”.	10
[4] Section 18K Form of contracts	11
Omit “ <i>Business Names Act 1962</i> ” from section 18K (7).	12
Insert instead “ <i>Business Names Act 2002</i> ”.	13
[5] Section 18V Misrepresentations about building consultancy licences	14
Omit “ <i>Business Names Act 1962</i> ” from section 18V (3).	15
Insert instead “ <i>Business Names Act 2002</i> ”.	17
1.5 Licensing and Registration (Uniform Procedures) Act 2002 No 28	18
[1] Schedule 2 Registration to which Part 3 of Act applies	19
Insert in alphabetical order of Acts and statutory rules:	20
Business Names Act 2002	
section 5 (1), registration of a business name	21
[2] Schedule 4 Amendment of other Acts and statutory rules	22
Omit Schedule 4.26.	23
	24

1.6 Motor Dealers Act 1974 No 52	1
Section 15 Name under which holder of licence may operate	2
Omit “ <i>Business Names Act 1962</i> ” from section 15 (1).	3
Insert instead “ <i>Business Names Act 2002</i> ”.	4
1.7 Motor Vehicle Repairs Act 1980 No 71	5
Section 18B Name under which holder of licence may operate	6
Omit “ <i>Business Names Act 1962</i> ” from section 18B (3).	7
Insert instead “ <i>Business Names Act 2002</i> ”.	8
1.8 Partnership Act 1892 No 12	9
[1] Section 49 Definitions	10
Omit “ <i>Business Names Act 1962</i> ” from the definition of <i>Registrar</i> .	11
Insert instead “ <i>Business Names Act 2002</i> ”.	12
[2] Section 55 Registration of limited partnership	13
Omit “ <i>Business Names Act 1962</i> ” from section 55 (2).	14
Insert instead “ <i>Business Names Act 2002</i> ”.	15
[3] Section 59 Business Names Act 2002 not to apply	16
Omit “ <i>Business Names Act 1962</i> ”.	17
Insert instead “ <i>Business Names Act 2002</i> ”.	18
1.9 Printing and Newspapers Act 1973 No 46	19
[1] Section 3 Provisions in respect of certain printed documents	20
Omit “ <i>Business Names Act 1962</i> ” from section 3 (1) (d).	21
Insert instead “ <i>Business Names Act 2002</i> ”.	22

[2] Section 4 Provision in respect of printing and publishing newspapers	1
	2
Omit “ <i>Business Names Act 1962</i> ” from section 4 (1) (a).	3
Insert instead “ <i>Business Names Act 2002</i> ”.	4
1.10 Property, Stock and Business Agents Act 1941 No 28	5
Section 43A Business names	6
Omit “ <i>Business Names Act 1962</i> ” from section 43A (6).	7
Insert instead “ <i>Business Names Act 2002</i> ”.	8
1.11 Property, Stock and Business Agents Act 2002 No 66	9
Section 30 Business names	10
Omit “ <i>Business Names Act 1962</i> ” wherever occurring.	11
Insert instead “ <i>Business Names Act 2002</i> ”.	12
1.12 Travel Agents Act 1986 No 5	13
[1] Section 12 Name under which licensee may operate	14
Omit “ <i>Business Names Act 1962</i> ” from section 12 (1).	15
Insert instead “ <i>Business Names Act 2002</i> ”.	16
[2] Section 35 Name to appear on documents	17
Omit “section 20 of the <i>Business Names Act 1962</i> ” from section 35 (3).	18
Insert instead “section 24 of the <i>Business Names Act 2002</i> ”.	19

Schedule 2 Savings, transitional and other provisions	1
(Section 43)	2
Part 1 Preliminary	3
1 Regulations	4
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	5
this Act	6
(2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.	7
(3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	8
(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or	9
(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.	10
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Part 2 Provisions consequent on enactment of this Act	19
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2 Definition	21
In this Part:	22
<i>the 1962 Act</i> means the <i>Business Names Act 1962</i> .	23
3 Electronic applications for registration	24
(1) Despite Part 3 of the <i>Licensing and Registration (Uniform Procedures) Act 2002</i> (as applied by section 5 of this Act), an application referred to in section 41 of that Act may not be made by means of electronic communication.	25
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(2) Subclause (1) does not limit the effect of the <i>Electronic Transactions Act 2000</i> .	29
	30
(3) This clause ceases to have effect on a day to be appointed by proclamation.	31
	32

4	Registration of business names	1
	Any business name that, immediately before the commencement of this clause, was registered under the 1962 Act is taken to have been registered under this Act, and its registration continues in force for the residue of the period for which it would have continued in force under the 1962 Act if this Act had not been enacted.	2 3 4 5 6
5	Notification of changes	7
	Any notification given under section 12 of the 1962 Act before the commencement of this clause is taken to have been given under the corresponding provision of Division 2 of Part 2 of this Act.	8 9 10
6	Registration of similar business names	11
	Section 9 (3) extends to a notice given under section 7A of the 1962 Act.	12 13
7	Requirements as to information	14
	Any requirement under section 13 of the 1962 Act that was made before the commencement of this clause is taken to be a requirement under section 28 of this Act.	15 16 17
8	Stay of proceedings	18
	Any stay of proceedings that was in force under section 14 (1) of the 1962 Act immediately before the commencement of this clause is taken to be an order for the adjournment of proceedings under section 23 (2) (a) of this Act.	19 20 21 22
9	Certificates of registration	23
	Any certificate issued under section 23 of the 1962 Act is taken to be a certificate issued under section 26 of this Act.	24 25
10	Evidentiary matters	26
	Section 27 of this Act extends to matters arising before the commencement of this clause.	27 28
11	Delegations	29
	Any delegation that, immediately before the commencement of this clause, was in force under section 31A of the 1962 Act is taken to be a delegation under section 35 of this Act.	30 31 32

12	Continuation of certain regulations	1
	The <i>Business Names Regulation 2000</i> is taken to be a regulation under this Act, and may be amended and repealed accordingly.	2 3
13	Construction of certain references	4
	In any Act or instrument:	5
	(a) a reference to the 1962 Act extends to this Act, and	6
	(b) a reference to a provisions of the 1962 Act extends to the corresponding provision of this Act.	7 8
14	General saving	9
	Subject to this Schedule and the regulations:	10
	(a) anything begun under a provision of the 1962 Act for which there is a corresponding provision in this Act may be continued and completed under the 1962 Act as if this Act had not been enacted, and	11 12 13 14
	(b) subject to paragraph (a), anything done under a provision of the 1962 Act for which there is a corresponding provision in this Act (including anything arising under paragraph (a)) is taken to have been done under the corresponding provision of this Act.	15 16 17 18 19