

*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

ALLAN PICKERING,  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 9 May, 1962.*

## New South Wales



ANNO UNDECIMO

ELIZABETHÆ II REGINÆ

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Act No. , 1962.

An Act to make provision with respect to the registration and use of business names; to repeal the Business Names Act, 1934, and certain other enactments; and for purposes connected therewith.

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Business Names Act, 1962".

Short title  
and com-  
mencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

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2.



*Business Names.*

2. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State to the intent that where any provision of this Act or the application thereof to any person or circumstance is held invalid the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

Construc-  
tion.

3. (1) The Acts mentioned in the Schedule to this Act to the extent to which they are therein expressed to be repealed are hereby repealed accordingly.

Repeal, and  
savings and  
transitional  
provisions.

(2) Notwithstanding the provisions of subsection one of this section—

(a) any judgment obtained or order made in any proceedings referred to in subsection three of section thirteen of the repealed Act against a firm, individual or corporation may, to the extent that it has not been enforced before the commencement of this Act, be enforced against such firm or any member thereof or such individual or corporation; and

(b) any certificate furnished, or copy of or extract from a statement certified, in pursuance of the repealed Act shall be as valid and effectual as it would have been had the repealed Act not been repealed.

(3) A reference in any Act, order, regulation, rule, instrument or document to a firm, individual or corporation registered or required to have been 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 are, or to an individual who or a corporation which, as the case may be, is, carrying on business under a business name registered or required to be registered under this Act.

(4) A reference to the Registrar-General in any Act, order, regulation, rule, instrument or document relating to any matter under or in connection with the repealed Act or any corresponding



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corresponding previous enactment shall unless the context otherwise requires be construed as referring to the Registrar under this Act.

(5) A business name in respect of which a firm, individual or corporation was immediately before the commencement of this Act registered or deemed to be registered under the repealed Act shall subject to this Act upon the commencement 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 shall apply to and in relation to the business name accordingly.

4. (1) In this Act unless the context or subject matter otherwise indicates or requires— Interpretation.

15 “Business” includes trade and profession.

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

20 “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 interpretation.

“Christian name” includes any forename.

25 “Corporation” means any body corporate formed or incorporated whether in the State or outside the State and includes any foreign company within the meaning of the Companies Act, 1961.

“Director” in relation to a corporation includes any person occupying the position of director of the corporation by whatever name called.

30 “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”



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

“Initial” includes a recognised abbreviation of a Christian name.

5 “Prescribed” means prescribed by or under this Act.

“Process” includes any writ, summons, plaint, pleading, order or document in or relating to any legal proceedings.

10 “Register” means the register of business names referred to in section six of this Act.

“Registrar” means the Registrar of Companies under the Companies Act, 1961, and includes any Deputy Registrar of Companies.

“Regulations” means regulations made under this Act.

15 “Repealed Act” means the Business Names Act, 1934, as amended by subsequent Acts.

20 “Secretary” in relation to a corporation includes any person performing the duties of secretary of the corporation and in relation to a corporation registered under Division 3 of Part XI of the Companies Act, 1961, includes the agent within the meaning of that Division of the corporation.

“Section” means section of this Act.

“State” means the State of New South Wales.

25 (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—

30 (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)



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- (d) creates evidence of any debt or creates a charge on real or personal property;
- 5 (e) secures or collects any of his debts or enforces his rights in regard to any securities relating to such debts;
- (f) conducts an isolated transaction that is completed within a period of thirty-one days, but not being one of a number of similar transactions repeated from time to time; or
- 10 (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  
15 under that name.

5. (1) A person shall not either alone or together with other persons carry on business in the State under a business name unless—

Certain  
business  
names to be  
registered.

- 20 (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
- 25 (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 any provisions of section twelve that are applicable have been complied with by or on behalf of the person or persons in relation to whom the business name is registered.

30 Penalty : One hundred pounds. Default penalty.

(2)



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(2) For the purposes of subsection one of this section the name of a person consists of—

(a) in the case of an individual—his full name, or his surname together with—

- 5 (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
- 10 (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 such names and such initials;
- 15

(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 one of this section 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 any court, or under the powers contained in any instrument to carry on the business, the business shall for the purposes of this Act be deemed to be carried on by the person or persons 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 thereof shall not operate to avoid any agreement transaction act or matter.



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6. (1) The Registrar shall keep a register of business names registered under this Act in such form as he thinks fit. Register of business names.

5 (2) A statement lodged under this Act in relation to a business name registered under this Act, whether lodged before or after the registration, shall for the purposes of this Act be deemed to be incorporated with and to form part of the register.

10 (3) The register and index of the business names of firms, individuals and corporations registered or deemed to be registered under the repealed Act, and any statement or notice furnished or sent to the Registrar-General under the repealed Act or any corresponding previous enactment, shall be deemed to be incorporated with and to form part of the 15 register kept under this Act.

7. (1) An application for the registration of a business name shall be made by lodging with the Registrar 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 20 State under that name, shall be accompanied by the prescribed fee and shall set out—

(a) the business name;

25 (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 any 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 30 places is or is to be the principal place of business;

(d)



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- 5 (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 or proposed registered office in the State of each applicant which 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
- 10 (f) where the business name is a name adopted by the applicant or applicants in substitution for another name—that other name.
- (2) If any applicant is an infant and he is not so described in the statement and the date of his birth is not  
15 set out in the statement, the statement shall for the purposes of section seventeen be deemed to be false in a material particular.
- (3) Subject to this Act the Registrar shall upon the lodging of a statement under subsection one of this section in  
20 relation to a business name register the business name.
- (4) The Registrar shall upon registering a business name issue a certificate of registration in the prescribed form signed by the Registrar.
- (5) The Registrar may upon payment of the  
25 prescribed fee issue a further certificate of registration.
- (6) A business name shall not be registered under this Act if the statement referred to in subsection one of this section is lodged with the Registrar on a date preceding by more than two months the date shown in the statement as  
30 the proposed date of commencement of carrying on business.
- (7) The Registrar may refuse to register a business name if he is not satisfied that the particulars set out in the statement lodged under subsection one of this section are correct.



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

Resident agent.

(a) include the name and address of some person resident in the State who in relation to the carrying on of business under that name—

10 (i) has consented in writing to be the resident agent of the person or persons for the purposes of this Act; and

15 (ii) is authorised in writing by the person or persons to accept service on behalf of the person or persons of any notices for the purposes of this Act and of any process; and

(b) in addition be signed by the person who has consented to be the resident agent.

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

30 9. (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 Registrar, undesirable or is a name, or a name of a kind, that the Minister has, for the purposes of this Act, directed the Registrar not to accept for registration.

Restriction on registration of business names that are undesirable, &c.

(2)



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(2) The Minister shall cause a direction given by him under subsection one of this section to be published in the Gazette and a copy of the direction to be forwarded to the Attorney-General of the Commonwealth and the Attorney-  
5 General of each State of the Commonwealth.

10 **10.** (1) If a business name which could not be registered under this Act without contravention of subsection one of section nine is registered through inadvertence or otherwise, the Registrar 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—

Power to cancel registration of business names that are undesirable, &c.

15 (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 twenty-eight days) as is specified in the notice; and

(b) setting out his reasons for the proposed cancellation—

20 and upon the expiration of that period the Registrar may, if the notice has not been annulled under subsection three of this section, cancel the registration of that name.

25 (2) The Registrar shall not except with the approval of the Minister exercise his powers under subsection one of this section with respect to a business name that is deemed to be registered under this Act by virtue of subsection five of section three.

(3) The Minister may at any time before the expiration of the period specified in a notice given by the Registrar under subsection one of this section annul the notice.

30 (4) The Registrar may remit any fee payable in respect of an application for the registration of a new business name in place of a business name the registration of which is cancelled under subsection one of this section.



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11. (1) Subject to this Act, the registration, or renewal of a registration of a business name, shall be in force for a period of three years but the registration may from time to time be renewed by lodging with the Registrar at any time within the period of one month before or after the expiry of the registration or renewal a statement in the prescribed form signed by the person or one of the persons in relation to whom the name is registered accompanied by the prescribed fee.
- (2) The renewal of a registration shall take effect from the day on which the previous registration or renewal expires or has expired, as the case may be.
- (3) The Registrar shall upon renewing the registration of a business name issue a certificate of registration in the prescribed form signed by the Registrar.
- (4) The Registrar shall before or after the expiration of the registration of a business name but not earlier than one month before, nor later than one month after, the expiration send by post to the person or persons in relation to whom the business name is or was registered at the place shown in the register as the place where business is carried on under that name a notice of the date on which the registration is due to expire or has expired, as the case may be.
- (5) Where the registration of a business name has expired the Registrar 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 Registrar so nearly resembles it as to be calculated to deceive until the expiration of one month after the expiry of the registration.
- (6) Notwithstanding the provisions of subsection one of this section the following provisions shall apply in relation to



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to a business name which 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—

- 5 (a) the registration of the business name shall subject to this Act remain in force until a date fixed by the Registrar;
- (b) notice in writing of the date so fixed shall be sent by post by the Registrar 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;
- 10 (c) the date fixed by the Registrar shall be a date not less than one month after the notice in writing has been sent by post to such person or persons;
- 15 (d) no such notice in writing shall be sent by the Registrar until the expiration of a period of at least three years from the date upon which the name was registered or deemed to be registered under the repealed Act;
- 20 (e) the Registrar shall not be required to send to the person or persons in relation to whom the business name is or was registered the notice referred to in subsection four of this section; and
- 25 (f) after the renewal of the registration of the business name the provisions of this subsection shall cease to apply in relation to the business name.

12. (1) Where a business name is registered under this Act and a change occurs—

- 30 (a) which renders the description of the nature of the business lodged with the Registrar 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

Notification of changes in particulars relating to registered business names, cessation of business, &c.

(c)



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(c) in the registered particulars relating to the resident agent of the person or persons in relation to whom the name is registered—

there shall be lodged with the Registrar, within fourteen days  
5 thereafter or within such further time as the Registrar may, before the expiration of that period, allow, 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 Registrar of particulars of and of  
10 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  
15 registered office in the State of a person being a corporation in relation to which a business name is registered under this Act, there shall be lodged with the Registrar, within fourteen days thereafter or within such further time as the Registrar may, before the expiration of that period, allow, a statement  
20 in the prescribed form, signed by that person notifying the Registrar 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  
25 in the State under that name, there shall be lodged with the Registrar, within fourteen days thereafter or within such further time as the Registrar may, before the expiration of that period, allow, a statement in the prescribed form notifying the Registrar of the cessation and of the date thereof signed  
30 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  
35 other persons commences or commence to carry on business in the State under that name in place of or in association with the person or persons in relation to whom the name is already registered, there shall be lodged with the Registrar, within  
fourteen



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fourteen days thereafter or within such further time as the Registrar may, before the expiration of that period, allow, a statement in the prescribed form signed by the person or all of the persons carrying on business under that name immediately after that other person or those other persons so commenced carrying on business under that name, setting out the date on which that other person or those other persons so commenced to carry on business and in relation to each person required to sign the statement—

- 10 (a) who is an individual—the Christian names and surname and any former Christian names or surname and the usual place of residence of the individual (and where he is an infant in addition to the particulars referred to in this paragraph he shall be  
15 so described in the statement and the date of his birth shall be set out therein) ; or

- (b) who is a corporation—the corporate name and the place of the registered office in the State of the corporation,

20 and where the person or all of the persons carrying on business under that business name after that date is or are not resident within the State or does not or do not have a fixed address or fixed addresses within the State, the statement shall—

- 25 (i) also set out the name and address of some person resident in the State who in relation to the carrying on of business under that name—

- (a) has consented in writing to be the resident agent for the purposes of this Act of the  
30 person or persons required to sign the statement ; and

- (b) is authorised in writing by the person or persons required to sign the statement to accept service on his or their behalf of any  
35 notices for the purposes of this Act and of any process ; and

(ii)



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- (ii) in addition be signed by the person who has consented to be the resident agent.

(5) Where, while a person is the resident agent of a person or persons in relation to whom a business name is registered, the person or any one or more of the persons in relation to whom the name is registered commences or commence to reside within the State or acquires or acquire a fixed address or fixed addresses within the State, there shall be lodged with the Registrar within fourteen days after such person or persons so commenced to reside or acquired a fixed address or fixed addresses, or within such further time as the Registrar may, before the expiration of that period allow, a statement in the prescribed form signed by the person or one of the persons in relation to whom the name is registered—

- 15 (a) notifying the Registrar that the person appointed to be the resident agent of the person or persons in relation to whom the name is registered has ceased to be the resident agent of such person or persons; and
- 20 (b) setting out the name or names of the person or persons in relation to whom the name is registered and who has or have commenced to reside or has or have acquired a fixed address or fixed addresses in the State, and the usual place or places of residence or the fixed address or fixed addresses
- 25 within the State of such person or persons.

(6) Where, while a person is the resident agent of a person or persons in relation to whom a business name is registered, another person or other persons commences or

30 commence to carry on business in the State under that name in place of or in association with the person or persons in relation to whom the name is already registered and that other or one of those other persons resides within the State or has a fixed address within the State, there shall be lodged with

35 the Registrar within fourteen days after that other person or those other persons so commenced to carry on business or within such further time as the Registrar may, before the expiration of that period, allow, a statement in the prescribed form



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form signed by the person or one of the persons carrying on business under that name after that other or those other persons so commenced to carry on business—

- 5 (a) notifying the Registrar that the person who was the resident agent of the person or persons in relation to whom the name was registered immediately before that other or those other persons so commenced to carry on business is not or has ceased to be the resident agent of the person or persons carrying on business under that name immediately after that other person or those other persons so commenced carrying on business; and
- 10 (b) setting out the name or names of that other person or those other persons who resides or reside within the State or has or have a fixed address or fixed addresses within the State, and the usual place or places of residence or the fixed address or fixed addresses within the State of that other person or those other persons.
- 15 (7) Where a business name is registered under this Act and a person appointed the resident agent of the person or persons in relation to whom the name is registered ceases to be the resident agent of that person or those persons, there shall be lodged with the Registrar a statement in the prescribed
- 20 form notifying the Registrar of the appointment of another person in place of or in succession to the person who has ceased to be the resident agent of the person or persons in relation to whom the name is registered, and of the date of the appointment—
- 25 (a) signed by the person or by one of the persons in relation to whom the name is registered and by the other person so appointed; and
- 30 (b) showing that the other person so appointed—
- 35 (i) is in relation to the carrying on of business under that name authorised by the person or persons in relation to whom the name is registered to accept service on his or their behalf of any notices for the purposes of this Act and of any process; and
- (ii)



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- (ii) has consented in writing to act as the resident agent for that person or those persons, as the case requires.

Such statement shall be lodged with the Registrar within 5 fourteen days after the appointment or within such further time as the Registrar may, before the expiration of that period, allow.

(8) Where a business name is registered under this Act and the person or all the persons in relation to whom 10 the name is registered ceases or cease to reside within the State or to have a fixed address or fixed addresses in the State, there shall be lodged with the Registrar within fourteen days after that person or those persons has or have ceased to so reside or to have a fixed address or fixed addresses, or within 15 such further time as the Registrar may, before the expiration of that period, allow, a statement in the prescribed form notifying the Registrar of the name and address of some other person appointed to be the resident agent of the person or persons in relation to whom the name is registered in the 20 State—

- (a) signed by the person or one of the persons in relation to whom the name is registered and by the person so appointed; and

- (b) showing that the other person so appointed—

25 (i) has consented in writing to be the resident agent of the person or persons for the purposes of this Act; and

30 (ii) is authorised in writing by the person or persons to accept service on behalf of the person or persons of any notices for the purposes of this Act and of any process.

(9) If a statement required by a provision of this section to be lodged with the Registrar is not lodged in accordance with the provision, or if lodged does not comply with

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with the provision, each person required or authorised by the provision to sign the statement shall unless he proves that he took all reasonable steps to ensure compliance with the provision be guilty of an offence against this Act.

5     Penalty : One hundred pounds. Default penalty.

(10) 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 Registrar in accordance with and within the time prescribed by subsection four of this  
10 section or within such further time as the Registrar may in accordance with that subsection have allowed neither that person nor any other person shall be guilty of an offence against section five of this Act by reason only that before the lodging of the statement he carried on business under that  
15 name.

(11) Any statement required to be lodged with the Registrar 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.

20     (12) A statement lodged under this section shall be accompanied by the prescribed fee.

13. (1) The Registrar may by notice in writing require any person to furnish to the Registrar within a period specified  
in the notice (being a period of not less than twenty-eight  
25 days) or within such further period as the Registrar may, on the application of that person made before the expiration of that period, allow and notify to that person, such information as appears to the Registrar to be necessary to enable him to ascertain whether or not a person—

Duty to  
furnish  
information.

30     (a) is carrying on business either alone or in association with any other person or persons under a business name that is required to be registered under this Act; or

35     (b) has failed to lodge with the Registrar a statement required to be lodged under this Act.

(2)



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(2) A person required under subsection one of this section to furnish information to the Registrar shall within the period specified in the notice or within such further period as the Registrar has allowed furnish such information as it is within his power to furnish and shall not furnish any information which to his knowledge is false in any material particular.

Penalty : One hundred pounds.

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

15 **14.** (1) Where a person carrying on business under a business name in contravention of section five or a person who being guilty of an offence under section twelve by reason of the failure to lodge a statement referred to in that section 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 five 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.

Disability  
of persons  
in default.

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

(3)



*Business Names.*

(3) 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 shall, for the purpose of the proceedings, be a sufficient designation of the person or persons in any process or other legal document or instrument and any judgment obtained or order made in such proceedings may be enforced against that person, or against those persons or any of those persons, as the case may be.

(4) Nothing in this section shall be construed as exempting any person from compliance with any provision of this Act.

**15.** (1) Any statement lodged with the Registrar 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 Registrar is satisfied that it is not practicable to obtain the signature of a person required by this Act to sign a statement the Registrar 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.



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

Verification  
of  
particulars.

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

Penalty  
for false  
statement.

Penalty : One hundred pounds or imprisonment for three months or both.

18. (1) Where the Registrar 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 enquiring whether the person is or the persons are carrying on business under the name and stating that unless the Registrar 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.

Notice of  
proposed  
cancellation.

(2) Where the Registrar has reasonable cause to believe that any provision of section twelve has not been complied with he may send by post a notice addressed to the person or persons who appear to him to be guilty of an offence by reason of the failure to comply with such provision at the place shown in the register as the place where business is carried on under that name stating that unless within one month from the date of the notice that provision is complied with or the Registrar is satisfied that there was in fact no failure to comply with the provision the registration of the business name may be cancelled.



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*Business Names.*

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19. (1) The Registrar may cancel the registration of a business name—

Cancellation of registration.

- 5 (a) if there is lodged with the Registrar a statement under section twelve 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
- 10 person has or other persons have commenced to carry on business in the State under that name;
- 15 (b) if the Registrar has sent a notice to any person or persons in respect of the business name under subsection one of section eighteen and the Registrar is not 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;
- 20 (c) if the Registrar has sent a notice to any person or persons under subsection two of section eighteen and within one month after the date of the notice the provision of section twelve to which the notice relates has not been complied with or the Registrar is not satisfied that there was no failure to comply with the provision; or
- 25 (d) if the business name is registered in relation to a corporation only and the name of the corporation has been struck off any register of corporations kept under the Companies Act, 1961, or the corporation has been dissolved.

30 (2) The Registrar may on any grounds which 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)



*Business Names.*

(3) Where the registration of a business name has been cancelled under this section a person in relation to whom the business name was registered immediately before the cancellation may apply to the Supreme Court in its equitable jurisdiction for an order directing the Registrar to restore the registration of the business name.

(4) On an application under subsection three of this section the Supreme Court may if it is satisfied that the applicant is carrying on business under the business name and that it is just and equitable so to do make the order applied for upon such terms as the Court thinks fit.

(5) Upon the making of an order by the Supreme Court under subsection four of this section the business name shall be deemed to have continued to be registered as if the registration had not been cancelled and the Registrar 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.

**20.** Where a business name is registered under this Act—

- 20 (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;
- 25
- (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;
- 30 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

Use and  
exhibition  
of business  
name.



*Business Names.*

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 shall unless he proves that he took all reasonable steps to ensure compliance with this section be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

21. (1) The Registrar may on such evidence as to him appears sufficient correct any error in any entry in the register or in any certificate of registration of a business name. Registrar may correct errors in register, &c.

(2) When correcting an error under subsection one of this section the Registrar shall not erase or render illegible the original words and shall affix the date upon which the correction was made together with his initials.

(3) Any entry or certificate corrected under this section shall have the same validity and effect as if the error had not been made.

(4) The Registrar may accept and register a statement lodged to correct any error in or to supply any particular omitted from a statement previously lodged and registered; and in that event the statement previously lodged and that lodged under this subsection shall be read as one and shall both be incorporated with and form part of the register.

22. (1) A person may on payment of the prescribed fee inspect any statement lodged with the Registrar under this Act and not destroyed pursuant to section twenty-five, or furnished under any corresponding previous enactment and not destroyed at the commencement of this Act, and may make a copy thereof or take extracts therefrom. Inspection of statements.

(2) The Registrar may, on receiving—

(a) a written enquiry with respect to any business name specified in the enquiry; and

(b) the prescribed fee,

issue or send by post a reply to the enquiry.

23.



*Business Names.*

23. (1) The Registrar shall upon request in writing made by any person and payment of the prescribed fee issue or send by post to that person—

Certificates  
of registra-  
tion or non-  
registration.

- 5 (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
- 10 (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.

15 (2) The Registrar shall not be required to issue—

- 20 (a) under paragraph (a) of subsection one of this section a copy of or extract from a document forming part of the register where that document has been destroyed pursuant to section twenty-five or has been destroyed before the commencement of this Act; or
- 25 (b) under paragraph (b) of subsection one of this section a certificate in respect of a firm, individual or corporation where the registration was effected under the Registration of Firms Act, 1902, and such registration was not in force at the commencement of the repealed Act.

24. A document purporting to be—

Evidence of  
registration  
or non-  
registration.

- 30 (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 paragraph (a) of subsection one of section twenty-three;
- 35 (c) a certificate issued under paragraph (b) of subsection one of section twenty-three; or

(d)



*Business Names.*

- (d) a combination of two or more of the certificates, copies or extracts referred to in paragraph (a), (b) or (c) of this section—

shall in all courts and before all persons having authority to hear receive and examine evidence be prima facie evidence of any matter contained or set out therein.

25. Subject to the Archives Act, 1960, the Registrar may, if in his opinion it is no longer necessary or desirable to retain them, destroy or dispose of any statement or notice lodged, furnished 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 twelve years.

26. (1) Where a person is or the members of a firm are carrying on business in the State under a business name registered or required to be registered under this Act no person shall use or make reference to that business name—

- 20 (a) in any invitation to the public; or

(b) in any advertisement inviting the public, to deposit money with or lend money to that person or firm or use or make reference to a business name in connection with any deposit or loan of money.

- 25 Penalty : Five hundred pounds.

(2) This section does not apply to an invitation to the public made by a public company in conformity with the requirements of the Companies Act, 1961.

27. (1) A person who—

- 30 (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)

Authority of Registrar to destroy documents.

Invitations to the public to make deposits or loans.

General penalty provisions.



*Business Names.*

(c) otherwise contravenes or fails to comply with any provision of this Act,

shall be guilty of an offence against this Act.

Nothing in this subsection shall apply to any offence against a regulation.

(2) A person who is guilty of an offence against this Act shall be liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or punishment for the offence.

10 (3) The penalty or punishment pecuniary or other set out in or at the foot of any section or part of a section of this Act shall indicate 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 15 apply to a part only of the section it shall apply to that part only.

28. (1) Where in or at the foot of any section or part of a section of this Act there appears the expression "Default penalty" it shall indicate that any person who is 20 convicted of an offence against this Act in relation to that section or part shall be 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 ten pounds.

25 (2) Where any offence is committed by a person by reason of his failure to comply with any 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 one of this section shall be deemed to continue 30 so long as the thing so required or directed to be done by him remains undone notwithstanding that such period has elapsed.

(3) Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a court of petty sessions held before a stipendiary magistrate. Recovery of penalties.



*Business Names.*

29. Where a person guilty of an offence against this Act—

Offences  
committed  
by corpora-  
tions.

(a) is a corporation; or

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

5 any director, manager, secretary or other officer of the cor-  
poration who was knowingly a party to the offence shall also  
be guilty of that offence.

30. If in any proceedings for an offence against this Act Evidentiary  
provisions.  
proof is given that a business name has been displayed on

10 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 for the purposes of this Act to be carrying on  
15 the business under that business name.

31. (1) Where by this Act the Registrar is required or As to  
service of  
notices.  
permitted to send a notice to the person or persons in relation  
to whom the business name is registered the notice may, not-  
withstanding any other provision of this Act, be sent by post

20 addressed to the business name—

(a) at the place shown in the register as the place where  
the business is carried on; or

(b) where more than one place is shown in the register  
as the place where the business is carried on—

25 (i) at the place shown in the register as the  
principal place where the business is carried  
on; or

(ii) if no place is so shown as the principal  
place, at the place shown which appears  
30 first in the register as a place where the  
business is carried on; or

(c) if it appears from the register that there is for the  
purposes of this Act a resident agent appointed for  
the purposes of this Act by the person or persons  
in



*Business Names.*

in relation to whom the business name is registered,  
at the place shown in the register as the address of  
such resident agent in the State.

(2) Service of any communication or notice or  
5 process on any person or persons carrying on business under  
a business name—

(a) by leaving it at the place where business is carried  
on by such person or persons with some person  
apparently in the service of such person or persons  
10 and apparently of or above the age of sixteen  
years;

(b) by sending it by registered post, or certified mail  
service, addressed to such person or persons at the  
place where business is carried on by such person  
15 or persons,

shall be deemed to be personal service on such person or  
persons.

(3) For the purposes of subsection two of this  
section—

(a) “the place where business is carried on” means the  
20 place shown in the register as the place where the  
business is carried on or where there is more than  
one such place shown in the register—

(i) the place shown in the register as the  
25 principal place where the business is carried  
on; or

(ii) if no place is so shown as the principal  
place, the place shown which appears first  
in the register as the place where the  
30 business is carried on; and

(b) a resident agent appointed for the purposes of this  
Act by the person or persons so carrying on busi-  
ness shall be deemed to be a person in the service  
of such person or persons.



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*Business Names.*

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32. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed to carry this Act into effect or to  
5 give effect to any power, function, duty or authority under this Act. Regulations.

(2) Without limiting the generality of subsection one of this section the regulations may prescribe—

- 10 (a) the fees (not exceeding ten pounds) to be paid under this Act to the Registrar;
- (b) the conditions under and subject to which fees may be waived by the Registrar or the Minister;
- (c) the imposition of additional fees on the late lodgment of documents;
- 15 (d) the forms to be used under this Act (and all such forms or forms to the like effect may be used for the purposes of this Act and shall be sufficient in law);
- (e) the duties of the Registrar for the purposes of this  
20 Act; and
- (f) generally the conduct and regulation of registration under this Act.

(3) The regulations may prescribe penalties not exceeding twenty pounds for any breach thereof.

25 (4) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication, or from a later date to be specified in the regulations; and
- 30 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If



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*Business Names.*

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If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before the House disallowing any regulation or part thereof, the regulation or  
5 part shall thereupon cease to have effect.

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SCHEDULE.

Sec. 3.

Number of Act.	Title of Act.	Extent of Repeal.
Act No. 50, 1934 ..	Business Names Act, 1934.	The whole.
10 Act No. 35, 1937 ..	Statute Law Revision Act, 1937.	So much of the Second Schedule as amended section 20 of Act No. 50, 1934.

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BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1962  
[2s. 8d.]



Section 10 of the Constitution provides a resolution of which  
shall be passed by a majority of the members of the House of  
Representatives and shall be subject to the approval of the  
Senate and the President. The resolution shall be subject to the  
approval of the President.

SCHEDULE

Section of Act	Section of Act	Section of Act
Section 10 of Act No. 1982	Section 10 of Act No. 1982	Section 10 of Act No. 1982
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Senate and the President. The resolution shall be subject to the  
approval of the President.



*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, May, 1962.*

## New South Wales



ANNO UNDECIMO

ELIZABETHÆ II REGINÆ

\* \* \* \* \*

Act No. , 1962.

An Act to make provision with respect to the registration and use of business names; to repeal the Business Names Act, 1934, and certain other enactments; and for purposes connected therewith.

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Business Names Act, 1962".

Short title  
and com-  
mencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.



*Business Names.*

2. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State to the intent that where any provision of this Act or the application thereof to any person or circumstance is held invalid the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

Construc-  
tion.

3. (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.

Repeal, and  
savings and  
transitional  
provisions.

(2) Notwithstanding the provisions of subsection one of this section—

(a) any judgment obtained or order made in any proceedings referred to in subsection three of section thirteen of the repealed Act against a firm, individual or corporation may, to the extent that it has not been enforced before the commencement of this Act, be enforced against such firm or any member thereof or such individual or corporation; and

(b) any certificate furnished, or copy of or extract from a statement certified, in pursuance of the repealed Act shall be as valid and effectual as it would have been had the repealed Act not been repealed.

(3) A reference in any Act, order, regulation, rule, instrument or document to a firm, individual or corporation registered or required to have been 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 are, or to an individual who or a corporation which, as the case may be, is, carrying on business under a business name registered or required to be registered under this Act.

(4) A reference to the Registrar-General in any Act, order, regulation, rule, instrument or document relating to any matter under or in connection with the repealed Act or any corresponding



*Business Names.*

corresponding previous enactment shall unless the context otherwise requires be construed as referring to the Registrar under this Act.

(5) A business name in respect of which a firm,  
5 individual or corporation was immediately before the commencement of this Act registered or deemed to be registered under the repealed Act shall subject to this Act upon the commencement of this Act be deemed to be registered under  
10 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 shall apply to and in relation to the business name accordingly.

4. (1) In this Act unless the context or subject matter otherwise indicates or requires— **Interpretation.**

15 "Business" includes trade and profession.

"Business name" means a name, style, title or designation under which a business is carried on. ✓

20 "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 interpretation.

"Christian name" includes any forename.

25 "Corporation" means any body corporate formed or incorporated whether in the State or outside the State and includes any foreign company within the meaning of the Companies Act, 1961.

"Director" in relation to a corporation includes any person occupying the position of director of the corporation by whatever name called.

30 "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"



*Business Names.*

"Individual" means a natural person and does not include a corporation.

"Initial" includes a recognised abbreviation of a Christian name.

5 "Prescribed" means prescribed by or under this Act.

"Process" includes any writ, summons, plaint, pleading, order or document in or relating to any legal proceedings.

10 "Register" means the register of business names referred to in section six of this Act.

"Registrar" means the Registrar of Companies under the Companies Act, 1961, and includes any Deputy Registrar of Companies.

"Regulations" means regulations made under this Act.

15 "Repealed Act" means the Business Names Act, 1934, as amended by subsequent Acts.

20 "Secretary" in relation to a corporation includes any person performing the duties of secretary of the corporation and in relation to a corporation registered under Division 3 of Part XI of the Companies Act, 1961, includes the agent within the meaning of that Division of the corporation.

"Section" means section of this Act.

"State" means the State of New South Wales.

25 (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—

30 (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)



*Business Names.*

- (d) creates evidence of any debt or creates a charge on real or personal property;
- 5 (e) secures or collects any of his debts or enforces his rights in regard to any securities relating to such debts;
- (f) conducts an isolated transaction that is completed within a period of thirty-one days, but not being one of a number of similar transactions repeated from time to time; or
- 10 (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  
15 under that name.

5. (1) A person shall not either alone or together with other persons carry on business in the State under a business name unless—

Certain business names to be registered.

- 20 (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
- 25 (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 any provisions of section twelve that are applicable have been complied with by or on behalf of the person or persons in relation to whom the business name is registered.

30 Penalty : One hundred pounds. Default penalty.

(2)



*Business Names.*

(2) For the purposes of subsection one of this section the name of a person consists of—

(a) in the case of an individual—his full name, or his surname together with—

- 5 (i) his Christian name or names;
- (ii) the initial or initials of his Christian name or names;
- 10 (iii) a combination of one or more of his Christian names and the initial or initials of his remaining Christian name or names; or
- 15 (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 such names and such 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 one of this section 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 any court, or under the powers contained in any instrument to carry on the business, the business shall for the purposes of this Act be deemed to be carried on by the person or persons 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 thereof shall not operate to avoid any agreement transaction act or matter.



*Business Names.*

6. (1) The Registrar shall keep a register of business names registered under this Act in such form as he thinks fit. Register of business names.

(2) A statement lodged under this Act in relation to a business name registered under this Act, whether lodged before or after the registration, shall for the purposes of this Act be deemed to be incorporated with and to form part of the register.

(3) The register and index of the business names of firms, individuals and corporations registered or deemed to be registered under the repealed Act, and any statement or notice furnished or sent to the Registrar-General under the repealed Act or any corresponding previous enactment, shall be deemed to be incorporated with and to form part of the register kept under this Act.

7. (1) An application for the registration of a business name shall be made by lodging with the Registrar 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— Registration of business names.

(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 any 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 or is to be the principal place of business;

(d)



*Business Names.*

- (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 or proposed registered office in the State of each applicant which 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 any applicant is an infant and he is not so described in the statement and the date of his birth is not set out in the statement, the statement shall for the purposes of section seventeen be deemed to be false in a material particular.
- (3) Subject to this Act the Registrar shall upon the lodging of a statement under subsection one of this section in relation to a business name register the business name.
- (4) The Registrar shall upon registering a business name issue a certificate of registration in the prescribed form signed by the Registrar.
- (5) The Registrar may upon payment of the prescribed fee issue a further certificate of registration.
- (6) A business name shall not be registered under this Act if the statement referred to in subsection one of this section is lodged with the Registrar on a date preceding by more than two months the date shown in the statement as the proposed date of commencement of carrying on business.
- (7) The Registrar may refuse to register a business name if he is not satisfied that the particulars set out in the statement lodged under subsection one of this section are correct.



*Business Names.*

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

Resident agent.

(a) include the name and address of some person resident in the State who in relation to the carrying on of business under that name—

10 (i) has consented in writing to be the resident agent of the person or persons for the purposes of this Act; and

15 (ii) is authorised in writing by the person or persons to accept service on behalf of the person or persons of any notices for the purposes of this Act and of any process; and

(b) in addition be signed by the person who has consented to be the resident agent.

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

30 9. (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 Registrar, undesirable or is a name, or a name of a kind, that the Minister has, for the purposes of this Act, directed the Registrar not to accept for registration.

Restriction on registration of business names that are undesirable, &c.

(2)



*Business Names.*

(2) The Minister shall cause a direction given by him under subsection one of this section to be published in the Gazette and a copy of the direction to be forwarded to the Attorney-General of the Commonwealth and the Attorney-General of each State of the Commonwealth.

10. (1) If a business name which could not be registered under this Act without contravention of subsection one of section nine is registered through inadvertence or otherwise, the Registrar 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—

15 (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 twenty-eight days) as is specified in the notice; and

(b) setting out his reasons for the proposed cancellation—

20 and upon the expiration of that period the Registrar may, if the notice has not been annulled under subsection three of this section, cancel the registration of that name.

25 (2) The Registrar shall not except with the approval of the Minister exercise his powers under subsection one of this section with respect to a business name that is deemed to be registered under this Act by virtue of subsection five of section three.

(3) The Minister may at any time before the expiration of the period specified in a notice given by the Registrar under subsection one of this section annul the notice.

30 (4) The Registrar may remit any fee payable in respect of an application for the registration of a new business name in place of a business name the registration of which is cancelled under subsection one of this section.



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11. (1) Subject to this Act, the registration, or renewal of a registration of a business name, shall be in force for a period of three years but the registration may from time to time be renewed by lodging with the Registrar at any time within the period of one month before or after the expiry of the registration or renewal a statement in the prescribed form signed by the person or one of the persons in relation to whom the name is registered accompanied by the prescribed fee.
- 10 (2) The renewal of a registration shall take effect from the day on which the previous registration or renewal expires or has expired, as the case may be.
- (3) The Registrar shall upon renewing the registration of a business name issue a certificate of registration in the prescribed form signed by the Registrar.
- (4) The Registrar shall before or after the expiration of the registration of a business name but not earlier than one month before, nor later than one month after, the expiration send by post to the person or persons in relation to whom the business name is or was registered at the place shown in the register as the place where business is carried on under that name a notice of the date on which the registration is due to expire or has expired, as the case may be.
- (5) Where the registration of a business name has expired the Registrar 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 Registrar so nearly resembles it as to be calculated to deceive until the expiration of one month after the expiry of the registration.
- 35 (6) Notwithstanding the provisions of subsection one of this section the following provisions shall apply in relation to



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to a business name which 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—

- 5 (a) the registration of the business name shall subject to this Act remain in force until a date fixed by the Registrar;
- (b) notice in writing of the date so fixed shall be sent by post by the Registrar 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;
- 10 (c) the date fixed by the Registrar shall be a date not less than one month after the notice in writing has been sent by post to such person or persons;
- 15 (d) no such notice in writing shall be sent by the Registrar until the expiration of a period of at least three years from the date upon which the name was registered or deemed to be registered under the repealed Act;
- 20 (e) the Registrar shall not be required to send to the person or persons in relation to whom the business name is or was registered the notice referred to in subsection four of this section; and
- 25 (f) after the renewal of the registration of the business name the provisions of this subsection shall cease to apply in relation to the business name.

**12.** (1) Where a business name is registered under this Act and a change occurs—

- 30 (a) which renders the description of the nature of the business lodged with the Registrar 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

Notification of changes in particulars relating to registered business names, cessation of business, &c.

(c)



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(c) in the registered particulars relating to the resident agent of the person or persons in relation to whom the name is registered—

there shall be lodged with the Registrar, within fourteen days  
5 thereafter or within such further time as the Registrar may, before the expiration of that period, allow, 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 Registrar of particulars of and of  
10 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  
15 registered office in the State of a person being a corporation in relation to which a business name is registered under this Act, there shall be lodged with the Registrar, within fourteen days thereafter or within such further time as the Registrar may, before the expiration of that period, allow, a statement  
20 in the prescribed form, signed by that person notifying the Registrar 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  
25 in the State under that name, there shall be lodged with the Registrar, within fourteen days thereafter or within such further time as the Registrar may, before the expiration of that period, allow, a statement in the prescribed form notifying the Registrar of the cessation and of the date thereof signed  
30 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  
35 other persons commences or commence to carry on business in the State under that name in place of or in association with the person or persons in relation to whom the name is already registered, there shall be lodged with the Registrar, within  
fourteen



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fourteen days thereafter or within such further time as the Registrar may, before the expiration of that period, allow, a statement in the prescribed form signed by the person or all of the persons carrying on business under that name immediately after that other person or those other persons so commenced carrying on business under that name, setting out the date on which that other person or those other persons so commenced to carry on business and in relation to each person required to sign the statement—

10 (a) who is an individual—the Christian names and surname and any former Christian names or surname and the usual place of residence of the individual (and where he is an infant in addition to the particulars referred to in this paragraph he shall be  
15 so described in the statement and the date of his birth shall be set out therein); or

(b) who is a corporation—the corporate name and the place of the registered office in the State of the corporation,

20 and where the person or all of the persons carrying on business under that business name after that date is or are not resident within the State or does not or do not have a fixed address or fixed addresses within the State, the statement shall—

25 (i) also set out the name and address of some person resident in the State who in relation to the carrying on of business under that name—

(a) has consented in writing to be the resident agent for the purposes of this Act of the  
30 person or persons required to sign the statement; and

(b) is authorised in writing by the person or persons required to sign the statement to accept service on his or their behalf of any  
35 notices for the purposes of this Act and of any process; and

(ii)



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(ii) in addition be signed by the person who has consented to be the resident agent.

(5) Where, while a person is the resident agent of a person or persons in relation to whom a business name is registered, the person or any one or more of the persons in relation to whom the name is registered commences or commence to reside within the State or acquires or acquire a fixed address or fixed addresses within the State, there shall be lodged with the Registrar within fourteen days after such person or persons so commenced to reside or acquired a fixed address or fixed addresses, or within such further time as the Registrar may, before the expiration of that period allow, a statement in the prescribed form signed by the person or one of the persons in relation to whom the name is registered—

- 15 (a) notifying the Registrar that the person appointed to be the resident agent of the person or persons in relation to whom the name is registered has ceased to be the resident agent of such person or persons; and
- 20 (b) setting out the name or names of the person or persons in relation to whom the name is registered and who has or have commenced to reside or has or have acquired a fixed address or fixed addresses in the State, and the usual place or places of residence or the fixed address or fixed addresses
- 25 within the State of such person or persons.

(6) Where, while a person is the resident agent of a person or persons in relation to whom a business name is registered, 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 the person or persons in relation to whom the name is already registered and that other or one of those other persons resides within the State or has a fixed address within the State, there shall be lodged with the Registrar within fourteen days after that other person or those other persons so commenced to carry on business or within such further time as the Registrar may, before the expiration of that period, allow, a statement in the prescribed form



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form signed by the person or one of the persons carrying on business under that name after that other or those other persons so commenced to carry on business—

- 5 (a) notifying the Registrar that the person who was the resident agent of the person or persons in relation to whom the name was registered immediately before that other or those other persons so commenced to carry on business is not or has ceased to be the resident agent of the person or persons carrying on business under that name immediately after that other person or those other persons so commenced carrying on business; and
- 10 (b) setting out the name or names of that other person or those other persons who resides or reside within the State or has or have a fixed address or fixed addresses within the State, and the usual place or places of residence or the fixed address or fixed addresses within the State of that other person or those other persons.
- 15 (7) Where a business name is registered under this Act and a person appointed the resident agent of the person or persons in relation to whom the name is registered ceases to be the resident agent of that person or those persons, there shall be lodged with the Registrar a statement in the prescribed
- 20 form notifying the Registrar of the appointment of another person in place of or in succession to the person who has ceased to be the resident agent of the person or persons in relation to whom the name is registered, and of the date of the appointment—
- 25 (a) signed by the person or by one of the persons in relation to whom the name is registered and by the other person so appointed; and
- 30 (b) showing that the other person so appointed—
- 35 (i) is in relation to the carrying on of business under that name authorised by the person or persons in relation to whom the name is registered to accept service on his or their behalf of any notices for the purposes of this Act and of any process; and
- (ii)



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- (ii) has consented in writing to act as the resident agent for that person or those persons, as the case requires.

Such statement shall be lodged with the Registrar within  
5 fourteen days after the appointment or within such further time as the Registrar may, before the expiration of that period, allow.

- (8) Where a business name is registered under this Act and the person or all the persons in relation to whom  
10 the name is registered ceases or cease to reside within the State or to have a fixed address or fixed addresses in the State, there shall be lodged with the Registrar within fourteen days after that person or those persons has or have ceased to so reside or to have a fixed address or fixed addresses, or within  
15 such further time as the Registrar may, before the expiration of that period, allow, a statement in the prescribed form notifying the Registrar of the name and address of some other person appointed to be the resident agent of the person or persons in relation to whom the name is registered in the  
20 State—

- (a) signed by the person or one of the persons in relation to whom the name is registered and by the person so appointed; and

- (b) showing that the other person so appointed—

- 25 (i) has consented in writing to be the resident agent of the person or persons for the purposes of this Act; and

- 30 (ii) is authorised in writing by the person or persons to accept service on behalf of the person or persons of any notices for the purposes of this Act and of any process.

- (9) If a statement required by a provision of this section to be lodged with the Registrar is not lodged in accordance with the provision, or if lodged does not comply  
41—B with



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with the provision, each person required or authorised by the provision to sign the statement shall unless he proves that he took all reasonable steps to ensure compliance with the provision be guilty of an offence against this Act.

5     Penalty : One hundred pounds.     Default penalty.

(10) 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 Registrar in accordance with and within the time prescribed by subsection four of this  
10 section or within such further time as the Registrar may in accordance with that subsection have allowed neither that person nor any other person shall be guilty of an offence against section five of this Act by reason only that before the lodging of the statement he carried on business under that  
15 name.

(11) Any statement required to be lodged with the Registrar 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.

20     (12) A statement lodged under this section shall be accompanied by the prescribed fee.

**13.** (1) The Registrar may by notice in writing require any person to furnish to the Registrar within a period specified in the notice (being a period of not less than twenty-eight  
25 days) or within such further period as the Registrar may, on the application of that person made before the expiration of that period, allow and notify to that person, such information as appears to the Registrar to be necessary to enable him to ascertain whether or not a person—

Duty to  
furnish  
information.

30     (a) is carrying on business either alone or in association with any other person or persons under a business name that is required to be registered under this Act; or

35     (b) has failed to lodge with the Registrar a statement required to be lodged under this Act.

(2)



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(2) A person required under subsection one of this section to furnish information to the Registrar shall within the period specified in the notice or within such further period as the Registrar has allowed furnish such information as it is within his power to furnish and shall not furnish any information which to his knowledge is false in any material particular.

Penalty : One hundred pounds.

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

15 14. (1) Where a person carrying on business under a business name in contravention of section five or a person who being guilty of an offence under section twelve by reason of the failure to lodge a statement referred to in that section in relation to a business name fails to lodge that statement  
20 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 five or to cause the statement to be lodged  
25 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.

Disability  
of persons  
in default.

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

(3)



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(3) 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 shall, for the purpose of the proceedings, be a sufficient designation of the person or persons in any process or other legal document or instrument and any judgment obtained or order made in such proceedings may be enforced against that person, or against those persons or any of those persons, as the case may be.

(4) Nothing in this section shall be construed as exempting any person from compliance with any provision of this Act.

**15.** (1) Any statement lodged with the Registrar under this Act shall be deemed to be signed by a person who is required to sign the statement if—

Signing of  
statements.

- (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 Registrar is satisfied that it is not practicable to obtain the signature of a person required by this Act to sign a statement the Registrar 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.



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

Verification  
of  
particulars.

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

Penalty  
for false  
statement.

Penalty : One hundred pounds or imprisonment for three months or both.

18. (1) Where the Registrar 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 enquiring whether the person is or the persons are carrying on business under the name and stating that unless the Registrar 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.

Notice of  
proposed  
cancellation.

(2) Where the Registrar has reasonable cause to believe that any provision of section twelve has not been complied with he may send by post a notice addressed to the person or persons who appear to him to be guilty of an offence by reason of the failure to comply with such provision at the place shown in the register as the place where business is carried on under that name stating that unless within one month from the date of the notice that provision is complied with or the Registrar is satisfied that there was in fact no failure to comply with the provision the registration of the business name may be cancelled.

19.



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*Business Names.*

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19. (1) The Registrar may cancel the registration of a business name—

Cancellation of registration.

- 5 (a) if there is lodged with the Registrar a statement under section twelve 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
- 10 person has or other persons have commenced to carry on business in the State under that name;
- 15 (b) if the Registrar has sent a notice to any person or persons in respect of the business name under subsection one of section eighteen and the Registrar is not 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;
- 20 (c) if the Registrar has sent a notice to any person or persons under subsection two of section eighteen and within one month after the date of the notice the provision of section twelve to which the notice relates has not been complied with or the Registrar is not satisfied that there was no failure to comply with the provision; or
- 25 (d) if the business name is registered in relation to a corporation only and the name of the corporation has been struck off any register of corporations kept under the Companies Act, 1961, or the corporation has been dissolved.

30 (2) The Registrar may on any grounds which 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)



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*Business Names.*

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(3) Where the registration of a business name has been cancelled under this section a person in relation to whom the business name was registered immediately before the cancellation may apply to the Supreme Court in its equitable jurisdiction for an order directing the Registrar to restore the registration of the business name.

(4) On an application under subsection three of this section the Supreme Court may if it is satisfied that the applicant is carrying on business under the business name and that it is just and equitable so to do make the order applied for upon such terms as the Court thinks fit.

(5) Upon the making of an order by the Supreme Court under subsection four of this section the business name shall be deemed to have continued to be registered as if the registration had not been cancelled and the Registrar 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.

**20.** Where a business name is registered under this Act—

- 20 (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  
25 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;  
30 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

Use and  
exhibition  
of business  
name.



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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  
5 carrying on business under that name shall unless he proves that he took all reasonable steps to ensure compliance with this section be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

21. (1) The Registrar may on such evidence as to him  
10 appears sufficient correct any error in any entry in the register or in any certificate of registration of a business name. Registrar may correct errors in register, &c.

(2) When correcting an error under subsection one of this section the Registrar shall not erase or render illegible the original words and shall affix the date upon which the  
15 correction was made together with his initials.

(3) Any entry or certificate corrected under this section shall have the same validity and effect as if the error had not been made.

(4) The Registrar may accept and register a state-  
20 ment lodged to correct any error in or to supply any particular omitted from a statement previously lodged and registered; and in that event the statement previously lodged and that lodged under this subsection shall be read as one and shall both be incorporated with and form part of the register.

25 22. (1) A person may on payment of the prescribed fee inspect any statement lodged with the Registrar under this Act and not destroyed pursuant to section twenty-five, or furnished under any corresponding previous enactment and not destroyed at the commencement of this Act, and may  
30 make a copy thereof or take extracts therefrom. Inspection of statements.

(2) The Registrar may, on receiving—

(a) a written enquiry with respect to any business name specified in the enquiry; and

(b) the prescribed fee,

35 issue or send by post a reply to the enquiry.

23.



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*Business Names.*

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23. (1) The Registrar shall upon request in writing made by any person and payment of the prescribed fee issue or send by post to that person—

Certificates  
of registra-  
tion or non-  
registration.

5 (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

10 (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.

15 (2) The Registrar shall not be required to issue—

20 (a) under paragraph (a) of subsection one of this section a copy of or extract from a document forming part of the register where that document has been destroyed pursuant to section twenty-five or has been destroyed before the commencement of this Act; or

25 (b) under paragraph (b) of subsection one of this section a certificate in respect of a firm, individual or corporation where the registration was effected under the Registration of Firms Act, 1902, and such registration was not in force at the commencement of the repealed Act.

24. A document purporting to be—

Evidence of  
registration  
or non-  
registration.

30 (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 paragraph (a) of subsection one of section twenty-three;

35 (c) a certificate issued under paragraph (b) of subsection one of section twenty-three; or

(d)



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- (d) a combination of two or more of the certificates, copies or extracts referred to in paragraph (a), (b) or (c) of this section—

shall in all courts and before all persons having authority  
5 to hear receive and examine evidence be prima facie evidence  
of any matter contained or set out therein.

25. Subject to the Archives Act, 1960, the Registrar may, Authority  
if in his opinion it is no longer necessary or desirable to of Registrar  
retain them, destroy or dispose of any statement or notice to destroy  
10 lodged, furnished or registered under this Act or under any documents.  
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  
15 force at any time during the preceding twelve years.

26. (1) Where a person is or the members of a firm are Invita-  
carrying on business in the State under a business name regis- tions to  
tered or required to be registered under this Act no person the public  
shall use or make reference to that business name— to make  
deposits  
or loans.

- 20 (a) in any invitation to the public; or

(b) in any advertisement inviting the public,  
to deposit money with or lend money to that person or firm  
or use or make reference to a business name in connection  
with any deposit or loan of money.

- 25 Penalty : Five hundred pounds.

(2) This section does not apply to an invitation to  
the public made by a public company in conformity with the  
requirements of the Companies Act, 1961.

27. (1) A person who—

- 30 (a) does that which by or under this Act he is forbidden General  
to do; penalty  
provisions.  
(b) does not do that which by or under this Act he is  
required or directed to do; or  
(c)



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(c) otherwise contravenes or fails to comply with any provision of this Act,

shall be guilty of an offence against this Act.

Nothing in this subsection shall apply to any offence against a regulation.

(2) A person who is guilty of an offence against this Act shall be liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or punishment for the offence.

10 (3) The penalty or punishment pecuniary or other set out in or at the foot of any section or part of a section of this Act shall indicate 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  
15 apply to a part only of the section it shall apply to that part only.

28. (1) Where in or at the foot of any section or part of a section of this Act there appears the expression "Default penalty" it shall indicate that any person who is  
20 convicted of an offence against this Act in relation to that section or part shall be 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 ten pounds.

25 (2) Where any offence is committed by a person by reason of his failure to comply with any 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 one of this section shall be deemed to continue  
30 so long as the thing so required or directed to be done by him remains undone notwithstanding that such period has elapsed.

(3) Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a court of petty sessions held before a stipendiary magistrate. Recovery of penalties.



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29. 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—

Offences committed by corporations.

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

30. If in any proceedings for an offence against this Act proof is given that a business name has been displayed on
- 10 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 for the purposes of this Act to be carrying on
- 15 the business under that business name.

Evidentiary provisions.

31. (1) Where by this Act the Registrar is required or permitted to send a notice to the person or persons in relation to whom the business name is registered the notice may, notwithstanding any other provision of this Act, be sent by post
- 20 addressed to the business name—

As to service of notices.

- (a) at the place shown in the register as the place where the business is carried on; or
- (b) where more than one place is shown in the register as the place where the business is carried on—
  - 25 (i) at the place shown in the register as the principal place where the business is carried on; or
  - (ii) if no place is so shown as the principal place, at the place shown which appears first in the register as a place where the business is carried on; or
- 30 (c) if it appears from the register that there is for the purposes of this Act a resident agent appointed for the purposes of this Act by the person or persons in



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*Business Names.*

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in relation to whom the business name is registered,  
at the place shown in the register as the address of  
such resident agent in the State.

(2) Service of any communication or notice or  
5 process on any person or persons carrying on business under  
a business name—

(a) by leaving it at the place where business is carried  
on by such person or persons with some person  
apparently in the service of such person or persons  
10 and apparently of or above the age of sixteen  
years;

(b) by sending it by registered post, or certified mail  
service, addressed to such person or persons at the  
place where business is carried on by such person  
15 or persons,

shall be deemed to be personal service on such person or  
persons.

(3) For the purposes of subsection two of this  
section—

20 (a) “the place where business is carried on” means the  
place shown in the register as the place where the  
business is carried on or where there is more than  
one such place shown in the register—

(i) the place shown in the register as the  
25 principal place where the business is carried  
on; or

(ii) if no place is so shown as the principal  
place, the place shown which appears first  
in the register as the place where the  
30 business is carried on; and

(b) a resident agent appointed for the purposes of this  
Act by the person or persons so carrying on busi-  
ness shall be deemed to be a person in the service  
of such person or persons.



*Business Names.*

32. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed to carry this Act into effect or to give effect to any power, function, duty or authority under this Act. Regulations.

(2) Without limiting the generality of subsection one of this section the regulations may prescribe—

- 10 (a) the fees (not exceeding ten pounds) to be paid under this Act to the Registrar;
- (b) the conditions under and subject to which fees may be waived by the Registrar or the Minister;
- (c) the imposition of additional fees on the late lodgment of documents;
- 15 (d) the forms to be used under this Act (and all such forms or forms to the like effect may be used for the purposes of this Act and shall be sufficient in law);
- 20 (e) the duties of the Registrar for the purposes of this Act; and
- (f) generally the conduct and regulation of registration under this Act.

(3) The regulations may prescribe penalties not exceeding twenty pounds for any breach thereof.

25 (4) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication, or from a later date to be specified in the regulations; and
- 30 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If



*Business Names.*

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before the House disallowing any regulation or part thereof, the regulation or  
5 part shall thereupon cease to have effect.

## SCHEDULE.

Sec. 3.

Number of Act.	Title of Act.	Extent of Repeal.
Act No. 50, 1934 ..	Business Names Act, 1934.	The whole.
10 Act No. 35, 1937 ..	Statute Law Revision Act, 1937.	So much of the Second Schedule as amended section 20 of Act No. 50, 1934.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1962



The Bureau has original jurisdiction in the Legislative Assembly, and having this day passed a resolution to the effect that the Council for its convenience.

11

Act No. 1, 1934

### Business Names

In order that the Bureau of Business Names may have a record of all the names which have been given at any time within fifteen sitting days of the date of the passing of the Act, the Bureau has been instructed to keep a record of all the names which have been given at any time within fifteen sitting days of the date of the passing of the Act, the Bureau has been instructed to keep a record of all the names which have been given at any time within fifteen sitting days of the date of the passing of the Act.

### SCHEDULE

Statute No.	Title of Act	Extent of Report
Act No. 50, 1934	Business Names Act, 1934	The whole.
10 Act No. 35, 1937	Statute Law Revision Act, 1937	So much of the Second Schedule as amended section 20 of Act No. 50, 1934.



No. , 1962.

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## A BILL

To make provision with respect to the registration and use of business names; to repeal the Business Names Act, 1934, and certain other enactments; and for purposes connected therewith.

[MR. MANNIX;—3 MAY, 1962.]

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**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Business Names Act, 1962".

Short title  
and com-  
mencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.



*Business Names.*

2. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State to the intent that where any provision of this Act or the application thereof to any person or circumstance is held invalid the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

Construc-  
tion.

3. (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.

Repeal, and  
savings and  
transitional  
provisions.

(2) Notwithstanding the provisions of subsection one of this section—

(a) any judgment obtained or order made in any proceedings referred to in subsection three of section thirteen of the repealed Act against a firm, individual or corporation may, to the extent that it has not been enforced before the commencement of this Act, be enforced against such firm or any member thereof or such individual or corporation; and

(b) any certificate furnished, or copy of or extract from a statement certified, in pursuance of the repealed Act shall be as valid and effectual as it would have been had the repealed Act not been repealed.

(3) A reference in any Act, order, regulation, rule, instrument or document to a firm, individual or corporation registered or required to have been 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 are, or to an individual who or a corporation which, as the case may be, is, carrying on business under a business name registered or required to be registered under this Act.

(4) A reference to the Registrar-General in any Act, order, regulation, rule, instrument or document relating to any matter under or in connection with the repealed Act or any corresponding



*Business Names.*

corresponding previous enactment shall unless the context otherwise requires be construed as referring to the Registrar under this Act.

(5) A business name in respect of which a firm, individual or corporation was immediately before the commencement of this Act registered or deemed to be registered under the repealed Act shall subject to this Act upon the commencement 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 shall apply to and in relation to the business name accordingly.

4. (1) In this Act unless the context or subject matter otherwise indicates or requires— Interpretation.

15 “Business” includes trade and profession.

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

20 “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 interpretation.

“Christian name” includes any forename.

25 “Corporation” means any body corporate formed or incorporated whether in the State or outside the State and includes any foreign company within the meaning of the Companies Act, 1961.

“Director” in relation to a corporation includes any person occupying the position of director of the corporation by whatever name called.

30 “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”



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*Business Names.*

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"Individual" means a natural person and does not include a corporation.

"Initial" includes a recognised abbreviation of a Christian name.

5 "Prescribed" means prescribed by or under this Act.

"Process" includes any writ, summons, plaint, pleading, order or document in or relating to any legal proceedings.

10 "Register" means the register of business names referred to in section six of this Act.

"Registrar" means the Registrar of Companies under the Companies Act, 1961, and includes any Deputy Registrar of Companies.

"Regulations" means regulations made under this Act.

15 "Repealed Act" means the Business Names Act, 1934, as amended by subsequent Acts.

20 "Secretary" in relation to a corporation includes any person performing the duties of secretary of the corporation and in relation to a corporation registered under Division 3 of Part XI of the Companies Act, 1961, includes the agent within the meaning of that Division of the corporation.

"Section" means section of this Act.

"State" means the State of New South Wales.

25 (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—

30 (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)



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*Business Names.*

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- (d) creates evidence of any debt or creates a charge on real or personal property;
- 5 (e) secures or collects any of his debts or enforces his rights in regard to any securities relating to such debts;
- (f) conducts an isolated transaction that is completed within a period of thirty-one days, but not being one of a number of similar transactions repeated from time to time; or
- 10 (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  
15 under that name.

5. (1) A person shall not either alone or together with other persons carry on business in the State under a business name unless—

Certain  
business  
names to be  
registered.

- 20 (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
- 25 (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 any provisions of section twelve that are applicable have been complied with by or on behalf of the person or persons in relation to whom the business name is registered.

30 Penalty : One hundred pounds. Default penalty.

(2)



*Business Names.*

(2) For the purposes of subsection one of this section the name of a person consists of—

(a) in the case of an individual—his full name, or his surname together with—

- 5 (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
- 10 (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 such names and such initials;
- 15

(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 one of this section 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 any court, or under the powers contained in any instrument to carry on the business, the business shall for the purposes of this Act be deemed to be carried on by the person or persons 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 thereof shall not operate to avoid any agreement transaction act or matter.



*Business Names.*

6. (1) The Registrar shall keep a register of business names registered under this Act in such form as he thinks fit. Register of business names.

5 (2) A statement lodged under this Act in relation to a business name registered under this Act, whether lodged before or after the registration, shall for the purposes of this Act be deemed to be incorporated with and to form part of the register.

10 (3) The register and index of the business names of firms, individuals and corporations registered or deemed to be registered under the repealed Act, and any statement or notice furnished or sent to the Registrar-General under the repealed Act or any corresponding previous enactment, shall be deemed to be incorporated with and to form part of the 15 register kept under this Act.

7. (1) An application for the registration of a business name shall be made by lodging with the Registrar 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— Registration of business names.

- (a) the business name;
- 25 (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 any 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 30 places is or is to be the principal place of business;
- (d)



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*Business Names.*

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- 5 (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 or proposed registered office in the State of each applicant which 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
- 10 (f) where the business name is a name adopted by the applicant or applicants in substitution for another name—that other name.

(2) If any applicant is an infant and he is not so described in the statement and the date of his birth is not  
15 set out in the statement, the statement shall for the purposes of section seventeen be deemed to be false in a material particular.

(3) Subject to this Act the Registrar shall upon the lodging of a statement under subsection one of this section in  
20 relation to a business name register the business name.

(4) The Registrar shall upon registering a business name issue a certificate of registration in the prescribed form signed by the Registrar.

(5) The Registrar may upon payment of the  
25 prescribed fee issue a further certificate of registration.

(6) A business name shall not be registered under this Act if the statement referred to in subsection one of this section is lodged with the Registrar on a date preceding by more than two months the date shown in the statement as  
30 the proposed date of commencement of carrying on business.

(7) The Registrar may refuse to register a business name if he is not satisfied that the particulars set out in the statement lodged under subsection one of this section are correct.



*Business Names.*

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

Resident agent.

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

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

9. (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 Registrar, undesirable or is a name, or a name of a kind, that the Minister has, for the purposes of this Act, directed the Registrar not to accept for registration.

Restriction on registration of business names that are undesirable, &c.

(2)



*Business Names.*

(2) The Minister shall cause a direction given by him under subsection one of this section to be published in the Gazette and a copy of the direction to be forwarded to the Attorney-General of the Commonwealth and the Attorney-  
5 General of each State of the Commonwealth.

10 **10.** (1) If a business name which could not be registered under this Act without contravention of subsection one of section nine is registered through inadvertence or otherwise, the Registrar 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—

Power to cancel registration of business names that are undesirable, &c.

15 (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 twenty-eight days) as is specified in the notice; and

(b) setting out his reasons for the proposed cancellation—

20 and upon the expiration of that period the Registrar may, if the notice has not been annulled under subsection three of this section, cancel the registration of that name.

25 (2) The Registrar shall not except with the approval of the Minister exercise his powers under subsection one of this section with respect to a business name that is deemed to be registered under this Act by virtue of subsection five of section three.

(3) The Minister may at any time before the expiration of the period specified in a notice given by the Registrar under subsection one of this section annul the notice.

30 (4) The Registrar may remit any fee payable in respect of an application for the registration of a new business name in place of a business name the registration of which is cancelled under subsection one of this section.



*Business Names.*

11. (1) Subject to this Act, the registration, or renewal of a registration of a business name, shall be in force for a period of three years but the registration may from time to time be renewed by lodging with the Registrar at any time within the period of one month before or after the expiry of the registration or renewal a statement in the prescribed form signed by the person or one of the persons in relation to whom the name is registered accompanied by the prescribed fee.
- 10 (2) The renewal of a registration shall take effect from the day on which the previous registration or renewal expires or has expired, as the case may be.
- (3) The Registrar shall upon renewing the registration of a business name issue a certificate of registration in 15 the prescribed form signed by the Registrar.
- (4) The Registrar shall before or after the expiration of the registration of a business name but not earlier than one month before, nor later than one month after, the expiration send by post to the person or persons in relation to whom 20 the business name is or was registered at the place shown in the register as the place where business is carried on under that name a notice of the date on which the registration is due to expire or has expired, as the case may be.
- (5) Where the registration of a business name has 25 expired the Registrar 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 30 business name was registered, any business name that is identical with that business name or that in the opinion of the Registrar so nearly resembles it as to be calculated to deceive until the expiration of one month after the expiry of the registration.
- 35 (6) Notwithstanding the provisions of subsection one of this section the following provisions shall apply in relation to

Duration of  
registration  
and renewal  
of registra-  
tion.



*Business Names.*

to a business name which 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—

- 5 (a) the registration of the business name shall subject to this Act remain in force until a date fixed by the Registrar;
- (b) notice in writing of the date so fixed shall be sent by post by the Registrar 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;
- 10 (c) the date fixed by the Registrar shall be a date not less than one month after the notice in writing has been sent by post to such person or persons;
- 15 (d) no such notice in writing shall be sent by the Registrar until the expiration of a period of at least three years from the date upon which the name was registered or deemed to be registered under the repealed Act;
- 20 (e) the Registrar shall not be required to send to the person or persons in relation to whom the business name is or was registered the notice referred to in subsection four of this section; and
- 25 (f) after the renewal of the registration of the business name the provisions of this subsection shall cease to apply in relation to the business name.

**12.** (1) Where a business name is registered under this Act and a change occurs—

- 30 (a) which renders the description of the nature of the business lodged with the Registrar 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)

Notification of changes in particulars relating to registered business names, cessation of business, &c.



*Business Names.*

(c) in the registered particulars relating to the resident agent of the person or persons in relation to whom the name is registered—

there shall be lodged with the Registrar, within fourteen days  
5 thereafter or within such further time as the Registrar may, before the expiration of that period, allow, 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 Registrar of particulars of and of  
10 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  
15 registered office in the State of a person being a corporation in relation to which a business name is registered under this Act, there shall be lodged with the Registrar, within fourteen days thereafter or within such further time as the Registrar may, before the expiration of that period, allow, a statement  
20 in the prescribed form, signed by that person notifying the Registrar 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  
25 in the State under that name, there shall be lodged with the Registrar, within fourteen days thereafter or within such further time as the Registrar may, before the expiration of that period, allow, a statement in the prescribed form notifying the Registrar of the cessation and of the date thereof signed  
30 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  
35 other persons commences or commence to carry on business in the State under that name in place of or in association with the person or persons in relation to whom the name is already registered, there shall be lodged with the Registrar, within  
fourteen



*Business Names.*

fourteen days thereafter or within such further time as the Registrar may, before the expiration of that period, allow, a statement in the prescribed form signed by the person or all of the persons carrying on business under that name immediately after that other person or those other persons so commenced carrying on business under that name, setting out the date on which that other person or those other persons so commenced to carry on business and in relation to each person required to sign the statement—

10 (a) who is an individual—the Christian names and surname and any former Christian names or surname and the usual place of residence of the individual (and where he is an infant in addition to the particulars referred to in this paragraph he shall be  
15 so described in the statement and the date of his birth shall be set out therein); or

(b) who is a corporation—the corporate name and the place of the registered office in the State of the corporation,

20 and where the person or all of the persons carrying on business under that business name after that date is or are not resident within the State or does not or do not have a fixed address or fixed addresses within the State, the statement shall—

25 (i) also set out the name and address of some person resident in the State who in relation to the carrying on of business under that name—

(a) has consented in writing to be the resident agent for the purposes of this Act of the  
30 person or persons required to sign the statement; and

(b) is authorised in writing by the person or persons required to sign the statement to accept service on his or their behalf of any  
35 notices for the purposes of this Act and of any process; and

(ii)



*Business Names.*

(ii) in addition be signed by the person who has consented to be the resident agent.

(5) Where, while a person is the resident agent of a person or persons in relation to whom a business name is registered, the person or any one or more of the persons in relation to whom the name is registered commences or commence to reside within the State or acquires or acquire a fixed address or fixed addresses within the State, there shall be lodged with the Registrar within fourteen days after such person or persons so commenced to reside or acquired a fixed address or fixed addresses, or within such further time as the Registrar may, before the expiration of that period allow, a statement in the prescribed form signed by the person or one of the persons in relation to whom the name is registered—

- 15 (a) notifying the Registrar that the person appointed to be the resident agent of the person or persons in relation to whom the name is registered has ceased to be the resident agent of such person or persons; and
- 20 (b) setting out the name or names of the person or persons in relation to whom the name is registered and who has or have commenced to reside or has or have acquired a fixed address or fixed addresses in the State, and the usual place or places of residence or the fixed address or fixed addresses
- 25 within the State of such person or persons.

(6) Where, while a person is the resident agent of a person or persons in relation to whom a business name is registered, 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 the person or persons in relation to whom the name is already registered and that other or one of those other persons resides within the State or has a fixed address within the State, there shall be lodged with the Registrar within fourteen days after that other person or those other persons so commenced to carry on business or within such further time as the Registrar may, before the expiration of that period, allow, a statement in the prescribed form



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*Business Names.*

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form signed by the person or one of the persons carrying on business under that name after that other or those other persons so commenced to carry on business—

- 5 (a) notifying the Registrar that the person who was the resident agent of the person or persons in relation to whom the name was registered immediately before that other or those other persons so commenced to carry on business is not or has ceased to be the resident agent of the person or persons carrying on business under that name immediately after that other person or those other persons so commenced carrying on business; and
- 10 (b) setting out the name or names of that other person or those other persons who resides or reside within the State or has or have a fixed address or fixed addresses within the State, and the usual place or places of residence or the fixed address or fixed addresses within the State of that other person or those other persons.
- 15 (7) Where a business name is registered under this Act and a person appointed the resident agent of the person or persons in relation to whom the name is registered ceases to be the resident agent of that person or those persons, there shall be lodged with the Registrar a statement in the prescribed
- 20 form notifying the Registrar of the appointment of another person in place of or in succession to the person who has ceased to be the resident agent of the person or persons in relation to whom the name is registered, and of the date of the appointment—
- 25 (a) signed by the person or by one of the persons in relation to whom the name is registered and by the other person so appointed; and
- 30 (b) showing that the other person so appointed—
- 35 (i) is in relation to the carrying on of business under that name authorised by the person or persons in relation to whom the name is registered to accept service on his or their behalf of any notices for the purposes of this Act and of any process; and
- (ii)



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*Business Names.*

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- (ii) has consented in writing to act as the resident agent for that person or those persons, as the case requires.

Such statement shall be lodged with the Registrar within 5 fourteen days after the appointment or within such further time as the Registrar may, before the expiration of that period, allow.

(8) Where a business name is registered under this Act and the person or all the persons in relation to whom 10 the name is registered ceases or cease to reside within the State or to have a fixed address or fixed addresses in the State, there shall be lodged with the Registrar within fourteen days after that person or those persons has or have ceased to so reside or to have a fixed address or fixed addresses, or within 15 such further time as the Registrar may, before the expiration of that period, allow, a statement in the prescribed form notifying the Registrar of the name and address of some other person appointed to be the resident agent of the person or persons in relation to whom the name is registered in the 20 State—

- (a) signed by the person or one of the persons in relation to whom the name is registered and by the person so appointed; and

- (b) showing that the other person so appointed—

25 (i) has consented in writing to be the resident agent of the person or persons for the purposes of this Act; and

30 (ii) is authorised in writing by the person or persons to accept service on behalf of the person or persons of any notices for the purposes of this Act and of any process.

(9) If a statement required by a provision of this section to be lodged with the Registrar is not lodged in accordance with the provision, or if lodged does not comply 41—B with



*Business Names.*

with the provision, each person required or authorised by the provision to sign the statement shall unless he proves that he took all reasonable steps to ensure compliance with the provision be guilty of an offence against this Act.

5 Penalty : One hundred pounds. Default penalty.

(10) 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 Registrar in accordance with and within the time prescribed by subsection four of this  
10 section or within such further time as the Registrar may in accordance with that subsection have allowed neither that person nor any other person shall be guilty of an offence against section five of this Act by reason only that before the lodging of the statement he carried on business under that  
15 name.

(11) Any statement required to be lodged with the Registrar 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.

20 (12) A statement lodged under this section shall be accompanied by the prescribed fee.

13. (1) The Registrar may by notice in writing require any person to furnish to the Registrar within a period specified in the notice (being a period of not less than twenty-eight  
25 days) or within such further period as the Registrar may, on the application of that person made before the expiration of that period, allow and notify to that person, such information as appears to the Registrar to be necessary to enable him to ascertain whether or not a person—

Duty to  
furnish  
information.

30 (a) is carrying on business either alone or in association with any other person or persons under a business name that is required to be registered under this Act; or

35 (b) has failed to lodge with the Registrar a statement required to be lodged under this Act.

(2)



*Business Names.*

(2) A person required under subsection one of this section to furnish information to the Registrar shall within the period specified in the notice or within such further period as the Registrar has allowed furnish such information as it is within his power to furnish and shall not furnish any information which to his knowledge is false in any material particular.

Penalty : One hundred pounds.

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

14. (1) Where a person carrying on business under a business name in contravention of section five or a person who being guilty of an offence under section twelve by reason of the failure to lodge a statement referred to in that section 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 five 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.

Disability  
of persons  
in default.

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

(3)



*Business Names.*

(3) 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  
5 under this Act, and the name shall, for the purpose of the proceedings, be a sufficient designation of the person or persons in any process or other legal document or instrument and any judgment obtained or order made in such proceedings may be enforced against that person, or against those persons  
10 or any of those persons, as the case may be.

(4) Nothing in this section shall be construed as exempting any person from compliance with any provision of this Act.

**15.** (1) Any statement lodged with the Registrar under  
15 this Act shall be deemed to be signed by a person who is <sup>Signing of</sup> statements.  
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
- 20 (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 Registrar is satisfied that it is not practicable to  
25 obtain the signature of a person required by this Act to sign a statement the Registrar 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  
30 only of its registration under this Act evidence relating to that person's interest in a business.



*Business Names.*

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

Verification  
of  
particulars.

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

Penalty  
for false  
statement.

Penalty : One hundred pounds or imprisonment for three months or both.

18. (1) Where the Registrar 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 enquiring whether the person is or the persons are carrying on business under the name and stating that unless the Registrar 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.

Notice of  
proposed  
cancellation.

(2) Where the Registrar has reasonable cause to believe that any provision of section twelve has not been complied with he may send by post a notice addressed to the person or persons who appear to him to be guilty of an offence by reason of the failure to comply with such provision at the place shown in the register as the place where business is carried on under that name stating that unless within one month from the date of the notice that provision is complied with or the Registrar is satisfied that there was in fact no failure to comply with the provision the registration of the business name may be cancelled.

19.



*Business Names.*

19. (1) The Registrar may cancel the registration of a business name—

Cancellation of registration.

- 5 (a) if there is lodged with the Registrar a statement under section twelve 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;
- 10 (b) if the Registrar has sent a notice to any person or persons in respect of the business name under subsection one of section eighteen and the Registrar is not 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;
- 15 (c) if the Registrar has sent a notice to any person or persons under subsection two of section eighteen and within one month after the date of the notice the provision of section twelve to which the notice relates has not been complied with or the Registrar is not satisfied that there was no failure to comply with the provision; or
- 20 (d) if the business name is registered in relation to a corporation only and the name of the corporation has been struck off any register of corporations kept under the Companies Act, 1961, or the corporation has been dissolved.
- 25

30 (2) The Registrar may on any grounds which 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)



*Business Names.*

(3) Where the registration of a business name has been cancelled under this section a person in relation to whom the business name was registered immediately before the cancellation may apply to the Supreme Court in its equitable jurisdiction for an order directing the Registrar to restore the registration of the business name.

(4) On an application under subsection three of this section the Supreme Court may if it is satisfied that the applicant is carrying on business under the business name and that it is just and equitable so to do make the order applied for upon such terms as the Court thinks fit.

(5) Upon the making of an order by the Supreme Court under subsection four of this section the business name shall be deemed to have continued to be registered as if the registration had not been cancelled and the Registrar 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.

**20.** Where a business name is registered under this Act—

- 20 (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 ;
- 25
- (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 ;
- 30 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

Use and  
exhibition  
of business  
name.



*Business Names.*

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 shall unless he proves that he took all reasonable steps to ensure compliance with this section be guilty of an offence against this Act.

Penalty : Fifty pounds. Default penalty.

21. (1) The Registrar may on such evidence as to him appears sufficient correct any error in any entry in the register or in any certificate of registration of a business name. Registrar may correct errors in register, &c.

(2) When correcting an error under subsection one of this section the Registrar shall not erase or render illegible the original words and shall affix the date upon which the correction was made together with his initials.

(3) Any entry or certificate corrected under this section shall have the same validity and effect as if the error had not been made.

(4) The Registrar may accept and register a statement lodged to correct any error in or to supply any particular omitted from a statement previously lodged and registered; and in that event the statement previously lodged and that lodged under this subsection shall be read as one and shall both be incorporated with and form part of the register.

22. (1) A person may on payment of the prescribed fee inspect any statement lodged with the Registrar under this Act and not destroyed pursuant to section twenty-five, or furnished under any corresponding previous enactment and not destroyed at the commencement of this Act, and may make a copy thereof or take extracts therefrom. Inspection of statements.

(2) The Registrar may, on receiving—

(a) a written enquiry with respect to any business name specified in the enquiry; and

(b) the prescribed fee,

issue or send by post a reply to the enquiry.



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*Business Names.*

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**23.** (1) The Registrar shall upon request in writing made by any person and payment of the prescribed fee issue or send by post to that person—

Certificates  
of registra-  
tion or non-  
registration.

- 5 (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
- 10 (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.

15 (2) The Registrar shall not be required to issue—

- 20 (a) under paragraph (a) of subsection one of this section a copy of or extract from a document forming part of the register where that document has been destroyed pursuant to section twenty-five or has been destroyed before the commencement of this Act; or
- 25 (b) under paragraph (b) of subsection one of this section a certificate in respect of a firm, individual or corporation where the registration was effected under the Registration of Firms Act, 1902, and such registration was not in force at the commencement of the repealed Act.

**24.** A document purporting to be—

Evidence of  
registration  
or non-  
registration.

- 30 (a) a certificate of registration issued under this Act;
- 35 (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 paragraph (a) of subsection one of section twenty-three;
- (c) a certificate issued under paragraph (b) of subsection one of section twenty-three; or

(d)



*Business Names.*

- (d) a combination of two or more of the certificates, copies or extracts referred to in paragraph (a), (b) or (c) of this section—

shall in all courts and before all persons having authority to hear receive and examine evidence be prima facie evidence of any matter contained or set out therein.

25. Subject to the Archives Act, 1960, the Registrar may, if in his opinion it is no longer necessary or desirable to retain them, destroy or dispose of any statement or notice lodged, furnished 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 twelve years.

Authority of Registrar to destroy documents and validation.

26. (1) Where a person is or the members of a firm are carrying on business in the State under a business name registered or required to be registered under this Act no person shall use or make reference to that business name—

Invitations to the public to make deposits or loans.

- 20 (a) in any invitation to the public; or

(b) in any advertisement inviting the public, to deposit money with or lend money to that person or firm or use or make reference to a business name in connection with any deposit or loan of money.

- 25 Penalty : Five hundred pounds.

(2) This section does not apply to an invitation to the public made by a public company in conformity with the requirements of the Companies Act, 1961.

27. (1) A person who—

- 30 (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

General penalty provisions.

(c)



*Business Names.*

(c) otherwise contravenes or fails to comply with any provision of this Act,

shall be guilty of an offence against this Act.

Nothing in this subsection shall apply to any offence against  
5 a regulation.

(2) A person who is guilty of an offence against this Act shall be liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly mentioned as the penalty or punishment for the offence.

10 (3) The penalty or punishment pecuniary or other set out in or at the foot of any section or part of a section of this Act shall indicate 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  
15 apply to a part only of the section it shall apply to that part only.

28. (1) Where in or at the foot of any section or part of a section of this Act there appears the expression "Default penalty" it shall indicate that any person who is  
20 convicted of an offence against this Act in relation to that section or part shall be 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 ten pounds.

25 (2) Where any offence is committed by a person by reason of his failure to comply with any 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 one of this section shall be deemed to continue  
30 so long as the thing so required or directed to be done by him remains undone notwithstanding that such period has elapsed.

(3) Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a court of petty sessions held before a stipendiary magistrate. Recovery of penalties.



*Business Names.*

29. 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—
- Offences committed by corporations.

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

30. If in any proceedings for an offence against this Act proof is given that a business name has been displayed on
- 10 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 for the purposes of this Act to be carrying on
- 15 the business under that business name.
- Evidentiary provisions.

31. (1) Where by this Act the Registrar is required or permitted to send a notice to the person or persons in relation to whom the business name is registered the notice may, notwithstanding any other provision of this Act, be sent by post
- 20 addressed to the business name—
- As to service of notices.

- (a) at the place shown in the register as the place where the business is carried on; or
- (b) where more than one place is shown in the register as the place where the business is carried on—
  - 25 (i) at the place shown in the register as the principal place where the business is carried on; or
  - (ii) if no place is so shown as the principal place, at the place shown which appears first in the register as a place where the business is carried on; or
- 30 (c) if it appears from the register that there is for the purposes of this Act a resident agent appointed for the purposes of this Act by the person or persons in



*Business Names.*

in relation to whom the business name is registered,  
at the place shown in the register as the address of  
such resident agent in the State.

(2) Service of any communication or notice or  
5 process on any person or persons carrying on business under  
a business name—

(a) by leaving it at the place where business is carried  
on by such person or persons with some person  
apparently in the service of such person or persons  
10 and apparently of or above the age of sixteen  
years;

(b) by sending it by registered post, or certified mail  
service, addressed to such person or persons at the  
place where business is carried on by such person  
15 or persons,

shall be deemed to be personal service on such person or  
persons.

(3) For the purposes of subsection two of this  
section—

20 (a) “the place where business is carried on” means the  
place shown in the register as the place where the  
business is carried on or where there is more than  
one such place shown in the register—

(i) the place shown in the register as the  
25 principal place where the business is carried  
on; or

(ii) if no place is so shown as the principal  
place, the place shown which appears first  
in the register as the place where the  
30 business is carried on; and

(b) a resident agent appointed for the purposes of this  
Act by the person or persons so carrying on busi-  
ness shall be deemed to be a person in the service  
of such person or persons.



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*Business Names.*

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32. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed to carry this Act into effect or to  
5 give effect to any power, function, duty or authority under this Act. Regulations.

(2) Without limiting the generality of subsection one of this section the regulations may prescribe—

- 10 (a) the fees (not exceeding ten pounds) to be paid under this Act to the Registrar;
- (b) the conditions under and subject to which fees may be waived by the Registrar or the Minister;
- (c) the imposition of additional fees on the late lodgment of documents;
- 15 (d) the forms to be used under this Act (and all such forms or forms to the like effect may be used for the purposes of this Act and shall be sufficient in law);
- (e) the duties of the Registrar for the purposes of this  
20 Act; and
- (f) generally the conduct and regulation of registration under this Act.

(3) The regulations may prescribe penalties not exceeding twenty pounds for any breach thereof.

25 (4) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication, or from a later date to be specified in the regulations; and
- 30 (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If



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*Business Names.*

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If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before the House disallowing any regulation or part thereof, the regulation or  
5 part shall thereupon cease to have effect.

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SCHEDULE.

Sec. 3.

Number of Act.	Title of Act.	Extent of Repeal.
Act No. 50, 1934 ..	Business Names Act, 1934.	The whole.
10 Act No. 35, 1937 ..	Statute Law Revision Act, 1937.	So much of the Second Schedule as amended section 20 of Act No. 50, 1934.

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BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1962  
[2s. 8d.]



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## BUSINESS NAMES BILL, 1962.

### EXPLANATORY NOTE.

THE object of this Bill is to make provisions with respect to the registration and use of business names. The Bill is based on a model Bill prepared in conjunction with the other States and the Commonwealth, and upon its enactment will replace the Business Names Act, 1934-1957.

The Bill—

- (a) prohibits a person or persons from carrying on business otherwise than under his or their own names or under a registered business name ;
- (b) requires the Registrar, who is the Registrar of Companies appointed under the Companies Act, 1961, to keep a register of business names ;
- (c) requires an applicant for registration to furnish with his application information relating to the nature of his business and other matters ;
- (d) necessitates the appointment of a resident agent in New South Wales by a person carrying on business in this State where that person resides outside this State or has no fixed address in this State ;
- (e) requires the Registrar to refuse registration of a business name that he considers to be undesirable or that the Minister has directed him not to accept for registration, and authorises him to cancel registration in certain cases ;
- (f) provides for registration and any renewal thereof to remain in force for a period of three years ;
- (g) requires the person or persons in relation to whom a business name is registered to notify the Registrar of changes of particulars relating to that business name, of the cessation of business under that name and of certain other matters ;
- (h) empowers the Registrar to require persons to furnish to him information to enable him to ascertain whether a breach of the Act has been committed ;
- (i) empowers courts to stay proceedings under unregistered business names or arising out of the business carried on under such names where such proceedings are brought by persons carrying on business in contravention of the provisions referred to in paragraphs (a) and (g) above ;
- (j) authorises the Registrar to cancel the registration of a business name where the person in relation to whom the name is registered has ceased to carry on business under that name and in certain other circumstances ;
- (k) requires any person in relation to whom a business name is registered to use the business name in his business stationery, to display his business name in a conspicuous place outside every place where he carries on business under that name and to exhibit the certificate of registration of the business name at the place or principal place where he carries on business under that name ;
- (l) permits persons, on payment of the prescribed fee, to inspect any statements lodged with the Registrar, or furnished to the Registrar-General under the Business Names Act, 1934-1957 ;



- (m) requires the Registrar to issue, upon payment of the prescribed fee, copies of or extracts from the register or documents forming part of the register, and certificates relating to the registration of business names ;
- (n) prohibits any person carrying on business under a registered business name or a business name required to be registered from using or referring to that business name in any invitation, or advertisement containing an invitation, to the public to deposit money with or lend money to that person or the firm of which he is a member ;
- (o) makes other provisions of an ancillary or consequential nature.



PROOF

No. , 1962.

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## A BILL

To make provision with respect to the registration and use of business names; to repeal the Business Names Act, 1934, and certain other enactments; and for purposes connected therewith.

[MR. MANNIX;—3 MAY, 1962.]

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**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Business Names Act, 1962".

Short title  
and com-  
mencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

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*Business Names.*

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2. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and so as not to exceed the legislative power of the State to the intent that where any provision of this Act or the application thereof to  
5 any person or circumstance is held invalid the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

Construc-  
tion.

3. (1) The Acts mentioned in the Schedule to this Act to the extent to which they are therein expressed to be repealed  
10 are hereby repealed accordingly.

Repeal, and  
savings and  
transitional  
provisions.

(2) Notwithstanding the provisions of subsection one of this section—

(a) any judgment obtained or order made in any proceedings referred to in subsection three of section  
15 thirteen of the repealed Act against a firm, individual or corporation may, to the extent that it has not been enforced before the commencement of this Act, be enforced against such firm or any member thereof or such individual or corporation;  
20 and

(b) any certificate furnished, or copy of or extract from a statement certified, in pursuance of the repealed Act shall be as valid and effectual as it would have been had the repealed Act not been repealed.

25 (3) A reference in any Act, order, regulation, rule, instrument or document to a firm, individual or corporation registered or required to have been registered under the repealed Act or any corresponding previous enactment shall unless the context otherwise requires be construed as referring  
30 also to a firm, the members of which are, or to an individual who or a corporation which, as the case may be, is, carrying on business under a business name registered or required to be registered under this Act.

(4) A reference to the Registrar-General in any Act,  
35 order, regulation, rule, instrument or document relating to any matter under or in connection with the repealed Act or any corresponding



*Business Names.*

corresponding previous enactment shall unless the context otherwise requires be construed as referring to the Registrar under this Act.

(5) A business name in respect of which a firm,  
5 individual or corporation was immediately before the commencement of this Act registered or deemed to be registered under the repealed Act shall subject to this Act upon the commencement of this Act be deemed to be registered under this Act in relation to each member of the firm, in relation to  
10 the individual or in relation to the corporation, as the case may be, and this Act shall apply to and in relation to the business name accordingly.

4. (1) In this Act unless the context or subject matter <sup>Interpre-</sup> otherwise indicates or requires— <sup>tation.</sup>

15 “Business” includes trade and profession.

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

20 “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 interpretation.

“Christian name” includes any forename.

25 “Corporation” means any body corporate formed or incorporated whether in the State or outside the State and includes any foreign company within the meaning of the Companies Act, 1961.

“Director” in relation to a corporation includes any person occupying the position of director of the corporation by whatever name called.

30 “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”



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*Business Names.*

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"Individual" means a natural person and does not include a corporation.

"Initial" includes a recognised abbreviation of a Christian name.

5 "Prescribed" means prescribed by or under this Act.

"Process" includes any writ, summons, plaint, pleading, order or document in or relating to any legal proceedings.

10 "Register" means the register of business names referred to in section six of this Act.

"Registrar" means the Registrar of Companies under the Companies Act, 1961, and includes any Deputy Registrar of Companies.

"Regulations" means regulations made under this Act.

15 "Repealed Act" means the Business Names Act, 1934, as amended by subsequent Acts.

20 "Secretary" in relation to a corporation includes any person performing the duties of secretary of the corporation and in relation to a corporation registered under Division 3 of Part XI of the Companies Act, 1961, includes the agent within the meaning of that Division of the corporation.

"Section" means section of this Act.

"State" means the State of New South Wales.

25 (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—

30 (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)



*Business Names.*

- (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 such debts;
- (f) conducts an isolated transaction that is completed within a period of thirty-one 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.

5. (1) A person shall not either alone or together with other persons carry on business in the State under a business name unless—

Certain  
business  
names to be  
registered.

- (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 any provisions of section twelve that are applicable have been complied with by or on behalf of the person or persons in relation to whom the business name is registered.

Penalty : One hundred pounds. Default penalty.

(2)



*Business Names.*

(2) For the purposes of subsection one of this section the name of a person consists of—

(a) in the case of an individual—his full name, or his surname together with—

- 5 (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
- 10 (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 such names and such initials;
- 15

(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 one of this section 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 any court, or under the powers contained in any instrument to carry on the business, the business shall for the purposes of this Act be deemed to be carried on by the person or persons 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 thereof shall not operate to avoid any agreement transaction act or matter.



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*Business Names.*

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6. (1) The Registrar shall keep a register of business names registered under this Act in such form as he thinks fit. Register of business names.

(2) A statement lodged under this Act in relation to a business name registered under this Act, whether lodged before or after the registration, shall for the purposes of this Act be deemed to be incorporated with and to form part of the register.

(3) The register and index of the business names of firms, individuals and corporations registered or deemed to be registered under the repealed Act, and any statement or notice furnished or sent to the Registrar-General under the repealed Act or any corresponding previous enactment, shall be deemed to be incorporated with and to form part of the register kept under this Act.

7. (1) An application for the registration of a business name shall be made by lodging with the Registrar 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— Registration of business names.

(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 any 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 or is to be the principal place of business;

(d)



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*Business Names.*

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- 5 (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 regis-  
tered office or proposed registered office in the State  
of each applicant which 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
- 10 (f) where the business name is a name adopted by the  
applicant or applicants in substitution for another  
name—that other name.

(2) If any applicant is an infant and he is not so  
described in the statement and the date of his birth is not  
15 set out in the statement, the statement shall for the purposes  
of section seventeen be deemed to be false in a material  
particular.

(3) Subject to this Act the Registrar shall upon the  
lodging of a statement under subsection one of this section in  
20 relation to a business name register the business name.

(4) The Registrar shall upon registering a business  
name issue a certificate of registration in the prescribed form  
signed by the Registrar.

(5) The Registrar may upon payment of the  
25 prescribed fee issue a further certificate of registration.

(6) A business name shall not be registered under  
this Act if the statement referred to in subsection one of this  
section is lodged with the Registrar on a date preceding by  
more than two months the date shown in the statement as  
30 the proposed date of commencement of carrying on business.

(7) The Registrar may refuse to register a business  
name if he is not satisfied that the particulars set out in the  
statement lodged under subsection one of this section are  
correct.



*Business Names.*

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

Resident agent.

(a) include the name and address of some person resident in the State who in relation to the carrying on of business under that name—

10 (i) has consented in writing to be the resident agent of the person or persons for the purposes of this Act; and

15 (ii) is authorised in writing by the person or persons to accept service on behalf of the person or persons of any notices for the purposes of this Act and of any process; and

(b) in addition be signed by the person who has consented to be the resident agent.

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

30 9. (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 Registrar, undesirable or is a name, or a name of a kind, that the Minister has, for the purposes of this Act, directed the Registrar not to accept for registration.

Restriction on registration of business names that are undesirable, &c.

(2)



*Business Names.*

(2) The Minister shall cause a direction given by him under subsection one of this section to be published in the Gazette and a copy of the direction to be forwarded to the Attorney-General of the Commonwealth and the Attorney-  
5 General of each State of the Commonwealth.

10 **10.** (1) If a business name which could not be registered under this Act without contravention of subsection one of section nine is registered through inadvertence or otherwise, the Registrar 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—

15 (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 twenty-eight days) as is specified in the notice; and

(b) setting out his reasons for the proposed cancellation—

20 and upon the expiration of that period the Registrar may, if the notice has not been annulled under subsection three of this section, cancel the registration of that name.

25 (2) The Registrar shall not except with the approval of the Minister exercise his powers under subsection one of this section with respect to a business name that is deemed to be registered under this Act by virtue of subsection five of section three.

(3) The Minister may at any time before the expiration of the period specified in a notice given by the Registrar under subsection one of this section annul the notice.

30 (4) The Registrar may remit any fee payable in respect of an application for the registration of a new business name in place of a business name the registration of which is cancelled under subsection one of this section.

**11.**



*Business Names.*

11. (1) Subject to this Act, the registration, or renewal of a registration of a business name, shall be in force for a period of three years but the registration may from time to time be renewed by lodging with the Registrar at any time within the period of one month before or after the expiry of the registration or renewal a statement in the prescribed form signed by the person or one of the persons in relation to whom the name is registered accompanied by the prescribed fee.
- 5
- (2) The renewal of a registration shall take effect from the day on which the previous registration or renewal expires or has expired, as the case may be.
- 10
- (3) The Registrar shall upon renewing the registration of a business name issue a certificate of registration in the prescribed form signed by the Registrar.
- 15
- (4) The Registrar shall before or after the expiration of the registration of a business name but not earlier than one month before, nor later than one month after, the expiration send by post to the person or persons in relation to whom the business name is or was registered at the place shown in the register as the place where business is carried on under that name a notice of the date on which the registration is due to expire or has expired, as the case may be.
- 20
- (5) Where the registration of a business name has expired the Registrar 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 Registrar so nearly resembles it as to be calculated to deceive until the expiration of one month after the expiry of the registration.
- 25
- (6) Notwithstanding the provisions of subsection one of this section the following provisions shall apply in relation to
- 30
- 35



*Business Names.*

to a business name which 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—

- 5 (a) the registration of the business name shall subject to this Act remain in force until a date fixed by the Registrar;
- (b) notice in writing of the date so fixed shall be sent by post by the Registrar 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;
- 10 (c) the date fixed by the Registrar shall be a date not less than one month after the notice in writing has been sent by post to such person or persons;
- 15 (d) no such notice in writing shall be sent by the Registrar until the expiration of a period of at least three years from the date upon which the name was registered or deemed to be registered under the repealed Act;
- 20 (e) the Registrar shall not be required to send to the person or persons in relation to whom the business name is or was registered the notice referred to in subsection four of this section; and
- 25 (f) after the renewal of the registration of the business name the provisions of this subsection shall cease to apply in relation to the business name.

12. (1) Where a business name is registered under this Act and a change occurs—

- 30 (a) which renders the description of the nature of the business lodged with the Registrar 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

Notification of changes in particulars relating to registered business names, cessation of business, &c.

(c)



*Business Names.*

(c) in the registered particulars relating to the resident agent of the person or persons in relation to whom the name is registered—

there shall be lodged with the Registrar, within fourteen days  
5 thereafter or within such further time as the Registrar may, before the expiration of that period, allow, 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 Registrar of particulars of and of  
10 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  
15 registered office in the State of a person being a corporation in relation to which a business name is registered under this Act, there shall be lodged with the Registrar, within fourteen days thereafter or within such further time as the Registrar may, before the expiration of that period, allow, a statement  
20 in the prescribed form, signed by that person notifying the Registrar 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  
25 in the State under that name, there shall be lodged with the Registrar, within fourteen days thereafter or within such further time as the Registrar may, before the expiration of that period, allow, a statement in the prescribed form notifying the Registrar of the cessation and of the date thereof signed  
30 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  
35 other persons commences or commence to carry on business in the State under that name in place of or in association with the person or persons in relation to whom the name is already registered, there shall be lodged with the Registrar, within  
fourteen



*Business Names.*

fourteen days thereafter or within such further time as the Registrar may, before the expiration of that period, allow, a statement in the prescribed form signed by the person or all of the persons carrying on business under that name immediately after that other person or those other persons so commenced carrying on business under that name, setting out the date on which that other person or those other persons so commenced to carry on business and in relation to each person required to sign the statement—

10 (a) who is an individual—the Christian names and surname and any former Christian names or surname and the usual place of residence of the individual (and where he is an infant in addition to the particulars referred to in this paragraph he shall be  
15 so described in the statement and the date of his birth shall be set out therein) ; or

(b) who is a corporation—the corporate name and the place of the registered office in the State of the corporation,

20 and where the person or all of the persons carrying on business under that business name after that date is or are not resident within the State or does not or do not have a fixed address or fixed addresses within the State, the statement shall—

25 (i) also set out the name and address of some person resident in the State who in relation to the carrying on of business under that name—

(a) has consented in writing to be the resident agent for the purposes of this Act of the  
30 person or persons required to sign the statement ; and

(b) is authorised in writing by the person or persons required to sign the statement to accept service on his or their behalf of any  
35 notices for the purposes of this Act and of any process ; and

(ii)



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(ii) in addition be signed by the person who has consented to be the resident agent.

(5) Where, while a person is the resident agent of a person or persons in relation to whom a business name is registered, the person or any one or more of the persons in relation to whom the name is registered commences or commence to reside within the State or acquires or acquire a fixed address or fixed addresses within the State, there shall be lodged with the Registrar within fourteen days after such person or persons so commenced to reside or acquired a fixed address or fixed addresses, or within such further time as the Registrar may, before the expiration of that period allow, a statement in the prescribed form signed by the person or one of the persons in relation to whom the name is registered—

- 15 (a) notifying the Registrar that the person appointed to be the resident agent of the person or persons in relation to whom the name is registered has ceased to be the resident agent of such person or persons; and
- 20 (b) setting out the name or names of the person or persons in relation to whom the name is registered and who has or have commenced to reside or has or have acquired a fixed address or fixed addresses in the State, and the usual place or places of residence or the fixed address or fixed addresses
- 25 within the State of such person or persons.

(6) Where, while a person is the resident agent of a person or persons in relation to whom a business name is registered, another person or other persons commences or  
30 commence to carry on business in the State under that name in place of or in association with the person or persons in relation to whom the name is already registered and that other or one of those other persons resides within the State or has a fixed address within the State, there shall be lodged with  
35 the Registrar within fourteen days after that other person or those other persons so commenced to carry on business or within such further time as the Registrar may, before the expiration of that period, allow, a statement in the prescribed form



*Business Names.*

form signed by the person or one of the persons carrying on business under that name after that other or those other persons so commenced to carry on business—

- 5 (a) notifying the Registrar that the person who was the resident agent of the person or persons in relation to whom the name was registered immediately before that other or those other persons so commenced to carry on business is not or has ceased to be the resident agent of the person or persons carrying on business under that name immediately after that other person or those other persons so commenced carrying on business; and
- 10 (b) setting out the name or names of that other person or those other persons who resides or reside within the State or has or have a fixed address or fixed addresses within the State, and the usual place or places of residence or the fixed address or fixed addresses within the State of that other person or those other persons.
- 15 (7) Where a business name is registered under this Act and a person appointed the resident agent of the person or persons in relation to whom the name is registered ceases to be the resident agent of that person or those persons, there shall be lodged with the Registrar a statement in the prescribed
- 20 form notifying the Registrar of the appointment of another person in place of or in succession to the person who has ceased to be the resident agent of the person or persons in relation to whom the name is registered, and of the date of the appointment—
- 25 (a) signed by the person or by one of the persons in relation to whom the name is registered and by the other person so appointed; and
- 30 (b) showing that the other person so appointed—
  - 35 (i) is in relation to the carrying on of business under that name authorised by the person or persons in relation to whom the name is registered to accept service on his or their behalf of any notices for the purposes of this Act and of any process; and
  - (ii)



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persons interested therein and that the Registrar General shall endorse every Crown Grant or Certificate of Title comprising such lands or any part thereof accordingly.

23. (a) The Company hereby covenants with the Minister that  
 5 the Company will not upon any land comprised in any lease or  
 license to it in connection with its said refinery or upon any land  
 granted to or owned used or occupied by it in connection with such  
 refinery at any time do or permit or suffer to be done anything  
 which will in any way endanger the preservation of the historic  
 10 Captain Cook's Landing Reserve (being the land described in the  
 Fourth Schedule hereto) or the vegetation thereon.

(b) A covenant or condition to the effect of the provisions  
 of subclause (a) of this Clause may be inserted in every lease or  
 license granted by the Crown or the Minister or the Board to the  
 15 Company for the purposes of or in connection with the said refinery.

(c) Provisions to the effect of subclause (a) of this Clause will  
 be included in the Crown Grants of the lands described in the First  
 Schedule hereto and (without limiting the foregoing) the Act ratifying  
 this Agreement may provide that such provisions of the said Crown  
 20 Grants shall be deemed to be covenants by the Company for itself  
 its successors and assigns with the Minister and his successors in  
 office and that such provisions shall bind the lands described in the  
 First Schedule hereto and every part thereof into whosoever hands  
 the same may come and bind the persons interested therein and that  
 25 the Registrar General shall endorse every Crown Grant or Certificate  
 of Title comprising such lands or any part thereof accordingly.

24. (a) The Company hereby covenants with the Minister that  
 the Company shall at its own expense commence at the date notified  
 to it in that behalf by the Minister on or after the date of commence-  
 30 ment of this Agreement and thereafter continuously proceed with the  
 construction and erection of a substantial fence to the approval in  
 all respects of the Minister on and along the lines forming the  
 boundaries of the lands comprising the Company's refinery so that at  
 the expiration of six months from the date so notified by the  
 35 Minister the Company shall have at its own cost completed the full  
 and proper construction and erection as aforesaid of the said fence  
 and the Company covenants with the Minister to construct and erect  
 at its own cost the said fence within the said period of six months  
 in accordance in all respects with the foregoing provisions of this  
 40 Clause.

(b) In the event of the Company failing to comply with any  
 of the foregoing provisions of this Clause the Minister may without  
 prejudice to any other remedy of Her Majesty or the Minister under  
 this Agreement by reason of such default of the Company do all  
 45 such acts and things as the Minister may think necessary or desirable



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to remedy the default of the Company and the Company shall on demand pay to the Minister all costs and expenses incurred by the Minister in so doing and the same shall be recoverable by him from the Company in a Court of competent jurisdiction and a certificate  
5 of the Under Secretary of the amount of such costs and expenses incurred by the Minister shall be prima facie evidence thereof and neither Her Majesty nor the Minister shall incur any liability towards the Company by reason of any damage whatsoever done to or upon  
10 the lands the subject of this Agreement or to or upon any adjoining or adjacent lands of the Company in the performance by the Minister, his employees, agents, workmen, servants or licensees of any act or thing permitted to be done by the Minister under the provisions of this Clause.

25. Her Majesty Her Heirs and Successors and/or the Minister  
15 shall not be called upon or bound to pay the cost or any proportion of the cost of any dividing fence or fences between any land sold or leased by Her Majesty or the Minister to the Company and any remaining land of Her Majesty or the Minister and the Company will from time to time and at all times indemnify and keep indemnified  
20 Her Majesty Her Heirs and Successors and the Minister against all claims by any person or corporation whomsoever or whatsoever for such cost or any proportion thereof.

26. The Company hereby covenants with the Minister that it will from time to time and at all times hereafter indemnify and keep  
25 indemnified Her Majesty Her Heirs and Successors and the Minister his successors and assigns and the Government of the said State of New South Wales from and against all actions claims and demands which may at any time be brought or made against Her Majesty Her Heirs and Successors or the Minister his successors or assigns or the  
30 Government of the said State of New South Wales by or for any person body firm or corporation whomsoever or whatsoever in respect of any loss of life or of any injury to person or property or of any loss or damage occasioned by or arising out of or by reason or as a result of any act or thing done or omitted to be done by the Company  
35 its successors or assigns or its or their employees agents workmen servants or licensees in or in connection with or with respect to the exercise and enjoyment of any of the rights or privileges by this Agreement to be conferred on or granted to the Company or in or in connection with or with respect to the performance by the  
40 Company of any of the obligations or duties by this Agreement imposed upon the Company.

27. The Company hereby covenants with the Minister that it will observe and perform and cause to be observed and performed the provisions of all statutes rules regulations ordinances and by-laws  
45 now or hereafter in force and all orders and directions which may be



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be given under the same or any of them in so far as the same or any such order and direction relates to the Company's refinery or to the construction control management or user of the structures thereon or any of them or to any business or activity conducted by  
5 the Company on the refinery premises.

28. Any notice or communication required to be or that may be given to the Company under or in connection with this Agreement by or on behalf of Her Majesty Her Heirs or Successors or the Minister shall be deemed to have been duly given if signed by the Under  
10 Secretary.

29. This Agreement is subject to ratification by the Parliament of the State of New South Wales and shall come into effect when so ratified and the expression "the date of commencement of this Agreement" means the date of commencement of the Act which ratifies  
15 it PROVIDED that if this Agreement is not ratified by the said Parliament before the Thirty-first day of December 1962 it shall become null and void.

30. The Company will not at any time without the consent in writing of the Minister first obtained assign transfer or in any manner  
20 make over this Agreement or the benefit of this Agreement to any person body or corporation.

31. Such of the provisions and conditions of this Agreement as require or prescribe any act or thing to be done or not to be done by the Company shall in addition to being read and construed as  
25 conditions of this Agreement be also read and construed as agreements whereby the Company covenants with the Minister to observe and perform the said provisions and conditions.

32. Any opinion to be formed by the Minister under this Agreement may be formed by him on such materials as he himself may  
30 think sufficient and in such case the Minister shall be deemed to be exercising merely administrative functions.

33. In this Agreement or any Schedule hereto unless the context otherwise requires the singular includes the plural and vice versa and the following expressions shall have the meanings set opposite  
35 thereto respectively:—

"Auditor-General" means the Auditor General for the State of New South Wales or the person acting as such for the time being.

40 "Board" means the Maritime Services Board of New South Wales.

"month" means calendar month.

"Under



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"Under Secretary" means the Under Secretary, Department of Lands of the State of New South Wales, or the person acting as such for the time being.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first above written.

## THE FIRST SCHEDULE HEREINBEFORE REFERRED TO.

ALL THAT piece or parcel of land situate in the Parish of Sutherland, County of Cumberland, Sutherland Shire comprising Portions 1079 and 1078—

- 10 FIRSTLY: COMMENCING on the south eastern boundary of  
 Portion 993 at a point bearing 80 degrees 13 minutes 9.6  
 links from the south western corner of that portion and  
 bounded thence on the north west by part of that boundary  
 aforesaid bearing 80 degrees 13 minutes 5920.5 links; on  
 15 the east and south east by lines bearing 176 degrees 49  
 minutes 716.8 links and 220 degrees 8 minutes 512.2 links;  
 again on the south east by a north western side of a road  
 one chain wide bearing 243 degrees 9 minutes 791.3 links;  
 on the south by a northern side of the road aforesaid  
 20 bearing 269 degrees 15 minutes 4458.9 links; and on the  
 south west by a north eastern side of a road one chain  
 wide bearing 323 degrees 47 minutes 641.1 links to point  
 of commencement and containing an area of 54 acres and  
 shown on Plan C. 8286 2030 in the Department of Lands.
- 25 SECONDLY: COMMENCING on the southern side of a road  
 one chain wide separating Portion 1079 from 1078 at a  
 point bearing 143 degrees 47 minutes 122.8 links from the  
 south western corner of Portion 1079 and bounded thence  
 on the north and north west by the southern and south  
 30 eastern boundaries of that road bearing 89 degrees 15  
 minutes 4410.8 links and 63 degrees 9 minutes 735.6 links;  
 generally on the south east by lines bearing 191 degrees 25  
 minutes 1191.6 links; 202 degrees 0 minutes 736.5 links,  
 35 242 degrees 13 minutes, 471.2 links; 231 degrees 30 minutes  
 320.32 links 200 degrees 38 minutes 1130.3 links and 213  
 degrees 56 minutes 583.1 links; generally on the south west  
 by north eastern sides of a road one chain wide bearing  
 294 degrees 43 minutes 1165.7 links, 299 degrees 48  
 40 minutes 260.2 links, 309 degrees 59 minutes 260.3 links, 320  
 degrees 10 minutes 260.3 links, 330 degrees 21 minutes  
 260.2 links, 335 degrees 27 minutes 936.3 links and 323  
 degrees 47 minutes 1685.2 links to point of commencement  
 and containing an area of 103 acres 2 roods 35 perches  
 45 and shown on plan C. 8286 2030 in the Department of  
 Lands.

THE



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## THE SECOND SCHEDULE HEREINBEFORE REFERRED TO.

ALL THAT piece or parcel of land situated at Kurnell in the Shire and Parish of Sutherland, County of Cumberland, containing an area of 2 acres 2 roods 29 perches, more or less, COMMENCING  
5 at a point on the eastern boundary of Portion 1079 bearing 176 degrees 49 minutes 130.3 links from the north eastern corner of that Portion, and comprising a strip of land 75.76 links wide, 45.46 links on the south of and 30.30 links on the north of lines bearing 89 degrees 33 minutes 2870.4 links and 90 degrees 34 minutes 670  
10 links, as shown on plan C. 8286 2030 in the Department of Lands.

## THE THIRD SCHEDULE HEREINBEFORE REFERRED TO.

## SPECIFICATION.

1. The Company shall construct at its own expense a road centrally situated on the designed road along that part of the south-western  
15 boundaries of Portion 1079, and Portion 1078 extending 50 chains south-easterly from the north-western corner of Portion 1079, in the Parish of Sutherland, County of Cumberland. The standard of construction shall be a formation width of 36 feet comprising a 24 feet bituminous carriageway with 6 feet wide fully constructed  
20 soil cement stabilised shoulders on each side. The construction shall comply with Department of Main Roads standards for heavy industrial loading and shall include all such drains culverts and other drainage works and facilities as the Council of the Shire of Sutherland shall require and all work shall be completed to the satisfaction of the  
25 said Council.

2. The Company at its own expense shall reclaim and fill the whole of the land within the designed road one chain wide dividing Portion 1078 from Portion 1079, in the Parish of Sutherland, County of Cumberland to the final levels of the adjacent land and shall provide  
30 a strip of consolidated gravel 16 feet wide and 6 inches deep placed centrally to final levels slightly above the adjacent land to the satisfaction of the Minister for Lands.

3. Reclamation and levelling of the land sold to the Company under the Agreement shall be carried out by the Company in accordance with the requirements of the Council of the Shire of Sutherland, the final discharge of water from the land to be such that the water can be satisfactorily disposed of at an invert level not less than two feet of standard datum at Captain Cook Drive. Should reclamation or levelling of the Site interfere with the natural drainage of Crown  
40 land adequate drainage provision is to be made by the Company at its cost to preserve the status quo in the drainage of Crown lands.

4. The Company shall maintain the existing tracks in use through the land sold or provide alternative access and the public shall have the right to use those tracks or alternative access until the road referred  
45 to in item (1) has been satisfactorily completed.

5.



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5. The type, size and location of all structures to be erected on the subject land and the treatment and landscaping of the land shall be subject to the approval of the Minister for Local Government.

6. Drainage of the land sold and specifications for all structures to be erected on the land shall be subject to such conditions as may be imposed by the Council of the Shire of Sutherland.

THE FOURTH SCHEDULE HEREINBEFORE REFERRED TO.

ALL THAT piece or parcel of land situated in the Parish of Sutherland County of Cumberland, Sutherland Shire, comprising an area of 248 acres proclaimed as Public Park under the name of "Captain Cook's Landing Place" by notification in the Government Gazette on 9th July 1902 and shown on Plan Ms. 1541 Sydney in the Department of Lands COMMENCING on the high water mark of Botany Bay at the prolongation of the north-eastern side of Polo Street; bounded thence on the south-west by that prolongation and the north-eastern side of Polo Street and its prolongation south-easterly to the Pacific Ocean, thence generally on the north-east and north and north-west by the high water mark of the Pacific Ocean and Botany Bay north-westerly, westerly and south-westerly to the point of commencement.

THE COMMON SEAL of AUSTRALIAN LUBRICATING OIL REFINERY LIMITED was affixed hereto in pursuance of a resolution of the Directors and in the presence of:

L.S.  
D. C. HARPER, Director.

R. W. SEARLE, Secretary.

SIGNED SEALED AND DELIVERED by THE HONOURABLE KEITH CLIVE COMPTON the Minister for Lands of the State of New South Wales for and on behalf of Her Most Gracious Majesty Queen Elizabeth II (but not so as to incur any personal liability under this Agreement) in the presence of:

L.S.  
K. C. COMPTON.

W. J. BROADFOOT, J.P.







