

Queensland



ANNO UNDECIMO

ELIZABETHAE SECUNDAE REGINAE

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No. 12 of 1962

**An Act to make Provision with respect to the Registration  
and Use of Business Names and for other purposes**

[ASSENTED TO 26TH NOVEMBER, 1962]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. (1) **Short title.** This Act may be cited as "*The Business Names Act of 1962.*"

(2) **Commencement.** This Act shall come into operation on the first day of January, one thousand nine hundred and sixty-three.

2. **Repeals and transitory provisions.** (1) The Acts mentioned in the Schedule to this Act to the extent to which they are therein expressed to be repealed are hereby repealed accordingly.

(2) A reference in any Act, Order in Council, order, regulation, by-law, rule, Proclamation, instrument, or document to firms, individuals, or corporations registered or required to have been registered under the repealed Act or any corresponding previous enactment shall, unless the context otherwise requires, be construed as a reference to firms the members of which are, or to individuals who are, or to corporations that are carrying on business under a business name that is registered or required to be registered, or deemed to be registered, under this Act.

(3) A firm-name that was, immediately before the commencement of this Act, registered under the repealed Act shall, upon the commencement of this Act, be deemed to be registered as a business name under this Act in relation to each member of the firm, or in relation to the individual or corporation, as the case may be, by whom or by which it was registered under that Act, and this Act applies to and in relation to such a firm-name accordingly.

(4) A reference to the Principal Registrar of Firms or a Registrar of Firms in any Act, Order in Council, order, regulation, by-law, rule, Proclamation, instrument or document relating to any matter under or in connexion with the repealed Act or any corresponding previous enactment shall unless the context otherwise requires be construed as referring to the Registrar under this Act.

**3. Interpretation.** Cf. No. 18 of 1956 (A.C.T.), s. 4. No. 50 of 1934 (N.S.W.), s. 2. No. 6212 (Vic.), s. 3. 6 Geo. VI No. 24 (Qld.), s. 3. No. 1851 of 1928 (S.A.), s. 3. No. 2 of 1943 (W.A.), s. 3. 63 Vic. No. 34 (Tas.), s. 3. (1) In this Act, unless the contrary intention appears—

“Business” includes trade and profession;

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

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

“Christian name” includes any forename;

“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 of 1961*”;

“Crown Law Officer” means the Attorney-General, Minister for Justice or Solicitor-General;

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

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

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

“Initial” includes a recognized abbreviation of a christian name;

“Register” means a register of business names kept under this Act;

"Registrar" means the Registrar of Business Names under this Act and includes any Deputy Registrar of Business Names ;

"Repealed Act" means "*The Registration of Firms Act of 1942*," as amended;

"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 of 1961*," includes the agent of the corporation appointed for the purpose of that Division;

"Section" means section of this Act.

(2) For the purposes of this Act a person shall not be regarded as carrying on business within the State for the reason only that within the State he—

- (a) is or becomes a party to any action or suit or any administrative or arbitration proceeding, or effects settlement of an action, suit or proceeding or of any claim or dispute;
- (b) maintains any bank account;
- (c) effects any sale through an independent contractor;
- (d) creates evidence of any debt or creates a charge on real or personal property ;
- (e) secures or collects any of his debts or enforces his rights in regard to any securities relating to 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.

**4. Registrar of Business Names and Other Officers.** (1) For the purposes of this Act there shall be a Registrar of Business Names.

(2) The person who holds the office of Registrar of Companies and Commercial Acts, Brisbane, shall by virtue of his office and without further or other appointment, and while he holds that office, be the Registrar of Business Names and shall hold office accordingly.

(3) The Governor in Council may, from time to time, appoint such and so many Deputy Registrars of Business Names as are required for the purposes of this Act.

(4) The appointment of a Deputy Registrar may be made generally or limited to a district specified by the appointment.

(5) Where the appointment of a Deputy Registrar is limited to a district specified by the appointment, the exercise of his powers, authorities and functions, and the discharge of his duties under this Act shall be limited to and in relation to that district and the Deputy Registrar shall be the Deputy Registrar of Business Names for that district.

(6) Every person who holds the office of Deputy Registrar of Companies and Commercial Acts, Brisbane, shall, by virtue of his office and without further or other appointment and while he holds that office, be a Deputy Registrar of Business Names without limitation to a district and shall hold office accordingly.

(7) Every person who holds the office of clerk of petty sessions, save the office of clerk of petty sessions at Brisbane, shall by virtue of his office and without further or other appointment and while he holds that office, be a Deputy Registrar of Business Names and shall hold office accordingly.

(8) Where a person holds the office of Deputy Registrar of Business Names pursuant to subsection (7) of this section, the exercise of his powers, authorities and functions, and the discharge of his duties, under this Act shall be limited to and in relation to the petty sessions district wherein the place whereat he holds the office of clerk of petty sessions is situated and the person shall be the Deputy Registrar of Business Names for that district.

(9) Anything by this Act appointed or required to be done or signed by a Registrar may be done or signed by a Deputy Registrar of Business Names.

**5. Certain business names to be registered.** A.C.T. s. 6. N.S.W. s. 4. Vic. s. 4. Qld. s. 5. S.A. s. 4. W.A. ss. 4, 6. Tas. s. 4. (1) A person shall not either alone or in association with other persons carry on business in the State under a business name unless—

- (a) the business name consists of the name of that person and the name of each other person if any in association with whom that person is so carrying on business without any addition; or
- (b) the business name is registered under this Act in relation to that person and each other person if any in association with whom that person is so carrying on business,

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

Penalty: One hundred pounds. Default penalty.

(2) For the purposes of subsection (1) 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—
  - (i) his christian name or names;
  - (ii) the initial or initials of his christian name or names;
  - (iii) a combination of one or more of his christian names and the initial or initials of his remaining christian name or names;or
- (iv) the christian name or names by which he is commonly known or the initial or initials by which he is commonly known or any combination of one or more of 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 (1) 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 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.

**6. Register of business names.** A.C.T. s. 18. N.S.W. s. 16. Vic. s. 16. Qld. s. 18. S.A. s. 18. W.A. s. 16. Tas. s. 16. (1) The Registrar of Business Names shall keep a register of business names registered under this Act in such form as he thinks fit.

(2) The Registrar of Business Names shall from time to time but once at least in every month furnish copies, certified under the hand of the Registrar to be correct, of all statements lodged with him under this Act to the Deputy Registrar of Business Names for the district wherein is situated any place where business is or is proposed to be carried on under the business name to which the statement relates.

(3) Where a business name is registered under this Act and under that name business is or is proposed to be carried on at a place in a district to and in relation to which the exercise of the powers, authorities and functions, and the discharge of the duties, under this Act of a Deputy Registrar of Business Names are limited, that Deputy Registrar shall—

- (a) record the business name in a register of business names to be kept by him in such form as he thinks fit;
- (b) furnish copies, certified under his hand to be correct, of all statements lodged with him under this Act at such times as the Registrar of Business Names shall direct but in the absence of any such direction at least once in every month—
  - (i) to the Registrar of Business Names; and
  - (ii) to the Deputy Registrar of Business Names for any other district wherein is situated any place where business is or is proposed to be carried on under the business name to which the statement relates.

(4) 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 kept by the Registrar with whom it is lodged.

(5) A copy, certified under the hand of the Registrar to be correct and furnished pursuant to this section, of a statement lodged under this Act in relation to a business name registered under this Act, whether the statement was 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 of business names kept by the Registrar to whom the statement was so furnished.

(6) A register kept for the purposes of the repealed Act shall be deemed to be incorporated with and to form part of the corresponding register kept under this Act.

**7. Registration of business names.** A.C.T. s. 7. N.S.W. s. 6. Vic. s. 5. Qld. s. 6. S.A. ss. 6, 17 (1). W.A. s. 7. Tas. ss. 5, 15. (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—

- (a) the business name;
- (b) a concise description of the true nature of the business carried on or proposed to be carried on under that name by the applicant or applicants;
- (c) the address of each place in the State where the business is or is proposed to be carried on showing, if the business is or is proposed to be carried on at more than one place in the State, which of those places is or is to be the principal place of business;
- (d) the christian names and surname and any former christian names or surname and the usual place of residence of each applicant who is an individual and the corporate name and the place of the 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 he shall be so described in the statement and the date of his birth shall be set out in the statement, and a statement which does not comply with this subsection 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 (1) 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 (1) 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 (1) of this section are correct.

(8) When the statement under subsection (1) of this section is lodged with a Deputy Registrar for a district, the Deputy Registrar shall not register the business name unless the approval of the Registrar of Business Names to the registration of that name is first had and obtained.

**8. Resident agent. S.A. s. 5.** (1) Where a business name is required to be registered under this Act and the person or all the persons (in this subsection referred to as "the proprietor or proprietors") 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 (1) of section seven shall—

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

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

(ii) is authorised in writing by the proprietor or proprietors to accept service on behalf of the proprietor or proprietors 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 of the proprietor or proprietors.

(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 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. Restriction on registration of business names that are undesirable, &c. A.C.T. s. 24. N.S.W. ss. 21–24. Vic. ss. 21–25. Qld. ss. 10–12. S.A. s. 23. W.A. ss. 24–26. Tas. s. 8.** (1) Except with the consent of the Crown Law Officer 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 of Business Names undesirable or is a name or a name of a kind that the Crown Law Officer has for the purposes of this Act directed the Registrar not to accept for registration.

(2) The Crown Law Officer shall cause a direction given by him under subsection (1) of this section to be published in the *Government Gazette* and a copy of the direction to be forwarded to the Attorney-General of the Commonwealth and the Attorney-General of each State of the Commonwealth.

**10. Power to cancel registration of business names that are undesirable, &c. A.C.T. s. 25. N.S.W. s. 26. Vic. s. 26. W.A. s. 28. Tas. s. 20.** (1) If a business name which could not be registered under this Act without contravention of subsection (1) 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—

(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, and upon the expiration of that period the Registrar may cancel the registration of that name.

(2) The Registrar shall not except with the approval of the Crown Law Officer exercise his powers under subsection (1) of this section with respect to a firm-name that is deemed to be registered under this Act by virtue of subsection (3) of section two.

(3) The Crown Law Officer may at any time before the expiration of the period specified in a notice given by the Registrar under subsection (1) of this section annul the notice.

(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 (1) of this section.

**11. Renewal of registration.** A.C.T. s. 10. Qld. s. 6. S.A. s. 7. W.A. s. 16. (1) The registration of a business name remains in force until the thirty-first day of January next following the date thereof 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 a statement in the prescribed form signed by the person or one of the persons in relation to whom the name is registered together with the prescribed fee.

(2) The renewal of a registration shall be deemed to have been effected for a further period of one year as from the day on which the previous registration expires or has expired (as the case may be).

(3) The Registrar shall after the expiration of the registration of a business name send by post to the person or persons in relation to whom the business name 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 has expired.

(4) Where the registration of a business name has expired the Registrar shall not 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 sending of the notice referred to in subsection (3) of this section.

(5) Where a firm-name is deemed to be registered as a business name under this Act by virtue of subsection (3) of section two, the registration of the business name shall subject to this Act remain in force until the thirty-first day of January, One thousand nine hundred and sixty-three.

(6) Where the registration of a business name expires by effluxion of time on the thirty-first day of January in any year and the registration thereof is not renewed or further renewed within the period during which pursuant to subsection (1) of this section registration may be renewed or, as the case may be, further renewed, every person in relation to whom the business name was registered shall be guilty of an offence against this Act unless he proves—

- (a) that he or all the persons in relation to whom the business name was registered ceased to carry on business in the State under that name on or before the said thirty-first day of January and a statement required by the provisions of subsection (3) of section twelve to be lodged was lodged in accordance with those provisions or, if not so lodged, that he took all reasonable steps to ensure compliance with those provisions; or
- (b) that he took all reasonable steps to secure the renewal or further renewal of the registration in accordance with this section.

Penalty: Fifty pounds.

**12. Notification of changes in particulars relating to registered business names, cessation of business, &c.** A.C.T. s. 9. N.S.W. s. 10. Vic. s. 9. Qld. ss. 7, 8, 10. S.A. s. 11. W.A. s. 12. Tas. s. 10. (1) Where a business name is registered under this Act and a change occurs—

- (a) 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
- (b) 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 thereafter or within such further time as the Registrar allows, a statement in the prescribed form, signed by the person or one of the persons in relation to whom the name is registered at the time of the change, notifying the Registrar of particulars of and of the date of the change.

(2) Where a change occurs in the christian names or surname of any person being an individual in relation to whom a business name is registered under this Act or in the corporate name or the place of the registered office in the State of a person being a corporation in relation to which a business name is registered under this Act there shall be lodged with the Registrar within fourteen days thereafter or within such further time as the Registrar allows a statement 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 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 allows a statement in the prescribed form notifying the Registrar of the cessation and of the date thereof signed by each person who was carrying on business under that name immediately before the cessation or in the case of a deceased person by his personal representative.

(4) Where a business name is registered under this Act in relation to a person or persons and another person or other persons commences or commence to carry on business in the State under that name in place of or in association with any person or persons in relation to whom the name is already registered, there shall be lodged with the Registrar within fourteen days thereafter or within such further time as the Registrar allows, a statement in the prescribed form signed by each person 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—

- (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 a description of him as such and the date of his birth; or
- (b) who is a corporation—the corporate name and the place of the registered office in the State of the corporation,

and where the person or all the persons carrying on business under that business name after that date of commencement resides or reside outside the State or has or have no fixed address within the State, the statement shall—

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

(5) Where a business name is registered under this Act and a person appointed the resident agent of the person or persons in relation to whom the name is registered ceases to be the resident agent of such person or persons for the purposes of this Act—

- (a) there shall be lodged with the Registrar, within fourteen days after such cessation or within such further time as the Registrar allows, a statement in the prescribed form notifying the Registrar of the cessation and of the date thereof signed by the person or one of the persons in relation to whom the name is registered or by the person so ceasing or his personal representative; and
- (b) the person or persons in relation to whom the business name is registered shall, within fourteen days after such cessation or within such further time as the Registrar allows, appoint in place of or in succession to the person so ceasing another person as the resident agent of such person or persons for the purposes of this Act.

(6) Where a business name is registered under this Act and another person is appointed in place of or in succession to a person who has ceased to be the resident agent of the person or persons in relation to whom the name is registered, there shall be lodged with the Registrar, within fourteen days after such appointment or within such further time as the Registrar allows, a statement in the prescribed form notifying the Registrar of the appointment and of the date thereof—

- (a) signed by the person or by one of the persons in relation to whom the name is registered and by the other person so appointed;
- (b) showing that the other person so appointed—
  - (i) is in relation to the carrying on of business under that name authorised in writing by the person or persons in relation to whom the name is registered to accept service on his or their behalf any notice for the purposes of this Act and of any process; and
  - (ii) has consented in writing to act as the resident agent for that person or persons (as the case requires).

(7) Where a business name is registered under this Act and the person or all the persons in relation to whom the name is registered ceases or ceases to reside within the State or to have a fixed address in the State, there shall be lodged with the Registrar within fourteen days thereafter or within such further time as the Registrar allows a statement in the prescribed form stating the name and address of some person resident in the State who in relation to the carrying on of business under that name—

- (a) has consented in writing to be the resident agent of the person or persons for the purposes of this Act; and
- (b) is authorised in writing by the person or persons to accept service on behalf of the person or persons of any notices for the purposes of this Act and of any process,

signed by that person or one of those persons and by the person so appointed.

(8) If a statement required by a provision of this section to be lodged with the Registrar is not lodged in accordance with the provision, or if lodged does not comply with the provision, each person required or authorised by the provision to sign the statement shall unless he proves that he took all reasonable steps to ensure compliance with the provision be guilty of an offence against this Act.

Penalty: One hundred pounds. Default penalty.

(9) Where by reason of a person commencing to carry on business under a business name registered under this Act a statement is lodged with the Registrar in accordance with and within the time prescribed by subsection (4) of this section 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 name.

(10) 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.

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

**13. Duty to furnish information.** N.S.W. s. 15. Vic. s. 14. S.A. s. 13. W.A. s. 18. (1) The Registrar may by notice in writing require any person to furnish within a period specified in the notice (being a period of not less than twenty-eight days) or within such further period as the Registrar may allow such information as appears to the Registrar to be necessary to enable him to ascertain whether or not a person—

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

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

(2) A person required under subsection (1) 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 (1) 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 except proceedings for an offence against subsection (2) of this section.

**14. Disability of persons in default.** A.C.T. s. 14. N.S.W. s. 13. Vic. s. 12. Qld. s. 22. S.A. s. 16. W.A. s. 16. Tas. s. 13. (1) Where a person who is carrying on business under a business name in contravention of section five or a person who being required to lodge a statement under section twelve 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.

(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 the District Court by a Judge thereof in chambers or in the case of a Magistrates Court by a Stipendiary Magistrate in chambers.

**15. Signing of statements.** A.C.T. s. 23. N.S.W. s. 7. Vic. s. 6. Qld. s. 16. S.A. s. 8. W.A. s. 8. Tas. s. 7. (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.

**16. Verification of particulars.** 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.

**17. Penalty for false statement.** A.C.T. s. 16. N.S.W. s. 14. Vic. s. 13. Qld. s. 17. S.A. s. 24. W.A. s. 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 authorize or permit the lodging with the Registrar of such a statement which to his knowledge is false in any material particular.

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

**18. Notice of proposed cancellation.** A.C.T. s. 12. N.S.W. s. 11. Vic. s. 10. Qld. s. 19. S.A. s. 22. W.A. s. 14. Tas. s. 14. (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 that 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.

(2) Where the Registrar has reasonable cause to believe that any provision of section twelve which is required to be complied with by or on behalf of the person or persons in relation to whom a business name is registered under this Act has not been complied with he may send by post a notice addressed to the person or persons at the place shown in the register as the place where business is carried on under that name stating that unless 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. Cancellation of registration.** A.C.T. s. 13. N.S.W. s. 11. Vic. s. 10. Qld. s. 19A. S.A. s. 22a. W.A. s. 14. (1) The Registrar may cancel the registration of a business name—

(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;

- (b) if the Registrar has sent notice to any person or persons in respect of the business name under subsection (1) of section eighteen and that person does not, or those persons do not satisfy the Registrar within one month from the date of the notice that business is being carried on in the State by that person or those persons under that name;
- (c) if the Registrar has sent a notice to any person or persons under subsection (2) 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 that person does not or those persons do not satisfy the Registrar that there was no failure to comply with the provision; or
- (d) if the business name is registered in relation to a corporation only and the name of the corporation has been struck off any register of corporations kept under "*The Companies Act of 1961*," or the corporation has been dissolved.

(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) 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 District Court for an order directing the Registrar to restore the registration of the business name and the decision of the Court upon the application shall be final.

(4) On an application under subsection (3) of this section the District 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 District Court under subsection (4) 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. Use and exhibition of business name.** A.C.T. s. 8. N.S.W. ss. 9, 16. Vic. ss. 8, 15, 20. Qld. s. 21. S.A. ss. 10, 17 (2). W.A. s. 11. Tas. s. 9. Where a business name is registered under this Act—

- (a) a person or persons in relation to whom the business name is registered shall not issue or sign in connexion 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; and

(b) the business name shall at all times be displayed in a conspicuous position on the outside of every place at which business is carried on under that name,

and 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. Registrar may correct errors in register, &c.** A.C.T. s. 20. N.S.W. s. 18. W.A. s. 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.

(2) When correcting an error under subsection (1) 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 kept by the Registrar with whom the statements were lodged and the copy (if any), certified and furnished under section six, of the statement previously lodged and the copy (if any), so certified and furnished, of the statement lodged under this subsection shall be read as one and both such copies shall be incorporated with and form part of the register kept by the Registrar to whom the copies were furnished under section six.

**22. Inspection of statements.** A.C.T. s. 19. N.S.W. s. 17. Vic. s. 17. Qld. s. 18. S.A. s. 19 (1). W.A. s. 20. Tas. s. 17. A person may on payment of the prescribed fee inspect any statement lodged with the Registrar under this Act or filed under the repealed Act or a copy thereof certified and furnished pursuant to section six and may make a copy thereof or take extracts therefrom.

**23. Certificates of registration or non-registration.** A.C.T. s. 19. N.S.W. s. 17. Vic. s. 17. Qld. s. 18. S.A. s. 19 (2). W.A. s. 20. (1) The Registrar shall upon request by any person and payment of the prescribed fee issue to that person—

(a) a copy of or extract from the register kept by him 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;

(b) a certificate under his hand that a business name was 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 on a date or during a period specified in the certificate registered under the repealed Act; or

- (c) in the case of the Registrar at Brisbane, a certificate under his hand that a business name 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 not on a date or during a period specified in the certificate registered under the repealed Act.

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

**24. Evidence of registration or non-registration.** A.C.T. s. 26. N.S.W. s. 17. Vic. s. 17. Qld. s. 18. S.A. s. 20. W.A. s. 20. Tas. s. 18. A document purporting to be—

- (a) a certificate of registration issued under this Act;
  - (b) a copy of or extract from the register or a copy of or extract from a document forming part of the register issued under paragraph (a) of subsection (1) of section twenty-three;
  - (c) a certificate issued under paragraph (b) or (c) of subsection (1) of section twenty-three; or
  - (d) a combination of two or more of the certificates copies or extracts referred to in paragraphs (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. Authority of Registrar to destroy documents and validation.** Subject to Part IV of "*The Libraries Acts, 1943 to 1949*," the Registrar may if in his opinion it is no longer necessary or desirable to retain them destroy any statement or notice lodged filed received or registered under this Act or under the repealed Act where the registration of the business name or of the firm-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. Invitations to the public to make deposits or loans.** Vic. s. 8A. S.A. s. 4a. (1) A person shall not—

- (a) in any—
    - (i) invitation to; or
    - (ii) advertisement inviting,
 the public to deposit money with, or to lend money to; or
  - (b) in connection with any deposit of money with or loan of money to,
- that person or any other person or persons use or make reference to any name that is registered, or required to be registered, under this Act as a business name or, if a person or firm were carrying on business in the State under that name, would be required to be so registered.

Penalty: Five hundred pounds.

(2) This section does not apply—

- (a) to an invitation to the public made by a public company in conformity with the requirements of "*The Companies Act of 1961*"; or
- (b) to the use of or a reference to a business name registered under this Act in connection with any deposit of money with, or loan of money to, the person or firm carrying on business in the State under that name where no invitation to the public, or advertisement inviting the public, to deposit money with, or lend money to, that person or firm has been made, issued, given, published or disseminated.

**27. Proceedings. General penalty provisions.** N.S.W. s. 12. Vic. s. 11. Qld. s. 24. S.A. s. 15. W.A. ss. 15, 27. Tas. s. 12. (1) A person who—

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

shall be guilty of an offence against this Act.

(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.

(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 apply to a part only of the section it shall apply to that part only.

(4) All offences against this Act may be prosecuted in a summary way under "*The Justices Acts, 1886 to 1960.*"

(5) Proceedings for any offence against this Act may be taken by the Registrar or, with the written consent of the Registrar of Business Names, by any person.

(6) Proceedings for an offence against this Act may be instituted at any time within twelve months after the commission of the offence or within six months after the commission of the offence comes to the knowledge of the complainant, which ever is the later period.

**28. Default penalty.** (1) Where in or at the foot of any section or part of a section there appears the expression "Default penalty" it shall indicate that any person who is 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.

(2) Where any offence is committed by a person by reason of his failure to comply with a provision of this Act by or under which he is required or directed to do anything within a particular period, that

offence for the purposes of subsection (1) of this section shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that that period has elapsed.

**29. Offences committed by corporations.** A.C.T. s. 17. N.S.W. s. 19. Vic. s. 18. Qld. s. 24. W.A. s. 22. Where a person guilty of an offence against this Act—

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

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

**30. Evidentiary provisions.** S.A. s. 23a. If in any proceedings for an offence against this Act proof is given that a business name has been displayed on any premises, and evidence is given from which the court may infer that the business name has reference to any business carried on at the premises, the person or persons carrying on the business shall in the absence of proof to the contrary be deemed to be carrying on the business under that business name.

**31. As to service of notices and lodging of statements.** (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 at the place where business is carried on under a business name the notice may be sent by post addressed to the business name—

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

(2) Any statement required to be lodged with the Registrar under this Act shall be lodged with—

- (a) the Registrar at Brisbane; or
- (b) the Deputy Registrar for the district at a place in which business is carried on or proposed to be carried on under the business name in relation to which the statement is required to be lodged,

but in the case of a statement with respect to a change in relation to the place where business is carried on under a business name registered under this Act the statement shall be lodged with—

- (c) the Registrar at Brisbane; or
- (d) with the Deputy Registrar for a district in which is situated a place whereat business was carried on under the business name immediately prior to the change.

**32. Regulations.** A.C.T. s. 28. N.S.W. s. 27. Vic. s. 19. Qld. s. 25. S.A. s. 25. W.A. s. 23. Tas. s. 19. (1) The Governor in Council may from time to time make regulations, not inconsistent with this Act, prescribing all matters and things which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without affecting the generality of the provisions of subsection (1) of this section, the regulations may—

- (a) prescribe the duties of the Registrar for the purposes of this Act;
- (b) prescribe generally the conduct and regulation of registration under this Act;
- (c) prescribe—
  - (i) the time and manner of the submission of documents to the Registrar for lodging or registration;
  - (ii) the requirements with which documents lodged or to be lodged with the Registrar for the purposes of this Act shall comply; and
  - (iii) the manner in which, and the persons by whom, and the directions or requirements in accordance with which, the forms prescribed for the purposes of this Act, or any of them, shall or may be signed, prepared, or completed, and generally regulate the submission of documents to the Registrar and the signing, preparation, and completion of forms prescribed for the purposes of this Act;
- (d) prescribe the fees (not exceeding ten pounds) to be paid to the Registrar under this Act;
- (e) prescribe the cases in which, and conditions under and subject to which, the payment of fees may be waived by the Minister or by the Registrar;
- (f) prescribe and regulate the payment of additional fees on the late lodgment of documents;
- (g) require that, in such cases as may be prescribed, documents required by or under this Act to be lodged with the Registrar shall be verified by statutory declaration;
- (h) prescribe forms for the purposes of this Act; and
- (i) impose penalties, not exceeding twenty pounds, for offences against the regulations.

**33. Publication of Proclamations, regulations, &c.** (1) Every Proclamation and regulation made under this Act shall—

- (a) be published in the *Gazette*;
- (b) upon its publication in the *Gazette*, be judicially noticed and such publication shall be conclusive evidence of the matters contained therein;
- (c) take effect from the date of such publication, unless, in the case of any such regulation, a later date is specified in that or any other regulation for its commencement when in such event it shall take effect from that later date; and

(d) be laid before the Legislative Assembly within fourteen sitting days after such publication if the Legislative Assembly is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(2) If the Legislative Assembly passes a resolution of which notice has been given at any time within fourteen sitting days after any such Proclamation or regulation has been laid before the Legislative Assembly disallowing such Proclamation or regulation or part thereof, that Proclamation or regulation or part shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime or to the making of a further Proclamation or regulation.

## THE SCHEDULE

## [Section 2]

Year and Number of Act	Title of Act	Extent of Repeal
6. G. 6. No. 24 ..	<i>"The Registration of Firms Act of 1942"</i> ..	The whole
2 Eliz. II. No. 4 ..	<i>"The Registration of Firms Act Amendment Act of 1953"</i>	The whole
7 Eliz. II. No. 51 ..	<i>"The Registration of Firms Acts Amendment Act of 1958"</i>	The whole