



# **Business Names (Commonwealth Powers) Act 2011**

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Queensland

# Business Names (Commonwealth Powers) Act 2011

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# Business Names (Commonwealth Powers) Act 2011

**An Act to refer certain matters relating to the registration and use of business names to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the Commonwealth Constitution, and to provide for related matters**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Business Names (Commonwealth Powers) Act 2011*.

### 2 Commencement

The following provisions commence on a day to be fixed by proclamation—

- (a) parts 4 and 5;
- (b) schedule 1;
- (c) schedule 2, definitions *change-over day* and *existing Act*.

### 3 Dictionary

The dictionary in schedule 2 defines particular words used in this Act.

## Part 2 Referral of matters to the Commonwealth Parliament

### 4 Meaning of *initial business names matters*

The *initial business names matters* are the matters to which the provisions of the tabled text relate to the extent that those matters are included in the legislative powers of the Parliament of the State.

### 5 Meaning of *continuing business names matters*

- (1) Each of the following matters is a *continuing business names matter* to the extent that the matter is included in the legislative powers of the Parliament of the State—
  - (a) the registration of business names;
  - (b) the regulation of the use of business names to assist entities who engage with an entity carrying on a business under a business name to identify the entity;
  - (c) the regulation of the use of business names to assist entities who engage with an entity carrying on a business under a business name to contact the entity;
  - (d) the regulation of the use of business names to reduce the risks that arise from an entity carrying on a business under a name that is not the entity's own;
  - (e) the prohibition or restriction of the use of business names that are undesirable, offensive or confusing;
  - (f) the prohibition or restriction of the use of business names by an entity because—
    - (i) the entity has engaged in unlawful conduct; or
    - (ii) a person involved in the management of the entity has engaged in unlawful conduct.
- (2) However, none of the following matters is a *continuing business names matter*—

- (a) the imposition of a restriction on a government body affecting the ability of the body to carry on business under a name;
- (b) the imposition of a restriction on an entity affecting the ability of the entity to carry on business under a name registered to the entity on a notified State register;
- (c) the imposition of a restriction on an entity affecting the ability of the entity to carry on business under a name that is specified as the name of the entity in a State law;
- (d) the imposition of an obligation on a government body to include a name in a communication or to display a name;
- (e) the imposition of an obligation on an entity to include in a communication, or to display, a name that is registered to the entity on a notified State register;
- (f) the imposition of an obligation on an entity to include in a communication, or to display, a name that is specified as the name of the entity in a State law;
- (g) the omission of an exemption provision without the insertion of an equivalent provision, or the imposition of a limitation on the operation of an exemption provision;
- (h) any matter relating to the imposition or payment of taxes under a State law.

## 6 References

- (1) The initial business names matters are referred to the Parliament of the Commonwealth, but only to the extent of the making of laws with respect to those matters by enacting Acts in the terms, or substantially in the terms, of the tabled text.
- (2) Each continuing business names matter is referred to the Parliament of the Commonwealth, but only to the extent of the making of laws with respect to the matter by making express amendments of the national business names legislation.

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- (3) The operation of each of subsections (1) and (2) is not affected by the other subsection.
- (4) The reference of a matter under subsection (1) or (2) has effect only if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference for the purpose of section 51(xxxvii) of the Commonwealth Constitution).
- (5) Despite any provision other than section 9(4), a reference under subsection (1) or (2) has effect for a period—
  - (a) beginning when the subsection under which the reference is made comes into operation; and
  - (b) ending at the end of the day fixed under section 8(1)(a), (b) or (c) as the day on which the reference is to terminate;but not longer.

## **7 Amendment of Commonwealth law**

It is the intention of the Parliament of the State that—

- (a) the national business names legislation may be expressly amended, or have its operation otherwise affected, at any time by provisions of Commonwealth Acts the operation of which are based on legislative powers that the Parliament of the Commonwealth has apart from a reference of any matters for the purposes of section 51(xxxvii) of the Commonwealth Constitution; and
- (b) the national business names legislation may have its operation affected, otherwise than by express amendment, at any time by provisions of national business names instruments.



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## **8 Termination of references**

- (1) The Governor in Council may, at any time by proclamation, fix a day as the day on which—
  - (a) the initial reference and the amendment reference are to terminate; or
  - (b) the amendment reference is to terminate; or
  - (c) the initial reference is to terminate (if the amendment reference has previously been terminated).
- (2) A day fixed under subsection (1) must be no earlier than the first day after the end of the period of 6 months beginning with the day on which the proclamation is notified.
- (3) The Governor in Council may, by proclamation, revoke a proclamation under subsection (1).
- (4) A revoking proclamation has effect only if notified before the day fixed under subsection (1).
- (5) If a revoking proclamation has effect, the revoked proclamation is taken, for the purposes of section 6, never to have been notified but the revocation does not prevent the notification of a further proclamation under subsection (1).
- (6) A proclamation under subsection (1) or (3) is subordinate legislation.

## **9 Effect of termination of amendment reference**

- (1) A reference in this section to provisions referred to in section 7(b) includes a reference to national business names instruments made to carry out or give effect to the national business names legislation as amended by laws made under the amendment reference.
- (2) It is the intention of the Parliament of the State that, if the amendment reference terminates before the initial reference terminates, the termination of the amendment reference does not affect—
  - (a) laws made under the amendment reference before the termination; or

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- (b) the continued operation in the State of the existing legislation or of the existing legislation as—
  - (i) amended after the termination by laws referred to in paragraph (a) that commence after the termination; or
  - (ii) amended or affected after the termination by provisions referred to in section 7(a) or (b).
- (3) Accordingly, the amendment reference continues to have effect for the purposes of subsection (2) unless the initial reference is terminated.
- (4) Subsection (2) or (3) does not apply to an amendment of the national business names legislation that is excluded from the operation of this section by the proclamation that terminates the amendment reference.
- (5) In this section—

*existing legislation* means the national business names legislation as—

- (a) amended by laws made under the amendment reference that have commenced before the termination; or
- (b) amended or affected by provisions referred to in section 7(a) or (b) that have commenced before the termination;

and as in operation immediately before the termination.

*termination* means the termination of the amendment reference.

## 10 Evidence of tabled text

- (1) A certificate of the Clerk of the House of Assembly of Tasmania certifying that a document is an accurate copy of the tabled text, or is an accurate copy of a particular part or of particular provisions of the tabled text, is admissible in evidence in any proceedings and is evidence—
  - (a) of the matter certified; and

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- (b) that the text of the proposed Commonwealth Bills was tabled in the House of Assembly of Tasmania as referred to in schedule 2, definition *tabled text*.
- (2) Subsection (1) does not affect any other way in which the tabling or content of the tabled text, or the accuracy of a copy of the tabled text or of a part or provisions of the tabled text, may be established.

## **Part 3 Migration of business names data to the Commonwealth**

### **11 Definition for pt 3**

In this part—

*Commonwealth register* means the Business Names Register established and maintained under the Commonwealth Business Names Act.

### **12 Giving of information and notices to the Commonwealth**

- (1) The chief executive is authorised to do the following for the State—
- (a) give the Commonwealth, ASIC, or any officer of the Commonwealth or ASIC, information recorded in, or concerning the use of, the Queensland register that the chief executive considers appropriate in order to assist the Commonwealth and ASIC to establish or maintain the Commonwealth register; and
- (b) give notices to ASIC for the purposes of the Commonwealth Transitional Act, schedule 1.
- (2) The chief executive may give the information in whatever form the chief executive considers appropriate, including electronic data or in an approved form under the

Commonwealth Business Names Act or the Commonwealth Transitional Act.

- (3) This section applies despite any other Act or law.
- (4) A reference in this section to the *Business Names Act 1962* is, on and from the repeal of that Act under part 4, a reference to the Act as in force immediately before its repeal.
- (5) In this section—  
*Queensland register* means the register of business names mentioned in the *Business Names Act 1962*, section 6.

### **13 Giving of information to ASIC about business names to be held etc.**

- (1) The chief executive may give the following to ASIC—
  - (a) a notice under the Commonwealth Transitional Act, schedule 1, item 4 that a business name is to be held;
  - (b) information requested by ASIC under the Commonwealth Transitional Act, schedule 1, item 9 about whether a business name should continue to be held.
- (2) If the chief executive is satisfied a matter to which this section applies has been resolved, the chief executive may give notice to ASIC under the Commonwealth Transitional Act, schedule 1, item 6 or 8 stating that—
  - (a) ASIC is to cease to hold the business name; or
  - (b) the business name is to be registered on the Commonwealth register.

### **14 Protection from liability**

- (1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence in relation to the giving of information under this part.
- (2) If subsection (1) prevents liability attaching to the official, liability attaches instead to the State.

(3) In this section—

*official* means—

- (a) the chief executive; or
- (b) a public service employee to whom the chief executive has delegated functions under section 15.

## 15 Delegation by chief executive

(1) The chief executive may delegate the chief executive's functions under this part to an appropriately qualified public service employee.

(2) In this section—

*appropriately qualified* includes having the qualifications, experience or standing appropriate to perform the functions.

*Example of standing—*

the level at which a person is employed in the public service

*functions* includes powers.

# Part 4 Repeal and transitional provisions

## 16 Definitions for pt 4

In this part—

*change-over day* means the day this part commences.

*existing Act* means the *Business Names Act 1962* as in force immediately before its repeal under this part.

## 17 Repeal of legislation

The following are repealed—

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- *Business Names Act 1962* No. 12;
- *Business Names Regulation 1998* SL No. 35.

## **18 Words have meanings under existing Act**

Unless the context otherwise requires, a word used in this part and defined under the existing Act has the meaning given under the existing Act.

## **19 Continuing of provisions of existing Act**

- (1) This section applies if, despite the repeal of the existing Act, a provision of the existing Act (the *primary provision*) is continued in effect for a purpose under this part.
- (2) Any other provision of the existing Act—
  - (a) mentioned in the primary provision; or
  - (b) the continued application of which is otherwise necessary for the continued application of the primary provision;

is also continued in effect to the extent it is necessary for the continued application of the primary provision.

## **20 Applications for registration or renewal of registration of business name**

- (1) Subsection (2) applies if an application for registration, or renewal of registration, of a business name is made, but not finally decided, under the existing Act before the change-over day.
- (2) On or after the change-over day, the registrar may continue to deal with the application under the existing Act as if it had not been repealed.

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**21 Offence to carry on business in Queensland under particular business names being held**

- (1) This section applies if, before the change-over day—
  - (a) an application for registration of a business name is made under the existing Act; and
  - (b) the chief executive gives ASIC a notice under the Commonwealth Transitional Act, schedule 1, item 4 that the business name is to be held.
- (2) Section 5 of the existing Act continues to apply in relation to the business name.
- (3) Subsection (2) applies for the period—
  - (a) starting on the change-over day; and
  - (b) ending when the business name is registered, or ASIC ceases to hold the business name, under the Commonwealth Transitional Act.

**22 Show cause notices about cancellation of registration of business names that are undesirable etc.**

- (1) This section applies if—
  - (a) a notice is given to a person by the registrar under section 10 of the existing Act before the change-over day; and
  - (b) the period stated in the notice had not expired before the change-over day.
- (2) Despite the repeal of section 10 of the existing Act, the registrar may continue to deal with the notice under section 10 of the existing Act.

**23 Incomplete statement etc. not dealt with by registrar before change-over day**

- (1) This section applies if—

- (a) a statement is purportedly lodged by a person under the section 12 of the existing Act before the change-over day; and
  - (b) the registrar has not taken any action in relation to the statement before that day; and
  - (c) on or after that day, the registrar reasonably believes the statement—
    - (i) contains an alteration or erasure, or a matter contrary to law; or
    - (ii) is incomplete; or
    - (iii) does not comply with the existing Act as it was in force when the statement was required to be lodged.
- (2) If the business name is not being held by ASIC under the Commonwealth Transitional Act, the registrar—
- (a) can not take action under section 16 or 16A of the existing Act in relation to the statement; and
  - (b) must give the person a written notice stating that—
    - (i) the registrar reasonably believes the statement was not lodged as required under the existing Act; and
    - (ii) the grounds for the registrar’s reasonable belief; and
    - (iii) the person may be required under the Commonwealth Business Names Act to give the information contained in the statement to ASIC; and
  - (c) must refund any fee that accompanied the statement.
- (3) If the business name is being held by ASIC under the Commonwealth Transitional Act, sections 16 and 16A of the existing Act continue to apply in relation to the statement.
- (4) This section does not prevent the person from committing an offence against section 12(5) or 17(1) of the existing Act in relation to the statement.



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## **24 Pending notice requiring information to be given**

- (1) This section applies if—
  - (a) a notice is given to a person by the registrar under section 13 of the existing Act before the change-over day; and
  - (b) the period stated in the notice, or the further period allowed by the registrar under section 13(2) of the existing Act, had not expired before the change-over day.
- (2) Despite its repeal, section 13 of the existing Act continues to apply in relation to the notice.

## **25 Notice of proposed cancellation**

- (1) This section applies if a notice is given to a person by the registrar under section 18(1) or (2) of the existing Act within 1 month before the change-over day.
- (2) Despite the repeal of section 19 of the existing Act, the registrar may continue to deal with the notice under that section.

## **26 Continued application of s 19 of existing Act—application to District Court for restoration of registration**

- (1) Subsection (2) applies if, immediately before the change-over day, a person has a right to apply to the District Court under section 19(3) of the existing Act for an order directing the registrar to restore the registration of a business name.
- (2) Section 19 of the existing Act continues to apply in relation to the exercise of the right to apply to the court for the order.
- (3) If an application to the District Court was made under section 19(3) of the existing Act, but not finally decided, before the change-over day, the application may be decided by the District Court as if the existing Act had not been repealed.
- (4) If the District Court makes an order under section 19(4) of the existing Act as continued in effect under this section, the

registrar must give notice to ASIC under the Commonwealth Transitional Act, schedule 1, item 6 requiring that the business name be registered.

## **27 Offences against existing Act—before change-over day**

- (1) This section applies if a person is alleged to have committed an offence against the existing Act before the change-over day.
- (2) Despite the Criminal Code, section 11, a proceeding for the offence may be started or continued, and the court may hear and decide the proceeding, as if this part (other than this section) had not commenced.

## **28 Continued application of evidentiary provision**

Section 24 of the existing Act continues to apply on and after the change-over day in relation to a certificate of registration issued under the existing Act before the change-over day.

## **29 Performance of registrar's functions from change-over day**

- (1) The existing registrar is, on and from the change-over day, taken to continue to be employed as the registrar for the purpose of performing the registrar's continuing functions.
- (2) For subsection (1), section 4(1) of the existing Act continues to apply on and after the change-over day.

- (3) In this section—

*continuing functions*, of the registrar, means the functions of the registrar under this part or a provision of the existing Act continued in effect under this part.

*existing registrar* means the person employed, immediately before the change-over day, as the registrar of business names under section 4 of the existing Act.

**30 Continuation of delegations, and registrar's protection from liability, under existing Act**

- (1) This section applies for the purpose of the exercise of an administrator's powers under the existing Act as continued in effect under this part.
- (2) On and from the change-over day—
  - (a) section 4C of the existing Act continues to apply; and
  - (b) a delegation in effect under that section immediately before the change-over day continues in effect.
- (3) Section 24B of the existing Act continues to apply in relation to acts done, or omissions made, by the registrar.

## Schedule 2 Dictionary

### section 3

***amendment reference*** means the reference under section 6(2).

***ASIC*** means the Australian Securities and Investments Commission of the Commonwealth.

***business name*** has the same meaning as in the tabled text.

***change-over day***, for part 4, see section 16.

***Commonwealth Business Names Act*** means a Commonwealth Act in the terms, or substantially in the terms, of the proposed Bill for a Commonwealth Act mentioned in paragraph (a) of the definition *tabled text*.

***Commonwealth register***, for part 3, see section 11.

***Commonwealth Transitional Act*** means a Commonwealth Act in the terms, or substantially in the terms, of the proposed Bill for a Commonwealth Act mentioned in paragraph (b) of the definition *tabled text*.

***continuing business names matter*** has the meaning given by section 5.

***entity*** includes an individual, body corporate or unincorporate, partnership or anything else that is an entity within the meaning of the tabled text.

***exemption provision*** means a provision in the terms, or substantially in the terms, of clause 19(5) or 20(3) of the proposed Bill for a Commonwealth Act mentioned in paragraph (a) of the definition of *tabled text*.

***existing Act***, for part 4, see section 16.

***express amendment*** of the national business names legislation means the direct amendment of the text of the national business names legislation (whether by the insertion, omission, repeal, substitution or relocation of words or

matter) by another Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect otherwise than as part of the text of the national business names legislation.

**government body** means—

- (a) the State or an agency or authority of the State or of the State acting jointly with the Commonwealth or another State; or
- (b) a local government.

**initial business names matters** has the meaning given by section 4.

**initial reference** means the reference under section 6(1).

**national business names instrument** means any instrument (whether or not of a legislative character) that is made or issued under the national business names legislation.

**national business names legislation** means Commonwealth Acts enacted in the terms, or substantially in the terms, of the tabled text.

**notified State register** means a register that is maintained under a State law and is a *notified State/Territory register* within the meaning given by clause 6 of the proposed Bill for a Commonwealth Act mentioned in paragraph (a) of the definition of *tabled text*.

**registration** means the inclusion of information in any system for the recording of information (whether in written or electronic form).

**State law** means an Act of the State whenever enacted.

**tabled text** means the text of the following proposed Bills for Commonwealth Acts—

- (a) *Business Names Registration Bill 2011*;
- (b) *Business Names Registration (Transitional and Consequential Provisions) Bill 2011*;

as tabled in the House of Assembly of Tasmania on 5 July 2011 by or on behalf of the Minister introducing the Bill for

the *Business Names (Commonwealth Powers) Act 2011* of that State in that House.

**taxes** means taxes, duties, charges or other imposts, however described.