

# NORTHERN TERRITORY OF AUSTRALIA

## BUSINESS NAMES ACT

As in force at 1 July 1996

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 July 1996

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## BUSINESS NAMES ACT

An Act to consolidate and amend the law relating to Business Names, and for other purposes

### 1 Short title

This Act may be cited as the *Business Names Act*.

### 2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

### 3 Repeal and savings and transitional provisions

(1) The *Business Names Ordinance 1935* and the *Business Names Ordinance 1961* are repealed.

(2) Notwithstanding the repeal effected by subsection (1):

(a) a person who was, immediately before the commencement of this Act, the resident representative, within the meaning of the repealed Ordinance, of a firm, individual or corporation carrying on business under a business name in respect of which the firm, individual or corporation was registered under the repealed Ordinance shall, on that commencement and subject to this Act, be deemed to have been appointed under this Act to be the resident agent of the firm, individual or corporation for the purposes of this Act and the address shown in any statement, deemed by virtue of this Act to be incorporated with and to form part of the register, as the address of that person shall, while that person is the resident agent of the firm, individual or corporation, for the purpose of serving any notice or process on the firm, individual or corporation under this Act, be deemed to be the address of a place where business is carried on by the firm, individual or corporation under that business name; and

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- (b) a certificate furnished, or copy of or extract from a statement certified, in pursuance of the repealed Ordinance shall be as valid and effectual as it would have been if the repealed Ordinance had not been repealed.
- (3) A reference in any Act, order, regulation, instrument or document to firms, individuals or corporations registered under the repealed Ordinance shall, unless the context otherwise requires, be construed as referring also to firms, the members of which, to individuals who or to corporations which, as the case may be, are carrying on business under a business name registered under this Act.
- (4) A business name in respect of which a firm, individual or corporation was, immediately before the commencement of this Act, registered under the repealed Ordinance shall, on that commencement, 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 Interpretation

- (1) In this Act, unless the contrary intention appears:

**business** includes trade and profession.

**business name** means a name, style, title or designation under which a business is carried on.

**carrying on business** includes establishing a place of business and soliciting or procuring any order from a person in the Territory and **to carry on business** has a corresponding meaning.

**christian name** includes any forename.

**corporation** means a body corporate registered as a corporation under the Corporations Law.

**Deputy Registrar** means a person appointed under section 4A as a Deputy Registrar of Business Names and, until the first such appointment is made, includes each person appointed as a Deputy Commissioner for Corporate Affairs or an Assistant Commissioner for Corporate Affairs under the *Companies (Administration) Act*.

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

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***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.

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

***the register*** means the register of business names kept under this Act.

***the Registrar*** means the person appointed under section 4A as the Registrar of Business Names and, until such an appointment is made, includes the Commissioner for Corporate Affairs appointed under the *Companies (Administration) Act*.

***the repealed Ordinance*** means the *Business Names Ordinance 1935 – 1961*.

***secretary***, in relation to a corporation, includes any person performing the duties of secretary of the corporation and, in relation to a recognised company or foreign company, as defined in section 9 of the Corporations Law, includes an attorney of the corporation.

***this Act***, includes the Regulations.

- (2) For the purposes of this Act, a person shall not be regarded as carrying on business within the Territory for the reason only that within the Territory 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;

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- (f) conducts an isolated transaction that is completed within a period of 31 days, but not being one of a number of similar transactions repeated from time to time; or
  - (g) invests any of his funds or holds any property.
- (3) For the purposes of this Act, a business name shall be deemed to be registered under this Act in relation to a person if it appears from the register that that person either alone or together with other persons is carrying on business under that name.

#### **4A Registrar and Deputy Registrars**

- (1) The Minister may, by instrument in writing, appoint an employee, as defined in the *Public Sector Employment and Management Act*, to be the Registrar of Business Names and such other such employees to be Deputy Registrars of Business Names as he thinks fit.
- (2) The Registrar, in the performance of his functions and the exercise of his powers is subject to the written directions of the Minister.
- (3) A Deputy Registrar may, subject to the directions of the Registrar, perform a function and exercise a power of the Registrar.

#### **4B Acting appointments**

- (1) The Minister may, by instrument in writing, appoint a person to act as the Registrar or as a Deputy Registrar:
  - (a) during a vacancy in the office of the Registrar or in the office of a Deputy Registrar, as the case may be, whether or not an appointment has previously been made to the office; or
  - (b) during a period, or during all periods, when the Registrar or a Deputy Registrar is absent from duty or from the Territory or is, for any reason, unable to perform the functions of his office,but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (3) Where a person is acting as the Registrar or as a Deputy Registrar in accordance with this section and the office of the Registrar or of a Deputy Registrar becomes vacant while that person is so acting then, subject to subsection (2), that person may continue to act until the Minister otherwise directs, the vacancy is filled or a period of

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12 months from the date on which the vacancy occurred expires, whichever first happens.

- (4) The Minister may, at any time, terminate the appointment of a person appointed to act in accordance with this section.
- (5) The appointment of a person under this section ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.
- (6) While a person is acting as the Registrar or as a Deputy Registrar in accordance with this section, he shall perform all the functions and may exercise all the powers of the Registrar or of a Deputy Registrar, as the case requires.
- (7) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

#### **4C Judicial notice**

- (1) A court shall take judicial notice of:
  - (a) the official signature of a person who holds or has held, or is acting or has acted in, the office of the Registrar or a Deputy Registrar; and
  - (b) the fact that that person holds or has held, or is acting or has acted in, that office,

if the signature purporting to be the signature of that person appears on an official document.

- (2) In this section, a reference to a court shall be construed as including a reference to:
  - (a) a judge; and
  - (b) a person authorized by law or by consent of parties to receive evidence,

and, in relation to a person referred to in paragraph (b), the reference to taking judicial notice shall be construed as a reference to taking the like notice as would be taken by a court.

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#### **4D        Secrecy**

- (1) Subject to this section, a person who is, or has at any time been:
- (a) appointed for the purposes of this Act;
  - (b) engaged as a member of the staff of the Registrar; or
  - (c) authorized to perform a function or exercise a power of the Registrar on behalf of the Registrar,

shall not, except to the extent necessary to perform his official duties, or to perform a function or exercise a power, either directly or indirectly, make a record of, or divulge or communicate to a person, information that is or was acquired by him by reason of his being or having been so appointed, engaged or authorized, or make use of such information, for purposes other than the performance of his official duties or the performance of a function or exercise of a power.

Penalty:        \$10,000 or imprisonment for 2 years.

- (2) Nothing in subsection (1) precludes a person from:
- (a) producing a document to a court in the course of criminal proceedings or in the course of proceedings under this or any other Act;
  - (b) divulging or communicating to a court in the course of proceedings referred to in paragraph (a) a matter or thing coming under his notice in the performance of his official duties or in the performance of a function or the exercise of a power referred to in that subsection;
  - (c) producing a document or divulging or communicating information to a person to whom, in the opinion of the Registrar, it is in the public interest that the document be produced or the information be divulged or communicated; or
  - (d) producing a document or divulging or communicating information that is required or permitted by an Act to be produced, divulged or communicated, as the case may be.

#### **4E        Arrangements to perform functions**

The Minister or a person authorised by the Minister may make arrangements with the Australian Securities Commission for the performance by the Commission of functions under this Act.



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## **5 Certain business names to be registered**

- (1) A person shall not, either alone or in association with other persons, carry on business in the Territory 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, the provisions of section 12 which are required to be complied with by or on behalf of the person or persons in relation to whom the name is registered have been complied with.

Penalty: \$200. Default penalty.

- (2) For the purposes of subsection (1), 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; or
  - (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), be deemed not to be an addition to the business name.

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- (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**

- (1) The Registrar shall keep a register of business names registered under this Act in such form (including a computerized form) as he thinks fit.
- (2) A statement lodged under this Act in relation to a business name registered under this Act, whether lodged before or after the registration, shall, for the purposes of this Act, be deemed to be incorporated with and to form part of the register.
- (2A) Where a corporation in relation to which a business name is registered under this Act changes its name or its principal place of business under the Corporations Law, the change of name or place of business shall, on notification being given by the Australian Securities Commission to the Registrar, be deemed, for the purposes of this Act, to be incorporated with and form part of the register.
- (3) The register and index of the business names of firms, individuals and corporations registered under the repealed Ordinance and any statement or notice furnished or sent to the Registrar of Companies under the repealed Ordinance shall be deemed to be incorporated with and to form part of the register kept under this Act.

## **7 Registration of business names**

- (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 Territory under that name, shall be accompanied by the prescribed fee and shall set out:
  - (a) the business name;

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- (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 Territory 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 Territory, which of those places is the principal place of business;
  - (d) the christian names and surnames, 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 Territory of each applicant which is a corporation;
  - (e) the date or proposed date of commencement of the carrying on of business in the Territory 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.
  - (3) Subject to this Act the Registrar shall, upon the lodging of a statement under subsection (1) 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 pre-scribed form signed by the Registrar.
  - (5) The Registrar may, upon payment of the pre-scribed 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) is lodged with the Registrar on a date preceding by more than 2 months the date shown in the statement as the proposed date of commencement of carrying on business.
  - (7) The 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) are correct.

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## **8 Resident agent**

- (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 Territory under that name resides or reside outside the Territory, or has or have no fixed address within the Territory, the statement referred to in section 7(1) shall:
  - (a) include the name and address of some person resident in the Territory 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 authorized 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 Restriction on registration of business names that are undesirable, &c.**

- (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.
- (2) The Minister shall cause a direction given by him under subsection (1) to be published in the *Gazette* and a copy of the direction to be forwarded to the Attorney-General of each State.
- (3) An application for the consent of the Minister under this section shall be lodged with the Registrar and shall be accompanied by the prescribed fee.

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- (4) Where the Minister gives consent under this section to the registration of a business name, the Registrar shall, upon payment of the prescribed fee, file the consent and may, subject to this Act, register the business name.

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

- (1) If a business name which could not be registered under this Act without contravention of section 9(1) 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 28 days) as is specified in the notice; and
- (b) setting out his reasons for the proposed cancellation,

and, upon the expiration of that period, the Registrar may, if the notice has not been annulled under subsection (3), cancel the registration of that name.

- (2) The Registrar shall not, except with the approval of the Minister, exercise his powers under sub-section (1) with respect to a business name that is deemed to be registered under this Act by virtue of section 3(4).
- (3) The Minister may, at any time before the expiration of the period specified in a notice given by the Registrar under subsection (1), 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).

**11 Renewal of registration**

- (1) Subject to this Act, the registration of a business name remains in force for a period of 3 years, but the registration may from time to time be renewed by lodging with the 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 and accompanied by the prescribed fee.

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- (2) Subject to this Act, the registration of a business name renewed under section 10 remains in force for a period of 3 years from the day on which the previous registration expires or has expired, as the case may be.
  - (3) The Registrar shall, before or after the expiration of the registration of a business name, but not earlier than one month before the expiration, send by post to the person or persons in relation to whom the business name is or was registered, at the place shown in the register as the postal address or 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.
  - (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).
  - (5) Notwithstanding the provisions of subsection (1), the following provisions shall apply in relation to a business name which is deemed to be registered under this Act by virtue of being registered under the repealed Ordinance:
    - (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 posted 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;
    - (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;
    - (d) no such notice in writing shall be sent by the Registrar until the expiration of a period of at least 3 years from the date upon which the name was registered under the repealed Ordinance;
    - (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 (3); and
    - (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.

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

- (1) Where a business name is registered under this Act and a change occurs:
- (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 Territory at which business is carried on under that name or in the address of any such place; or
  - (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 14 days after the change, 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 the date of the change.

- (2) Where a change occurs in the christian names or surname or the place of residence of any person, being an individual, in relation to whom a business name is registered under this Act, or in the corporate name or the place of the registered office in the Territory 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 14 days after the change, or within such further time as the Registrar may, before the expiration of that period, allow, 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 Territory under that name, there shall be lodged with the Registrar within 14 days after the cessation, 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 of the cessation, 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.

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- (4) Where, immediately after a cessation referred to in subsection (3), the person or all of the persons carrying on business under the business name is not or are not resident within the Territory or does not or do not have a fixed address or fixed addresses within the Territory, the statement referred to in that subsection shall:
- (a) include the name and address of some person resident in the Territory 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 authorized 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.
- (5) 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 Territory 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 14 days after the commencement, 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 commencement and of the date of the commencement, signed by each person carrying on business under that name immediately after the commencement and setting out, in relation to each person required to sign the statement:
- (a) being 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 the individual is an infant, in addition to the particulars referred to in this paragraph, he shall be so described in the statement and the date of his birth shall be set out therein; or
  - (b) being a corporation – the corporate name and the place of the registered office in the Territory of the corporation.
- (6) Where, immediately after a commencement referred to in subsection (5), the person or all of the persons carrying on business under the business name is not or are not resident within the Territory or does not or do not have a fixed address or fixed



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addresses within the Territory, the statement referred to in that subsection shall:

- (a) include the name and address of some person resident in the Territory 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 authorized 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.
- (7) Where, while a person is the resident agent of a person or persons in relation to whom a business name is registered under this Act, 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 Territory or acquire or acquires a fixed address within the Territory, there shall be lodged with the Registrar within 14 days after the 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 business name is registered:
- (a) notifying the Registrar that the person appointed to be the resident agent of the person or persons in relation to whom the business name is registered has ceased to be the resident agent of such person or persons; and
  - (b) setting out the name or names of the person or persons in relation to whom the business name is registered who has or have commenced to reside or has or have acquired a fixed address or fixed addresses within the Territory, and the usual place or places of residence or the fixed address within the Territory of such person or persons.
- (8) Where, while a person is the resident agent of a person or persons in relation to whom a business name is registered under this Act, another person or other persons commences or commence to carry on business in the Territory under that name in place of or in association with any person or persons in relation to whom the name is already registered and that other person or one or more of those other persons resides within the Territory or has or have a

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fixed address or fixed addresses within the Territory, there shall be lodged with the Registrar within 14 days after the commencement, 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 carrying on business under that name after the commencement:

- (a) notifying the Registrar that the person who was the resident agent of the person or persons in relation to whom the business name was registered immediately before the commencement is not or has ceased to be the resident agent of the person or persons carrying on business under that name immediately after the commencement; and
  - (b) setting out the name or names of that other person or those other persons who resides or reside within the Territory or has or have a fixed address or fixed addresses within the Territory, and the usual place or places of residence or the fixed address or fixed addresses within the Territory of that other person or those other persons.
- (9) Where a business name is registered under this Act and a person appointed to be the resident agent of the person or persons in relation to whom the name is registered ceases to reside within the Territory or ceases to be the resident agent of that person or those persons, there shall be lodged with the Registrar within 14 days after the cessation, 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 name and address of some other person resident within the Territory who is appointed to be the resident agent of the person or persons in relation to whom the name is registered in place of or succession to the person who has ceased to be so resident or who has ceased to be the resident agent of that person or those persons, and of the date of the appointment:
- (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 person so appointed, 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 authorized 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.

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- (10) 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 cease to reside within the Territory or to have a fixed address or fixed addresses within the Territory, there shall be lodged with the Registrar within 14 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 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 resident in the Territory who is appointed 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:
- (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 person so appointed, 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 authorized 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.
- (11) 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 authorized 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:       \$200. Default penalty.
- (12) 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 subsection (5), neither that person nor any other person shall be guilty of an offence against section 5 by reason only that, before the lodging of the statement, he carried on business under that name.
- (13) 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.
- (14) A statement lodged under this section shall, if a fee for the lodging of the statement is prescribed, be accompanied by that fee.

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### **13           Duty to furnish information**

- (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 28 days), or within such further period as the Registrar may, before the expiration of that period, 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) 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:       \$200.

- (3) A person shall not be excused from furnishing any information where required to do so under subsection (1) on the ground that the information might tend to incriminate him or make him liable to a penalty but the information furnished by him shall not be admissible in evidence against him in any proceedings civil or criminal.

### **14           Disability of persons in default**

Where a person carrying on business under a business name in contravention of section 5, or a person who, being required to lodge a statement under section 12 in relation to a business name, fails to lodge that statement, commences any suit or action in that business name or in respect of a cause of action arising out of any dealing in or under that business name, the court before which the suit or action is commenced may order the person to cease to contravene section 5 or 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.

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**15        Signing of statements**

- (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 authorized 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 evidence relating to that person's interest in a business by reason only of its registration under this Act.

**16        Verification of particulars**

The Registrar may in a particular case, if he thinks fit, refuse or 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 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:        \$200 or imprisonment for 3 months or both.

**18        Notice of proposed cancellation**

- (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 Territory 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 stating that, unless the Registrar is satisfied within one month from the date of the notice that business is being carried on in the Territory by that person or those persons under that name, the

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registration of the business name may be cancelled.

- (2) Where the Registrar has reasonable cause to believe that any provision of section 12 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**

- (1) The Registrar may cancel the registration of a business name:
- (a) if there is lodged with the Registrar a statement under section 12 notifying him that the person or all the persons in relation to whom the business name is registered has or have ceased to carry on business in the Territory 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 Territory under that name;
  - (b) if the Registrar has sent a notice to any person or persons in respect of the business name under section 18(1) and that person does not, or those persons do not, satisfy the Registrar within one month from the date of the notice that business is being carried on in the Territory by that person or those persons under that name;
  - (c) if the Registrar has sent a notice to any person or persons under section 18(2) and within one month after the date of the notice the provision of section 12 to which the notice relates has not been complied with or the person does not or those persons do not satisfy the 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 Corporations Law or the corporation has been dissolved.

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- (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 Supreme Court for an order directing the Registrar to restore the registration of the business name.
  - (4) On an application under subsection (3), 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 (4), 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**

Where a business name is registered under this Act:

- (a) a person or persons in relation to whom a business name is registered shall not issue or sign in 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;
- (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 name; and
- (c) the certificate of registration of the business name shall at all times be exhibited in a conspicuous position at the place where business is carried on under that name or, if there is more than one such place, at the principal place where business is so carried on,

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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: \$100. Default penalty.

**21 Registrar may correct errors in register, &c.**

- (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), 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 Inspection of statements**

A person may, on payment of the prescribed fee, inspect any statement, lodged with the Registrar under this Act or filed under the repealed Ordinance, which has not been destroyed in pursuance of section 25 and may make a copy thereof or take extracts therefrom.

**23 Certificates of registration or non-registration**

- (1) The Registrar shall, upon request in writing by any person and payment of the prescribed fee, issue to that person:
  - (a) a copy of or extract from the register or a copy of or extract from a document forming part of the register certified under his hand to be a true copy or extract; or
  - (b) a certificate under his hand that a business name was or was not on a date or during a period specified in the certificate registered under this Act in relation to a person or that a firm, individual or corporation was or was not on a date or during a period specified in the certificate registered under the repealed Ordinance.



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- (2) The Registrar shall not be required to issue a copy, extract or certificate under subsection (1) in respect of a statement or notice which has been destroyed in pursuance of section 25 or in respect of a date or a period ending on a date earlier by more than 12 years than the date of the receipt of the request.

## **24 Evidence of registration or non-registration**

- (1) A document purporting to be:
- (a) a certificate of registration issued under this Act;
  - (b) a copy of or extract from the register or a copy of or extract from a document forming part of the register issued under section 23(1)(a);
  - (c) a certificate issued under section 23(1)(b); or
  - (d) a combination of 2 or more of the certificates, copies or extracts referred to in paragraphs (a), (b) and (c),

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.

- (2) A reference in subsection (1)(b) or (d) to an extract or document includes a reference to an extract or document in print-out or other form from a computerized register.

## **25 Authority of Registrar to destroy documents**

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, filed, received or registered under this Act or under the repealed Ordinance where the registration of the business name or of the firm, individual or corporation, as the case may be, in respect of which the statement or notice was lodged, filed, received or registered has not been in force at any time during the preceding 12 years.

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**26            Invitations to the public to make deposits or loans**

- (1) Where a person is or the members of a firm are carrying on business in the Territory under a business name registered or required to be registered under this Act, no person shall use or make reference to that business name in any invitation to the public or 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.

Penalty:        \$1,000.

- (2) This section does not apply to an invitation to the public made by a public company in conformity with the requirements of the Corporations Law.

**27            Proceedings against persons under a business name**

- (1) Proceedings may be taken in a court of competent jurisdiction against a person or persons in the business name under which the person is or the persons are carrying on business whether or not the business name is registered under this Act and the name shall, for the purpose of the proceedings, be a sufficient designation of the person or persons in all process and other legal documents and instruments and a judgment obtained or order made in such proceedings may be enforced against the person or persons or any of them.
- (2) Nothing in this section shall be construed as exempting any person from compliance with any provision of this Act.

**28            Default penalty**

- (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 indicates that a person who is found guilty of an offence against this Act in relation to that section or part is guilty of a further offence against this Act if the offence continues after he is so found guilty and is liable to an additional penalty for each day during which the offence so continues of not more than \$20.
- (2) Where an offence is committed by a person by reason of his failure to comply with a provision of this Act by or under which he is required or directed to do anything within a particular period, that offence, for the purposes of subsection (1) shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that such period has elapsed.

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## **29 Offences committed by corporations**

Where a person guilty of an offence against this Act:

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

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

## **30 Evidentiary provisions**

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 Service of notices**

- (1) Where, by this Act, the Registrar is required or permitted to send a notice to the person or persons in respect of whom the business name is registered at the place where business is carried on under a business name, the notice may be sent by post addressed to the business name:
  - (a) at the place shown in the register as the place where business is so carried on;
  - (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 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, at the place shown in the register as the address of the resident agent in the Territory.

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- (2) Service of any communication, notice or, subject to subsection (2A), process on any person or persons carrying on business under a business name registered under this Act:
- (a) by leaving it at the place where business is carried on by the person or persons with some other person apparently in the service of the person or persons and apparently of or above the age of 16 years;
  - (b) where it appears from the register that there is a resident agent appointed for the purposes of this Act by the person or persons, by leaving it with the resident agent or with some other person apparently in the service of the resident agent and apparently of or above the age of 16 years; or
  - (c) by sending it by registered post or as certified mail addressed to:
    - (i) the person or persons at the place where business is carried on by the person or persons; or
    - (ii) the resident agent, where it appears from the register that there is a resident agent appointed for the purpose of this Act by the person or persons, at the place shown in the register as the address of the resident agent in the Territory,

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

- (2A) If Rules of a court provide a procedure, service of process shall be in accordance with the Rules.

- (3) In subsection (2) ***the place where business is carried on*** means:
- (a) the place shown in the register as the place where business is carried on; or
  - (b) where more than one place is shown in the register as the place where business is carried on:
    - (i) 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 the business is carried on.

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## **32 Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters 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, and in particular for prescribing matters for or in relation to:

- (a) the fees to be paid to the Registrar under this Act;
- (b) the forms to be used under this Act;
- (c) the duties of the Registrar for the purposes of this Act;
- (d) generally the conduct and regulation of registration under this Act; and
- (e) the imposition of penalties not exceeding \$40 for breaches of the regulations.

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## ENDNOTES

**1****KEY**

Key to abbreviations

amd = amended  
 app = appendix  
 bl = by-law  
 ch = Chapter  
 cl = clause  
 div = Division  
 exp = expires/expired  
 f = forms  
 Gaz = Gazette  
 hdg = heading  
 ins = inserted  
 lt = long title  
 nc = not commenced

od = order  
 om = omitted  
 pt = Part  
 r = regulation/rule  
 rem = remainder  
 renum = renumbered  
 rep = repealed  
 s = section  
 sch = Schedule  
 sdiv = Subdivision  
 SL = Subordinate Legislation  
 sub = substituted

**2****LIST OF LEGISLATION*****Business Names Ordinance 1962 (Act No. 37, 1963)***

Assent date	22 May 1963
Commenced	1 July 1963 ( <i>Gaz</i> 26A, 1 July 1963, p 132A)

***Business Names Ordinance 1963 (Act No. 53, 1963)***

Assent date	31 July 1963
Commenced	1 July 1963 (s 2, s 2 <i>Business Names Ordinance 1962</i> (Act No. 37, 1963) and <i>Gaz</i> 26A, 1 July 1963, p 132A)

***Business Names Ordinance 1968 (Act No. 2, 1968)***

Assent date	20 March 1968
Commenced	3 April 1968 ( <i>Gaz</i> 15, 3 April 1968, p 90)

***Ordinances Revision Ordinance 1973 (Act No. 87, 1973)***

Assent date	11 December 1973
Commenced	11 December 1973 (s 12(2))

**Amending Legislation*****Ordinances Revision Ordinance 1974 (Act No. 34, 1974)***

Assent date	26 August 1974
Commenced	11 December 1973 (s 3(2))

***Ordinances Revision Ordinance (No. 2) 1974 (Act No. 69, 1974)***

Assent date	24 October 1974
Commenced	11 December 1973 (s 3)

***Ordinances Revision Ordinance 1976 (Act No. 27, 1976)***

Assent date	28 June 1976
Commenced	ss 1, 2 and 6: 28 June 1976 (s 6(2)); ss 3 and 4: 11 December 1973; s 5: 24 October 1974

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***Transfer of Powers (Self-Government) Ordinance 1978 (Act No. 54, 1978)***

Assent date 1 July 1978  
Commenced 1 July 1978 (s 2)

***Statute Law Revision Act 1978 (Act No. 95, 1978)***

Assent date 5 September 1978  
Commenced 5 September 1978

***Statute Law Revision Act 1979 (Act No. 98, 1979)***

Assent date 10 August 1979  
Commenced 26 October 1979 (*Gaz* G43, 26 October 1979, p 1)

***Statute Law Revision Act 1980 (Act No. 6, 1981)***

Assent date 9 January 1981  
Commenced 9 January 1981

***Statute Law Revision Act 1981 (Act No. 29, 1981)***

Assent date 25 March 1981  
Commenced 25 March 1981

***Companies and Securities (Consequential Amendments) Act 1986 (Act No. 18, 1986)***

Assent date 30 June 1986  
Commenced 1 July 1986 (s 2)

***Local Courts (Consequential Amendments) Act 1990 (Act No. 31, 1990)***

Assent date 11 June 1990  
Commenced s 5: 11 June 1990; rem: 1 January 1991 (s 2, s 2 *Local Court Act 1989* (Act No. 31, 1989) and *Gaz* G49, 12 December 1990, p 2)

***Business Names Amendment Act 1990 (Act No. 58, 1990)***

Assent date 14 December 1990  
Commenced 1 January 1991 (s 2, s 2 *Corporations (Northern Territory) Act 1990* (Act No. 56, 1990) and *Gaz* S76, 21 December 1990)

***Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)***

Assent date 30 June 1993  
Commenced 1 July 1993 (s 2, s 2 *Public Sector Employment and Management Act 1993* (Act No. 11, 1993) and *Gaz* S53, 29 June 1993)

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date 19 April 1996  
Commenced 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz* S15, 13 June 1996)

### 3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Ordinances Revision Ordinance 1973* (as amended) to the following provisions: Ss 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 31 and 32.

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**4 LIST OF AMENDMENTS**

s 1	amd No. 58, 1978, s 4; No. 6, 1981, s 4
s 2	amd No. 29, 1981, s 2
s 3	amd No. 53, 1963, s 3; No. 6, 1981, s 4
s 4	amd No. 53, 1963, s 4; No. 2, 1968, s 3; No. 6, 1981, s 4; No. 18, 1986, s 3; No. 58, 1990, s 4
s 4A	ins No. 58, 1990, s 5 amd No. 28, 1993, s 3
ss 4B – 4E	ins No. 58, 1990, s 5
s 5	amd No. 2, 1968, s 7; No. 6, 1981, s 4
s 6	amd No. 6, 1981, s 4; No. 58, 1990, s 6
ss 7 – 8	amd No. 6, 1981, s 4
s 9	amd No. 2, 1968, s 4; No. 54, 1978, s 4; No. 98, 1979, s 6; No. 6, 1981, s 4
s 10	amd No. 53, 1963, s 5; No. 54, 1978, s 4; No. 6, 1981, s 4
s 11	amd No. 53, 1963, s 6; No. 6, 1981, s 4; No. 58, 1990, s 7
s 12	amd No. 2, 1968, ss 5 and 7; No. 6, 1981, s 4
s 13	amd No. 2, 1968, s 7; No. 6, 1981, s 4
ss 15 – 16	amd No. 6, 1981, s 4
s 17	amd No. 2, 1968, s 7; No. 6, 1981, s 4
s 18	amd No. 6, 1981, s 4
s 19	amd No. 2, 1968, s 6; No. 6, 1981, s 4; No. 18, 1986, s 3; No. 58, 1990, s 8
s 20	amd No. 2, 1968, s 7; No. 6, 1981, s 4
ss 22 – 23	amd No. 6, 1981, s 4
s 24	amd No. 87, 1973, s 12; No. 6, 1981, s 4; No. 58, 1990, s 9
s 25	amd No. 6, 1981, s 4
s 26	amd No. 53, 1963, s 7; No. 2, 1968, s 7; No. 6, 1981, s 4; No. 18, 1986, s 3; No. 58, 1990, s 10
s 27	amd No. 6, 1981, s 4; No. 31, 1990, s 7
s 28	amd No. 2, 1968, s 7; No. 6, 1981, s 4; No. 17, 1996, s 6
ss 29 – 30	amd No. 6, 1981, s 4
s 31	amd No. 6, 1981, s 4; No. 31, 1990, s 7
s 32	amd No. 2, 1968, s 7; No. 95, 1978, s 14; No. 6, 1981, s 4