

# NORTHERN TERRITORY OF AUSTRALIA

## BUSINESS NAMES ACT 2007

As in force at 22 August 2007

### Table of provisions

<b>Part 1</b>	<b>Introduction</b>	
<b>Division 1</b>	<b>Preliminary matters</b>	
1	Short title .....	1
2	Commencement .....	1
<b>Division 2</b>	<b>Interpretation</b>	
3	Definitions.....	1
4	Conducting business in Territory .....	2
5	Registered person .....	3
6	Declared offences for Criminal Code.....	4
<b>Division 3</b>	<b>Application of Act</b>	
7	Effect of contravention of Act.....	4
8	Person appointed to conduct business.....	4
<b>Part 2</b>	<b>Registration of business names</b>	
<b>Division 1</b>	<b>Requirement for registration of business names</b>	
9	Certain business names to be registered .....	4
<b>Division 2</b>	<b>Registration process</b>	
10	Application for registration .....	5
11	Decision on application.....	6
12	Refusal of application – general .....	6
13	Refusal of application – undesirable or prohibited names .....	6
14	Duration of registration .....	7
<b>Division 3</b>	<b>Renewal of registration</b>	
15	Notice of renewal.....	7
16	Application for renewal of registration.....	7
17	Renewal of registration .....	7
18	Re-using expired business name .....	8

---

<b>Division 4</b>	<b>Change in particulars of registration</b>	
19	Notice of change in particulars .....	8
20	Notice of ceasing to conduct business under name .....	9
<b>Division 5</b>	<b>Use and display of business name</b>	
21	Display of business name.....	10
22	Display of certificate of registration .....	10
<b>Division 6</b>	<b>Notices and information</b>	
23	Signing of notices .....	11
24	Commissioner may require statutory declaration.....	11
25	Commissioner may require information or document .....	11
<b>Division 7</b>	<b>Cancellation of registration</b>	
26	Registered person not conducting business under business name .....	12
27	Failure to give notice of change in particulars.....	13
28	Undesirable or prohibited name.....	13
29	Deregistered corporation .....	14
30	Notice of cancellation .....	14
31	Re-using expired business name .....	14
32	Revocation of cancellation.....	15
<b>Part 3</b>	<b>Legal proceedings and evidentiary matters</b>	
<b>Division 1</b>	<b>Appeals</b>	
33	Who may appeal.....	15
34	Hearing procedure.....	15
35	Operation and implementation of decision .....	16
36	Decision on appeal .....	16
37	Costs .....	16
<b>Division 2</b>	<b>Offences</b>	
38	Misleading information.....	16
39	Misleading documents.....	17
40	Liability of executive officers of corporations .....	17
41	Confidential information .....	18
42	Default penalty.....	18
<b>Division 3</b>	<b>Evidentiary matters</b>	
43	Evidence of conducting business under name .....	19
44	Judicial notice .....	19

---

45	Evidence of registration or non-registration .....	19
----	--	----

**Division 4          General matters**

46	Proceedings against persons under business name .....	19
47	Disability of persons in default .....	19

**Part 4                Administrative matters**

48	Prohibited names.....	20
49	Register of business names .....	20
50	Public access to register.....	20
51	Commissioner may correct errors.....	21
52	Duplicate certificate of registration.....	21
53	Approved forms .....	21

**Part 5                Miscellaneous matters**

54	Regulations.....	21
----	------------------	----

**Part 6                Repeals and transitional matters for  
Business Names Act 2007**

**Division 1          Repeals**

55	Repeals .....	21
----	---------------	----

**Division 2          Transitional matters**

56	Definitions.....	21
57	Register .....	22
58	Registered business names .....	22
59	Certificate of registration.....	22
60	Application for registration or renewal of registration.....	22
61	Resident agents.....	22
62	General transitional provision .....	23
63	Interpretation Act not affected.....	24

**Part 7                Consequential amendments**

**Division 1          Amendment of Acts**

**Subdivision 1      Companies (Unclaimed Assets and Moneys)  
Act**

64	Act amended .....	24
65	Amendment of section 5 (Definitions).....	24
66	Amendment of section 6 (Unclaimed assets in hands of liquidator).....	24

---

## **Subdivision 2 Partnership Act**

67	Act amended .....	25
68	Amendment of section 57 (Registration) .....	25

## **Division 2 Amendment of subordinate legislation**

### **Subdivision 1 Consumer Affairs and Fair Trading (Travel Agents) Regulations**

69	Regulations amended.....	25
70	Amendment of regulation 3 (Application for licence) .....	25
71	Amendment of Schedule 1 .....	25

### **Subdivision 2 Local Court Rules**

72	Rules amended .....	26
73	Amendment of rule 1.09 (Definitions) .....	26
74	Amendment of rule 6.05 (Personal service on firm or company).....	26

### **Subdivision 3 Private Security (Security Firms) Regulations**

75	Regulations amended.....	26
76	Amendment of Schedule .....	27

### **Subdivision 4 Small Claims Rules**

77	Rules amended .....	27
78	Amendment of rule 1.06 (Definitions) .....	27
79	Amendment of rule 6.05 (Personal service on firm or company).....	27
80	Amendment of Schedule 1 .....	28

### **Subdivision 5 Work Health Court Rules**

81	Rules amended .....	29
82	Amendment of rule 1.08 (Interpretation).....	29
83	Amendment of rule 4.05 (Personal service on firm or company).....	29

## **Division 3 Expiry of Part**

84	Expiry .....	30
----	--------------	----

## **Schedule Repeal of Acts**

### **ENDNOTES**

# NORTHERN TERRITORY OF AUSTRALIA

---

As in force at 22 August 2007

---

## BUSINESS NAMES ACT 2007

### An Act about the registration of business names

#### Part 1 Introduction

##### Division 1 Preliminary matters

###### 1 Short title

This Act may be cited as the *Business Names Act 2007*.

###### 2 Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

##### Division 2 Interpretation

###### 3 Definitions

In this Act:

***approved form*** means a form approved by the Commissioner under section 53.

***business*** includes trade and profession.

***business address***, for a business name, means:

- (a) the place shown in the register as the place where business is conducted under the business name; or
- (b) if more than one place is shown in the register as the place where business is conducted under the business name – the place shown in the register as the principal place where business is conducted.

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

**Commissioner** means the person holding or occupying the office of Commissioner of Consumer Affairs under the *Consumer Affairs and Fair Trading Act*.

**conducting business**, see section 4.

**corporation** means a body corporate registered as a corporation under the Corporations Act 2001.

**Default penalty**, see section 42.

**information notice** means a written notice to a person about a decision stating:

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the person may appeal to the Local Court against the decision within 28 days after receipt of the notice.

**misleading information**, includes information that is misleading because it:

- (a) does not include relevant information; or
- (b) includes misinformation.

**officer**, of a corporation, means an officer of a corporation as defined in paragraphs (a) and (c) to (g) of the definition of **officer of a corporation** in section 9 of the Corporations Act 2001.

**on-line service** means an Internet carriage service as defined in the *Broadcasting Services Act 1992 (Cth)*.

**prescribed fee** means a fee prescribed by regulation.

**prohibited name** means a name, or a name of a kind, for which a direction under section 48 is in force.

**register** means the register of business names.

**registered person**, see section 5.

## 4 Conducting business in Territory

- (1) Conducting business in the Territory includes:
  - (a) establishing a place of business; and
  - (b) soliciting or procuring an order from a person in the Territory.

- (2) A person is not regarded as conducting business in the Territory merely because, in the Territory, the person:
- (a) is or becomes a party to an action or suit or any administrative or arbitration proceeding, or settles an action, suit or proceeding or any claim or dispute; or
  - (b) maintains an ADI account; or
  - (c) effects a sale through an independent contractor; or
  - (d) creates evidence of a debt or creates a charge on real or personal property; or
  - (e) secures or collects any of the person's debts or enforces the person's rights in relation to any securities for such debts; or
  - (f) conducts an isolated transaction that is completed within 28 days, but not being one of a number of similar transactions repeated from time to time; or
  - (g) invests the person's funds or holds property.

## 5 Registered person

- (1) In this Act, a reference to ***the registered person*** for a business name registered under this Act is a reference to:
- (a) if the name is registered in one person's name only – the person; or
  - (b) if the name is registered in more than one person's name – those persons.
- (2) In this Act, a reference to ***a registered person*** for a business name registered under this Act is a reference to:
- (a) if the name is registered in one person's name only – the person; or
  - (b) if the name is registered in more than one person's name – any one of the persons.

## **6 Declared offences for Criminal Code**

An offence against this Act is an offence to which Part IIAA of the Criminal Code applies.

*Note*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility (including burdens of proof and general defences) and defines terms used for offences.*

## **Division 3 Application of Act**

### **7 Effect of contravention of Act**

A contravention of a provision of this Act does not operate to avoid an agreement, transaction, act or matter.

### **8 Person appointed to conduct business**

For this Act, a business conducted by a receiver, manager, administrator or trustee (an **appointee**) appointed under any agreement or court order, or under any law, is taken to be conducted by the person for whom the appointee is appointed.

## **Part 2 Registration of business names**

### **Division 1 Requirement for registration of business names**

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

- (1) A person must not, either alone or in association with another person (an **associate**), conduct business in the Territory under a business name unless the business name is registered under this Act in the name of the person and each associate.

Maximum penalty: 100 penalty units.

Default penalty: 1 penalty unit.

- (2) Subsection (1) does not apply if:
- (a) the business name consists of the name of the person and the name of each associate, without any addition; or
  - (b) orders for the goods and services provided by the business are received only by way of on-line service; or



- (c) the business name is the equivalent, in foreign language characters, of a business name registered under this Act in the name of the person and any associates.
- (3) A person does not commit an offence against subsection (1) if:
- (a) the person conducts business under a business name previously registered under this Act; and
  - (b) the registration has expired; and
  - (c) within 28 days after its expiry, an application for renewal of registration of the business name is made under section 16.
- (4) For subsection (2), the individual's name consists of:
- (a) the individual's full name; or
  - (b) the individual's surname and one of the following:
    - (i) the individual's given name or names;
    - (ii) the initial or initials of the individual's given name or names;
    - (iii) a combination of one or more of the individual's given name and the initial or initials of the individual's remaining given name or names;
    - (iv) the name or names by which the individual is commonly known or the initial or initials by which the individual is commonly known or any combination of one or more of the names and initials.
- (5) For subsection (2), the name of a corporation is the name under which the corporation is registered under the Corporations Act 2001.
- (6) For subsection (2)(a), the addition to a business name of words indicating the business is conducted in succession to the former registered person for the name is not an addition to the business name.

## **Division 2            Registration process**

### **10            Application for registration**

- (1) A person may apply to the Commissioner for registration of a business name.

- (2) The application must:
  - (a) be made in the approved form; and
  - (b) be signed by the applicant; and
  - (c) be accompanied by the prescribed fee.
- (3) The application must not be made more than 2 months before the date shown in it as the date or proposed date of commencement of the business.

## **11 Decision on application**

- (1) On consideration of the application, the Commissioner must:
  - (a) register the business name; or
  - (b) refuse to register the business name.
- (2) If the Commissioner decides to register the business name, the Commissioner must issue to the applicant a certificate of registration in the approved form for the business name.
- (3) If the Commissioner decides to refuse to register the business name, the Commissioner must give the applicant an information notice for the decision.

## **12 Refusal of application – general**

The Commissioner must refuse to register the business name if the Commissioner is not satisfied the particulars stated in the application are correct.

## **13 Refusal of application – undesirable or prohibited names**

- (1) The Commissioner must refuse to register a business name if the name is:
  - (a) a name the Commissioner considers undesirable; or
  - (b) a prohibited name.
- (2) Subsection (1) does not apply if the Minister consents to the registration of the name under subsection (3).
- (3) The Minister may consent to the registration of the business name if the application for registration includes an application for the Minister's consent to register the name if it would otherwise be refused under subsection (1).

- (4) If the Minister decides to refuse to consent to the registration of the business name under subsection (3), the Minister must give the applicant written notice of the decision.

#### **14 Duration of registration**

The registration of a business name remains in force for 3 years starting:

- (a) on the date of registration; or
- (b) if the registration is renewed under Division 3 – immediately after the expiry of the registration or previous renewal of registration.

### **Division 3 Renewal of registration**

#### **15 Notice of renewal**

- (1) The Commissioner must give to the registered person for a business name written notice of the date on which the registration of the business name expires.
- (2) The notice must be given not more than 28 days before expiry.

#### **16 Application for renewal of registration**

- (1) The person who is, or was, the registered person for the business name may apply to the Commissioner for renewal of registration of the business name.
- (2) The application must:
- (a) be made in the approved form; and
- (b) be signed by a person who is, or was, a registered person for the business name; and
- (c) be accompanied by the prescribed fee.
- (3) The application may be made:
- (a) not more than 28 days before expiry of the registration; or
- (b) within 28 days after expiry of the registration.

#### **17 Renewal of registration**

If the application is properly made, on receipt of the application the Commissioner must immediately renew the registration.

**18 Re-using expired business name**

- (1) This section applies if the registration of a business name has expired.
- (2) The Commissioner must not accept for registration any business name that is identical to the business name or that, in the Commissioner's opinion, closely resembles it, unless:
  - (a) the application for registration is made at least 28 days after the expiry of the registration; and
  - (b) no application for renewal of the registration was made within 28 days after expiry of the registration.
- (3) However, subsection (2) does not apply if the application is made:
  - (a) by the person who, immediately before the registration expired, was the registered person for the business name; or
  - (b) with the consent of the person who was the registered person for the business name immediately before the registration expired.

**Division 4 Change in particulars of registration**

**19 Notice of change in particulars**

- (1) This section applies if any of the following events happen in relation to a registered business name:
  - (a) a change occurs in the description of the nature of the business;
  - (b) a change occurs in the business address or another address shown on the register as a place where business is conducted under the business name;
  - (c) a change occurs in the email address listed on the register for the business;
  - (d) a change occurs in:
    - (i) the name or the place of residence of a registered person for the business name who is an individual; or
    - (ii) the corporate name or the place of the registered office in the Territory of a registered person for the business name that is a corporation;

- (e) another person commences to conduct business in the Territory under the business name in place of, or in association with, the registered person for the business name.
- (2) Written notice about the event must be given to the Commissioner:
- (a) by a person required to give the notice under subsection (3)(b); and
  - (b) in the approved form.
- (3) The notice must:
- (a) be given within 14 days after the event happens or the later period allowed by the Commissioner; and
  - (b) be given by:
    - (i) for an event mentioned in subsection (1)(a), (b) or (c) – a registered person at the time of the change; or
    - (ii) for an event mentioned in subsection (1)(d) – the person whose name, place of residence or registered office has changed; or
    - (iii) for an event mentioned in subsection (1)(e) – each person conducting business under that name immediately after the commencement; and
  - (c) be accompanied by the prescribed fee.
- (4) A person who is required under subsection (3) to give notice must comply with the requirement.
- Maximum penalty: 20 penalty units.
- Default penalty: 1 penalty unit.
- (5) It is a defence to a prosecution for an offence against subsection (4) if the defendant has a reasonable excuse.

## **20 Notice of ceasing to conduct business under name**

- (1) The registered person for a business name must give notice under this section in the approved form to the Commissioner if the registered person ceases to conduct business in the Territory under the name.
- (2) If a registered person is deceased, notice must be given by the person's personal representative.

- (3) The notice must:
- (a) be given within 14 days after the registered person ceases to conduct business in the Territory under the name; and
  - (b) be accompanied by the prescribed fee.
- (4) A person who is required under subsection (1) or (2) to give notice must comply with the requirement.
- Maximum penalty: 20 penalty units.
- Default penalty: 1 penalty unit.
- (5) It is a defence to a prosecution for an offence against subsection (4) if the defendant has a reasonable excuse.

## **Division 5 Use and display of business name**

### **21 Display of business name**

- (1) The registered person for a business name must ensure the registered business name is displayed in legible characters on any document relating to the conduct of the business.
- Maximum penalty: 20 penalty units.
- Default penalty: 1 penalty unit.
- (2) The registered person for a business name must ensure the name is displayed in a prominent place on the outside of every place at which business is conducted under the name.
- Maximum penalty: 20 penalty units.
- Default penalty: 1 penalty unit.
- (3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant proves that the defendant took all reasonable steps to ensure compliance with the subsection.

### **22 Display of certificate of registration**

- (1) The registered person for a business name must ensure the certificate of registration for the business name is displayed in a prominent place at the business address.
- Maximum penalty: 20 penalty units.
- Default penalty: 1 penalty unit.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant took all reasonable steps to ensure compliance with the subsection.

## **Division 6 Notices and information**

### **23 Signing of notices**

- (1) A notice given to the Commissioner under this Act is taken to be signed by the person required to sign the notice if:
- (a) for an individual – it is signed on the person's behalf by a person authorised in writing to sign the notice; or
  - (b) for a corporation – it is signed by an officer of the corporation.
- (2) Despite any other provision of this Act, if the Commissioner is satisfied it is not practicable to obtain the signature of a person required by this Act to sign a notice, the Commissioner may accept the notice without it being signed by the person.

*Note*

*The Electronic Transactions (Northern Territory) Act provides for notices to be given by electronic communication.*

### **24 Commissioner may require statutory declaration**

The Commissioner may require verification of the particulars stated in a document by statutory declaration.

### **25 Commissioner may require information or document**

- (1) The Commissioner may, by written notice, require a person to give information, or produce a document, to the Commissioner if the Commissioner considers the information or document relevant to the administration or enforcement of this Act.
- (2) The notice must state the period within which the information must be given (the **stated period**).
- (3) The stated period must be at least 14 days.
- (4) However, the Commissioner may extend the stated period if asked by the person before the end of the period.
- (5) The person must give the information or produce the document to the Commissioner within the stated period or that period as extended under subsection (4).

Maximum penalty: 20 penalty units.

- (6) It is a defence to a prosecution for an offence against subsection (5) if the defendant has a reasonable excuse.
- (7) The person is not excused from giving information or producing a document on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (8) However, if the person objects to giving information or producing a document on that ground, the information or document is not admissible against the person in civil or criminal proceedings other than proceedings for an offence in which the falsity or misleading nature of the information or document is relevant.

## **Division 7            Cancellation of registration**

### **26            Registered person not conducting business under business name**

- (1) The Commissioner must cancel the registration of a business name if notice is given under section 20 that the registered person for the business name has ceased to conduct business in the Territory under the name.
- (2) If the Commissioner reasonably believes the registered person for a business name is not conducting business in the Territory under the business name, the Commissioner may give written notice to the registered person stating:
  - (a) that the Commissioner proposes to cancel the registration of the name at the end of 14 days after the notice is given to the registered person; and
  - (b) the reasons for the proposed cancellation; and
  - (c) that the registered person may make representations in the 14-day period to show cause why the registration should not be cancelled.
- (3) The Commissioner must consider representations made under subsection (2)(c).
- (4) The Commissioner may cancel the registration of the business name if, at the end of the 14-day period, the Commissioner is satisfied the registered person for the business name is not conducting business in the Territory under the business name.



**27 Failure to give notice of change in particulars**

- (1) If the Commissioner reasonably believes a person has contravened a requirement of section 19 in relation to a business name, the Commissioner may give written notice to the registered person for the business name stating:
  - (a) that the Commissioner proposes to cancel the registration of the name at the end of 14 days after the notice is given to the registered person unless:
    - (i) the provision is complied with within the 14-day period;  
or
    - (ii) the Commissioner is satisfied there was in fact no contravention of the provision; and
  - (b) the reasons for the proposed cancellation; and
  - (c) that the registered person may make representations in the 14-day period to show cause why the registration should not be cancelled.
- (2) The Commissioner must consider representations made under subsection (1)(c).
- (3) The Commissioner may cancel the registration of the business name if, at the end of the 14-day period:
  - (a) the Commissioner is not satisfied there was in fact no contravention of the provision; and
  - (b) the provision has not been complied with.

**28 Undesirable or prohibited name**

- (1) This section applies if a business name is registered even though it is a name that must not be registered under section 13(1).
- (2) The Commissioner may give written notice to the registered person for the business name stating:
  - (a) that the Commissioner proposes to cancel the registration of the name at the end of 14 days after the notice is given to the registered person; and
  - (b) the reasons for the proposed cancellation; and

- (c) that the registered person may make representations in the 14-day period to show cause why the registration should not be cancelled.
- (3) The Commissioner must consider representations made under subsection (2)(c).
- (4) The Commissioner may cancel the registration of the business name if, at the end of the 14-day period, the Commissioner is satisfied the business name is a name that must not be registered under section 13(1).
- (5) If the Commissioner cancels the registration of the business name under subsection (4), the Commissioner may remit the fee payable for an application for the registration of a new business name for the business.

## **29 Deregistered corporation**

The Commissioner must cancel the registration of a business name if:

- (a) the registered person is a corporation; and
- (b) it has been deregistered under the Corporations Act 2001.

## **30 Notice of cancellation**

If, under section 26(4), 27(3) or 28(4), the Commissioner decides to cancel the registration of a business name, the Commissioner must give the registered person for the business name an information notice for the decision.

## **31 Re-using expired business name**

- (1) This section applies if the registration of a business name is cancelled.
- (2) The Commissioner must not accept for registration any business name that is identical to the business name or that, in the Commissioner's opinion, closely resembles it:
  - (a) within 28 days after the cancellation; or
  - (b) if an appeal is made against the decision to cancel the registration under Part 3, Division 1 – until the appeal is concluded.

**32            Revocation of cancellation**

- (1) The Commissioner may revoke a cancellation of a business name within 28 days after cancellation if subsection (2) or (3) applies.
- (2) This subsection applies if the Commissioner is satisfied the registration of the business name was cancelled because of an error.
- (3) This subsection applies if:
  - (a) the registered person for the business name was a corporation; and
  - (b) the registration of the business name was cancelled because the corporation was deregistered by ASIC; and
  - (c) ASIC has reinstated the registration of the corporation.
- (4) If a cancellation is revoked under subsection (1), the business name is taken to have continued to be registered as if the registration had not been cancelled.

**Part 3            Legal proceedings and evidentiary matters**

**Division 1        Appeals**

**33            Who may appeal**

- (1) A person who is entitled to be given an information notice for a decision may appeal to the Local Court against the decision.
- (2) An appeal must:
  - (a) be started within 28 days after:
    - (i) if the person receives an information notice for the decision – the day the person receives the notice; or
    - (ii) if subparagraph (i) does not apply – the day the person becomes aware of the decision; and
  - (b) state fully the grounds on which it is made.

**34            Hearing procedure**

The appeal is a hearing de novo.

**35            Operation and implementation of decision**

- (1) The appeal does not affect the operation or implementation of the decision.
- (2) However, the Local Court may make an order staying or otherwise affecting the operation or implementation of so much of the decision as the Court considers appropriate to effectively hear and decide the appeal.
- (3) The order:
  - (a) is subject to any conditions stated in it; and
  - (b) has effect:
    - (i) for the period stated in it; or
    - (ii) if no period is stated in it – until the Court has decided the appeal.

**36            Decision on appeal**

- (1) The Local Court must make an order:
  - (a) confirming the decision; or
  - (b) setting the decision aside and substituting its own decision.
- (2) If the Court makes an order under subsection (1)(b), the substituted decision is, for this Act (other than this Division), taken to be the decision of the Commissioner.

**37            Costs**

At the hearing of the appeal, the Local Court may make the order as to costs it considers appropriate.

**Division 2            Offences**

**38            Misleading information**

A person must not give to the Commissioner information the person knows to be misleading in a material particular.

Maximum penalty:        50 penalty units or imprisonment for  
6 months.

### **39 Misleading documents**

- (1) A person must not give to the Commissioner a document containing information the person knows to be misleading in a material particular.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

- (2) However, no offence is committed against subsection (1) if the person, when giving the document to the Commissioner:
- (a) draws the misleading aspect of the document to the Commissioner's attention; and
  - (b) to the extent the person can reasonably do so, gives the Commissioner the information necessary to correct the document.

### **40 Liability of executive officers of corporations**

- (1) If a corporation commits an offence against this Act, each of the executive officers of the corporation commits an offence and is liable to the same penalty for the offence as an individual.
- (2) However, it is a defence for an executive officer to establish:
- (a) the defendant did not know, and could not reasonably have been expected to know, that the offence was to be or was being committed; or
  - (b) the defendant exercised due diligence to prevent the commission of the offence.
- (3) Proceedings for an offence against this Act may be brought against an executive officer of a corporation whether or not a proceeding for the offence is brought against the corporation.
- (4) A person is not liable to be punished by imprisonment for an offence against this Act if the person would not have been found guilty of the offence if subsection (1) had not been enacted.
- (5) In this section:

**executive officer**, of a corporation, means a person who is concerned with, or takes part in, the management of the corporation, (whether or not the person is a director or the person's position is given the name of executive officer).

#### 41 Confidential information

- (1) This section applies if:
- (a) a person is, or has been, the Commissioner or a public sector employee performing functions (**official functions**) under this Act; and
  - (b) the person acquires information in the course of performing official functions.
- (2) The person is guilty of an offence if:
- (a) the person discloses the information to someone else; or
  - (b) the person does something that discloses the information to someone else and is reckless about whether doing the thing would result in the information being disclosed; or
  - (c) the person uses the information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) Subsection (2) does not apply to:
- (a) a disclosure of information made in the course of performing official functions; or
  - (b) a disclosure by the person to a court or tribunal in any proceedings; or
  - (c) a disclosure or use required or authorised by law; or
  - (d) a disclosure or use made in the public interest.

#### 42 Default penalty

If the expression **Default penalty** appears at the end of a section or subsection, a person who is found guilty of an offence against the section or subsection:

- (a) may be found guilty of a further offence when the person is found guilty of the first offence if the offence continued after the date of the first offence; and
- (b) the person is punishable for the further offence by a penalty not exceeding the amount of the stated default penalty for each day during which the offence continued.

### **Division 3            Evidentiary matters**

#### **43            Evidence of conducting business under name**

In any proceedings, a person is taken to be conducting business under a business name if:

- (a) the business name has been displayed at a place; and
- (b) it is reasonable to infer that the business name has reference to a business conducted at the place.

#### **44            Judicial notice**

In any proceedings, a signature purporting to be the signature of the Commissioner is evidence of the signature it purports to be.

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

In any proceedings, a document issued under section 50(2) is evidence of any matter contained or stated in it.

### **Division 4            General matters**

#### **46            Proceedings against persons under business name**

- (1) Proceedings may be taken in a court of competent jurisdiction against a person in the business name under which the person is conducting business.
- (2) Subsection (1) applies whether or not the business name is registered under this Act.
- (3) For the proceedings, the business name is a sufficient designation of the person in all documents.

#### **47            Disability of persons in default**

- (1) This section applies if:
  - (a) a person:
    - (i) conducts business under a business name in contravention of section 9; or
    - (ii) does not give notice under section 19 for a business name when required to do so; and
  - (b) the person starts proceedings in the business name.

- (2) The court in which the proceeding is started may order the person to cease to contravene section 9 or to give the notice.
- (3) In addition, the court may:
  - (a) stay all proceedings until the order under subsection (2) is complied with; or
  - (b) allow the proceedings to be continued on an undertaking being given by the person that the person will comply with the order within a period stated by the court.

## **Part 4                      Administrative matters**

### **48                      Prohibited names**

The Minister may, by *Gazette* notice, direct the Commissioner not to register a name, or a name of a kind, stated in the notice.

### **49                      Register of business names**

- (1) The Commissioner must keep a register of business names registered under this Act.
- (2) The following form part of the register:
  - (a) a notice given under this Act for a business name registered under this Act;
  - (b) a change in the name or principal place of a business under the Corporations Act 2001, on notice of the change being given by ASIC.

### **50                      Public access to register**

- (1) Any person may, on payment of the prescribed fee:
  - (a) inspect the register; and
  - (b) copy or take extracts from the register.
- (2) On payment of the prescribed fee, the Commissioner must issue to a person:
  - (a) a copy of or extract from the register, certified to be a true copy or extract; or
  - (b) a certificate signed by the Commissioner certifying a person was or was not on a date, or during a period stated in the certificate, the registered person for a business name.



**51 Commissioner may correct errors**

- (1) If the Commissioner is satisfied there is an error in an entry in the register or in a certificate of registration of a business name, the Commissioner may correct the error.
- (2) Any entry or certificate corrected has effect as if the error had not been made.

**52 Duplicate certificate of registration**

The Commissioner must, on payment of the prescribed fee, issue to the registered person for a business name a duplicate certificate of registration for the business name.

**53 Approved forms**

The Commissioner may approve forms for use under this Act.

**Part 5 Miscellaneous matters**

**54 Regulations**

- (1) The Administrator may make regulations under this Act.
- (2) The regulations may prescribe fees payable under this Act.

**Part 6 Repeals and transitional matters for Business Names Act 2007**

**Division 1 Repeals**

**55 Repeals**

The Acts specified in the Schedule are repealed.

**Division 2 Transitional matters**

**56 Definitions**

In this Part:

***commencement date*** means the date on which section 55 commences.

***repealed Act*** means the *Business Names Act* as in force immediately before the commencement date.

**57 Register**

The register kept under the repealed Act immediately before the commencement date is taken to be the register under this Act.

**58 Registered business names**

A business name registered under the repealed Act immediately before the commencement date is taken to have been registered under this Act on the date the name was registered under the repealed Act.

**59 Certificate of registration**

A certificate of registration of a business name issued under the repealed Act and in force immediately before the commencement date is taken to be a certificate of registration of a business name issued under this Act.

**60 Application for registration or renewal of registration**

An application for registration, or renewal of registration, of a business name that was pending immediately before the commencement date is taken to be an application for registration, or renewal of registration, of a business name under this Act.

**61 Resident agents**

- (1) This section applies if:
  - (a) a person was the resident agent under the repealed Act for a business name (the **agent**); and
  - (b) under a provision of the repealed Act, the agent was required or permitted to perform a function; and
  - (c) under a corresponding provision of this Act, the registered person is required or permitted to perform the function.
- (2) The agent may perform the function under the corresponding provision as if the agent were the registered person for the business name.
- (3) For subsection (2), if the Commissioner is required or permitted to send a notice to the registered person, the Commissioner must send the notice to the agent.

- (4) Subsections (2) and (3) cease to apply on the earliest of the following:
  - (a) the date a notice under section 19 is given to the Commissioner for the business name;
  - (b) the date an application for renewal of registration for the business name is made under section 16;
  - (c) the date notice of revocation is given to the Commissioner under subsection (5);
  - (d) the date notice of cessation is given to the Commissioner under subsection (6).
- (5) The registered person for a business name may revoke an agent's authority to act under this section by:
  - (a) giving written notice to the Commissioner of the revocation;  
and
  - (b) giving written notice to the agent of the revocation.
- (6) In addition, an agent may cease to act under this section by:
  - (a) giving written notice to the Commissioner of the cessation;  
and
  - (b) giving written notice to the registered person for the business name of the cessation.

## **62 General transitional provision**

- (1) If anything of a kind required or permitted to be done under a provision of this Act was done under a corresponding provision of the repealed Act and still had effect immediately before the commencement date, the thing continues in effect on and after that date as if:
  - (a) this Act had been in force when it was done; and
  - (b) it had been done under this Act.
- (2) If subsection (1) applies in relation to a notice or other instrument, a reference in the notice or instrument to a provision of the repealed Act must, for that subsection, be read as a reference to the corresponding provision of this Act.

- (3) Without limiting subsections (1) and (2), if a provision of the repealed Act that corresponds to a provision of this Act would, but for its repeal, have applied in relation to anything done or being done or in existence before the commencement date, the provision of this Act applies (with the necessary changes) in relation to the thing.

**63 Interpretation Act not affected**

This Part does not limit Part III of the *Interpretation Act*.

**Part 7 Consequential amendments**

**Division 1 Amendment of Acts**

**Subdivision 1 Companies (Unclaimed Assets and Moneys) Act**

**64 Act amended**

This Subdivision amends the *Companies (Unclaimed Assets and Moneys) Act*.

**65 Amendment of section 5 (Definitions)**

- (1) Section 5, definition of ***the Registrar***

*omit*

- (2) Section 5

*insert (in alphabetical order)*

***Commissioner*** means the person holding or occupying the office of Commissioner of Consumer Affairs under the *Consumer Affairs and Fair Trading Act*.

**66 Amendment of section 6 (Unclaimed assets in hands of liquidator)**

Section 6(3)

*omit*

Registrar

*substitute*

Commissioner

## **Subdivision 2 Partnership Act**

### **67 Act amended**

This Subdivision amends the *Partnership Act*.

### **68 Amendment of section 57 (Registration)**

Section 57(3)

*omit*

Registrar of Business Names

*substitute*

Commissioner

## **Division 2 Amendment of subordinate legislation**

### **Subdivision 1 Consumer Affairs and Fair Trading (Travel Agents) Regulations**

#### **69 Regulations amended**

This Subdivision amends the *Consumer Affairs and Fair Trading (Travel Agents) Regulations*.

#### **70 Amendment of regulation 3 (Application for licence)**

Regulation 3(2)(b)

*omit*

Registrar of Business Names within the meaning of

*substitute*

Commissioner under

#### **71 Amendment of Schedule 1**

Schedule 1, Forms 1 and 2, Note 1

*omit, substitute*

A certificate of the Commissioner under the Business Names Act that each business name stated in this application has been registered under that Act must accompany this form.

## **Subdivision 2 Local Court Rules**

### **72 Rules amended**

This Subdivision amends the *Local Court Rules*.

### **73 Amendment of rule 1.09 (Definitions)**

Rule 1.09, definition of *firm*

*omit, substitute*

*firm* means an unincorporated body of persons (whether consisting of individuals or of corporations or partly of individuals and partly of corporations) associated together to conduct business;

### **74 Amendment of rule 6.05 (Personal service on firm or company)**

(1) Rule 6.05(a)

*omit*

*Business Names Act* – by serving a document in accordance with section 31(2) of that Act;

*substitute*

*Business Names Act* – by:

- (i) leaving a document, addressed to the firm, at the firm's business address with someone who appears to be at least 16 years old and appears to be employed by the firm; or
- (ii) sending a document by registered post addressed to the firm at the firm's business address; or

(2) Rule 6.05(b), at the end

*insert*

or

## **Subdivision 3 Private Security (Security Firms) Regulations**

### **75 Regulations amended**

This Subdivision amends the *Private Security (Security Firms) Regulations*.

**76 Amendment of Schedule**

Schedule, Note (a)

*omit, substitute*

A certificate of the Commissioner under the *Business Names Act* that each business name stated in this application has been registered under that Act must accompany this form.

**Subdivision 4 Small Claims Rules**

**77 Rules amended**

This Subdivision amends the *Small Claims Rules*.

**78 Amendment of rule 1.06 (Definitions)**

Rule 1.06, definition of *firm*

*omit, substitute*

*firm* means an unincorporated body of persons (whether consisting of individuals or of corporations or partly of individuals and partly of corporations) associated together to conduct business;

**79 Amendment of rule 6.05 (Personal service on firm or company)**

(1) Rule 6.05(a)

*omit*

*Business Names Act* – by serving a document in accordance with section 31(2) of that Act;

*substitute*

*Business Names Act* – by:

- (i) leaving a document, addressed to the firm, at the firm's business address with someone who appears to be at least 16 years old and appears to be employed by the firm; or
- (ii) sending a document by registered post addressed to the firm at the firm's business address; or

(2) Rule 6.05(b), at the end

*insert*

or

**80 Amendment of Schedule 1**

(1) Schedule 1, Form 6A

*omit*

*/\* the resident agent of the \* plaintiff/defendant \* firm/ a person apparently in the service of the resident agent of the \* plaintiff/defendant \* firm and who is apparently of or above the age of 16 years \**

(2) Schedule 1, Form 6A

*omit*

*/ resident agent's address in the Territory \**

(3) Schedule 1, Form 7A

*omit*

*/\* the resident agent of the defendant firm/ a person apparently in the service of the resident agent of the defendant firm and who is apparently of or above the age of 16 years \**

(4) Schedule 1, Form 7A

*omit*

*/ resident agent's address in the Territory \**

(5) Schedule 1, Form 7B

*omit*

*/\* the resident agent of the defendant firm/ a person apparently in the service of the resident agent of the defendant firm and who is apparently of or above the age of 16 years \**

(6) Schedule 1, Form 7B

*omit*

*/ resident agent's address in the Territory \**



(7) Schedule 1, Form 7C

*omit*

/\* the resident agent of the defendant firm/ a person apparently in the service of the resident agent of the defendant firm and who is apparently of or above the age of 16 years \*

(8) Schedule 1, Form 7C

*omit*

/ resident agent's address in the Territory \*

(9) Schedule 1, Form 23A

*omit*

/\* the resident agent of the \* plaintiff/defendant \* firm/ a person apparently in the service of the resident agent of the \* plaintiff/defendant \* firm and who is apparently of or above the age of 16 years \*

(10) Schedule 1, Form 23A

*omit*

/ resident agent's address in the Territory \*

## **Subdivision 5 Work Health Court Rules**

### **81 Rules amended**

This Subdivision amends the *Work Health Court Rules*.

### **82 Amendment of rule 1.08 (Interpretation)**

Rule 1.08(1), definition of ***firm***

*omit, substitute*

***firm*** means an unincorporated body of persons (whether consisting of individuals or of corporations or partly of individuals and partly of corporations) associated together to conduct business.

### **83 Amendment of rule 4.05 (Personal service on firm or company)**

Rule 4.05(a)

*omit*

*Business Names Act* – by serving a document in accordance with section 31(2) of that Act;

*substitute*

*Business Names Act* – by:

- (i) leaving a document, addressed to the firm, at the firm's business address with someone who appears to be at least 16 years old and appears to be employed by the firm; or
- (ii) sending a document by registered post addressed to the firm at the firm's business address; or

### **Division 3            Expiry of Part**

#### **84            Expiry**

This Part expires the day after it commences.

**Schedule Repeal of Acts**

section 55

---

<i>Business Names Ordinance 1962</i>	Ordinance No. 37 of 1963
<i>Business Names Ordinance 1963</i>	Ordinance No. 53 of 1963
<i>Business Names Ordinance 1968</i>	Ordinance No. 2 of 1968
<i>Business Names Amendment Act 1990</i>	Act No. 58 of 1990

---

## 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 Act 2007 (Act No. 1, 2007)***

Assent date	8 March 2007
Commenced	22 August 2007 ( <i>Gaz</i> G34, 22 August 2007, p 7)