

NORTHERN TERRITORY OF AUSTRALIA

BUSINESS NAMES (NATIONAL UNIFORM LEGISLATION)
IMPLEMENTATION ACT 2012

Act No. 8 of 2012

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 8 of 2012

An Act to provide for the implementation of a national law relating to the registration and use of business names

[Assented to 27 April 2012]
[Second reading 22 February 2012]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Business Names (National Uniform Legislation) Implementation Act 2012*.

2 Commencement

- (1) This Act, other than Parts 3 and 4, commences on the day on which the Administrator's assent to this Act is declared.
- (2) Parts 3 and 4 commence on the change-over day.

3 Definitions

In this Act:

after the change-over day means on and after the change-over day.

change-over day means the day on which Part 2 of the Commonwealth Business Names Act commences.

Commonwealth Business Names Act means the *Business Names Registration Act 2011* (Cth).

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

Commonwealth Transitional Act means the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* (Cth).

expired but renewable business name means a business name in respect of which:

- (a) registration on the Territory register expires before the change-over day; and
- (b) a person would be entitled to make a renewal application after the change-over day if the Territory Act were still in operation; and
- (c) a renewal application has not been made under the Territory Act before the change-over day.

item, followed by a number, means the item with that number in Schedule 1 to the Commonwealth Transitional Act.

Example

Item 6 means item 6 of Schedule 1 to the Commonwealth Transitional Act.

new business names legislation means:

- (a) the Commonwealth Business Names Act and any instrument made under that Act; and
- (b) the Commonwealth Transitional Act and any instrument made under that Act.

registration application means an application under section 10 of the Territory Act.

renewal application means an application under section 16 of the Territory Act.

Territory Act means the *Business Names Act* as in force immediately before the repeal.

Note

A reference to this Act does not have any referential words (such as "of this Act"). However, a reference to a specific provision of the Territory Act includes referential words to that Act (such as section 25 "of the Territory Act").

Territory register means the register of business names kept under section 49 of the Territory Act.

the repeal means the repeal of the Territory Act by Part 3.

4 Meanings of other words

- (1) Unless the context otherwise requires, a word used in this Act and defined under the Territory Act has the meaning given under the Territory Act.
- (2) For this Act, both of the following are made when they are received by or for the Commissioner:
 - (a) a registration application;
 - (b) a renewal application.

Part 2 Migration of information to Commonwealth register and transition to Commonwealth Business Names Act

Division 1 Transfer of business names information to ASIC

5 Commissioner may give information to ASIC

- (1) The Commissioner may give ASIC any information the Commissioner has acquired in connection with the performance of the Commissioner's functions under the Territory Act that is reasonably required by ASIC in connection with the performance of its functions under the Commonwealth Business Names Act or Commonwealth Transitional Act.
- (2) The Commissioner may give the information:
 - (a) before or after the change-over day; and

(b) in whatever form the Commissioner considers appropriate, including an electronic form or form approved under the Commonwealth Business Names Act or Commonwealth Transitional Act.

(3) This section applies despite any other Act or law.

6 Commissioner to notify ASIC about business names to be registered on Commonwealth register

The Commissioner must, before the change-over day, give ASIC notice under item 1 in relation to each business name that will be registered on the Territory register immediately before the change-over day, other than a business name mentioned in section 7(1).

7 Commissioner to notify ASIC about business names to be held etc.

(1) The Commissioner must, before the change-over day, give ASIC notice under item 4 that the following business names are to be held for the purposes of resolving outstanding matters under the Territory Act:

(a) each business name that is the subject of a registration application made, but not finally decided under the Territory Act, before the change-over day;

(b) each business name that is the subject of a registration application refused within 28 days before the change-over day;

(c) each expired but renewable business name;

(d) each business name that is the subject of a notice given under section 19(2) of the Territory Act before the change-over day in relation to which the Commissioner has not taken any action before that day;

(e) each business name that is the subject of a notice given under section 25 of the Territory Act if the period for compliance stated in the notice, or the period as extended under section 25(4) of the Territory Act, has not expired before the change-over day;

(f) each business name that is the subject of a notice given under section 26(2), 27(1) or 28(2) of the Territory Act if the 14 day period stated in the notice has not expired before the change-over day;

- (g) each business name that is the subject of an appeal started under Part 3 of the Territory Act that has not been concluded before the change-over day;
 - (h) each business name that is cancelled under section 26(4), 27(3) or 28(4) of the Territory Act within 28 days before the change-over day, unless the cancellation is revoked before the change-over day.
- (2) The Commissioner must give ASIC information as requested under item 9 about whether a business name should continue to be held for the purposes of resolving outstanding matters.

Division 2 Applications for registration or renewal of registration of business names

8 Commissioner may refuse registration application made before change-over day

- (1) If a registration application is made during the period starting 2 weeks before the change-over day, the Commissioner:
- (a) may refuse to accept the application; and
 - (b) if the Commissioner refuses to accept the application – must notify the applicant about the refusal and provide the applicant with information about how to apply for registration of a business name on the Commonwealth register.
- (2) This section applies despite anything to the contrary in Part 2, Division 2 of the Territory Act.

9 Registration application pending on change-over day

- (1) This section applies if before the change-over day:
- (a) a registration application in relation to a business name is made and is not refused as mentioned in section 8; and
 - (b) the application is not finally decided under the Territory Act.
- (2) Despite the repeal, after the change-over day, the Commissioner must decide whether or not the business name would have been registered under the Territory Act if the Territory Act were still in operation.

- (3) If the Commissioner decides the business name:
- (a) would have been registered – the Commissioner must notify ASIC under item 6 or 9 that the business name is to be registered on the Commonwealth register; or
 - (b) would not have been registered – the Commissioner must notify ASIC under item 8 or 9 that ASIC is to cease to hold the business name.

10 Renewal application may be made after the change-over day

- (1) Despite the repeal, after the change-over day but subject to section 16(3) of the Territory Act, a person may make a renewal application in relation to a business name as if the Territory Act were still in operation.
- (2) If a renewal application is made in accordance with subsection (1), the Commissioner must decide whether or not registration of the business name would have been renewed under the Territory Act if the Territory Act were still in operation.
- (3) If the Commissioner decides registration:
- (a) would have been renewed – the Commissioner must notify ASIC under item 6 or 9 that the business name is to be registered on the Commonwealth register; or
 - (b) would not have been renewed – the Commissioner must notify ASIC under item 8 or 9 that ASIC is to cease to hold the business name.

11 Commissioner to notify ASIC if certain business names not renewed

If a renewal application is not made for an expired but renewable business name within 28 days after the expiry of the registration of the business name, the Commissioner must notify ASIC under item 8 or 9 that ASIC is to cease to hold the business name.

Note for section 11

A renewal application for an expired but renewable business name could have been made as mentioned in section 10.

Division 3 Notices relating to business names

12 Notice of change in certain particulars

- (1) This section applies if:
 - (a) a notice in relation to a business name is given to the Commissioner under section 19(2) of the Territory Act before the change-over day; and
 - (b) the Commissioner has not taken any action in relation to the notice before that day.
- (2) As soon as practicable after the change-over day, the Commissioner must notify ASIC under item 6 or 9 that the business name is to be registered on the Commonwealth register, taking into account the particulars contained in the notice.

13 Commissioner may refuse notice of ceasing to conduct business given before change-over day

- (1) If a person gives a notice under section 20 of the Territory Act in relation to a business name during the period starting 2 weeks before the change-over day:
 - (a) the Commissioner may refuse to accept the notice; and
 - (b) if the Commissioner refuses to accept the notice:
 - (i) the Commissioner must notify the person and provide the person with information about how to request ASIC to cancel the registration of the business name; and
 - (ii) despite section 24, the person cannot be charged with an offence against section 20(4) of the Territory Act in relation to the business name.
- (2) This section applies despite anything to the contrary in sections 20 and 26 of the Territory Act.

14 Notice requiring information pending on change-over day

- (1) This section applies if before the change-over day:
 - (a) a notice in relation to a business name is given to a person under section 25 of the Territory Act; and

- (b) the period for compliance stated in the notice, or the period as extended by the Commissioner under section 25(4) of the Territory Act, has not expired.
- (2) Despite the repeal:
- (a) section 25 of the Territory Act continues to apply in relation to the notice after the change-over day; but
 - (b) at the end of the period stated in the notice, the Commissioner must decide whether or not there would be grounds to give a notice in relation to the business name under section 26(2) or 27(1) of the Territory Act if that Act were still in operation.
- (3) If the Commissioner decides:
- (a) there would not be grounds to give a notice mentioned in subsection (2)(b) – the Commissioner must notify ASIC under item 6 or 9 that the business name is to be registered on the Commonwealth register; or
 - (b) there would be grounds to give a notice mentioned in subsection (2)(b) – the Commissioner must notify ASIC under item 8 or 9 that ASIC is to cease to hold the business name.

15 Notice to show cause pending on change-over day

- (1) This section applies if before the change-over day:
- (a) a notice in relation to a business name is given to a person under section 26(2), 27(1) or 28(2) of the Territory Act; and
 - (b) the period stated in the notice has not expired.
- (2) Despite the repeal:
- (a) the section of the Territory Act under which the notice was given continues to apply in relation to the notice after the change-over day; but
 - (b) at the end of the period specified in the notice, the Commissioner must decide whether or not the registration of the business name would have been cancelled under the Territory Act if it were still in operation.
- (3) If the Commissioner decides the registration:
- (a) would not have been cancelled – the Commissioner must notify ASIC under item 6 or 9 that the business name is to be registered on the Commonwealth register; or

- (b) would have been cancelled – the Commissioner must notify ASIC under item 8 or 9 that ASIC is to cease to hold the business name.

Division 4 Appeals and revocation of cancellation of business names

16 Appeal started before change-over day

Despite the repeal, if an appeal to the Local Court was started under section 33 of the Territory Act and not finally decided before the change-over day, the appeal may be decided by the Local Court as if the Territory Act were still in operation.

17 Appeal may be started after the change-over day

- (1) Subsection (2) applies if, immediately before the repeal, a person has a right to appeal to the Local Court under section 33 of the Territory Act.
- (2) Despite the repeal, after the change-over day:
 - (a) the person may start an appeal under section 33 of the Territory Act, within the period mentioned in section 33(2) of the Territory Act, as if the Territory Act were still in operation; and
 - (b) the appeal may be decided by the Local Court as if the Territory Act were still in operation.

18 Commissioner to notify ASIC at conclusion of appeal

- (1) This section applies to an appeal mentioned in section 16 or 17.
- (2) If the Local Court makes an order that the business name the subject of the appeal:
 - (a) is to be registered – the Commissioner must notify ASIC under item 6 or 9 that the business name is to be registered on the Commonwealth register; or
 - (b) is not to be registered – the Commissioner must notify ASIC under item 8 or 9 that ASIC is to cease to hold the business name.

19 Commissioner to notify ASIC if appeal against refusal not started

- (1) This section applies to a business name the subject of a registration application refused within 28 days before the change-over day.
- (2) If an appeal against the refusal is not started within the time allowed under section 33 of the Territory Act, the Commissioner must notify ASIC under item 8 or 9 that ASIC is to cease to hold the business name.

Note for subsection (2)

An appeal against the refusal could have been made as mentioned in section 17.

20 Commissioner to notify ASIC if cancellation should be revoked or appeal against cancellation not started

- (1) This section applies to a business name that is cancelled under section 26(4), 27(3) or 28(4) of the Territory Act within 28 days before the change-over day, unless the cancellation is revoked before the change-over day.
- (2) The Commissioner may notify ASIC under item 6 or 9 that the business name is to be registered on the Commonwealth register if, after the change-over day, the Commissioner decides that section 32(2) or (3) of the Territory Act applies to the cancellation.
- (3) If the Commissioner does not notify ASIC under subsection (2) and an appeal against the cancellation is not started within the time allowed under section 33 of the Territory Act, the Commissioner must notify ASIC under item 8 or 9 that ASIC is to cease to hold the business name.

Note for subsection (3)

An appeal against the cancellation could have been made as mentioned in section 17.

Division 5 Offences

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

- (1) This section applies to a business name if:
 - (a) the Commissioner has given ASIC a notice under item 4 that the business name is to be held for the purposes of resolving outstanding matters under the Territory Act; and

- (b) the business name would not have been treated as having been registered under the Territory Act (had that Act not been repealed) while the outstanding matter concerned was resolved.
- (2) Despite the repeal, section 9 of the Territory Act continues to apply in relation to the business name as if the Territory Act were still in operation until:
- (a) the business name is registered by ASIC under the Commonwealth Transitional Act; or
 - (b) ASIC ceases to hold the business name under the Commonwealth Transitional Act.

22 Offence to give misleading information or documents after the change-over day

Despite the repeal, after the change-over day, sections 38 and 39 of the Territory Act:

- (a) continue to apply in relation to information and documents given to the Commissioner under the Territory Act as continued by this Act, as if the Territory Act were still in operation; and
- (b) are taken to apply in relation to information and documents given to the Commissioner under this Act, as if the Territory Act were still in operation.

23 Offence to disclose confidential information after the change-over day

Despite the repeal, after the change-over day, section 41 of the Territory Act:

- (a) continues to apply in relation to information acquired under the Territory Act (whether or not as continued by this Act), as if the Territory Act were still in operation; and
- (b) is taken to apply in relation to information acquired under this Act, as if the Territory Act were still in operation.

24 Offences committed against Territory Act before or after the change-over day

- (1) This section applies if a person is alleged to have committed an offence against the Territory Act before or after the change-over day.

- (2) Despite the repeal, the provisions of the Territory Act and the *Fines and Penalties Act*, as in force immediately before the change-over day, continue to apply after the change-over day in relation to the offence.

Division 6 General matters

25 Section 12 of *Interpretation Act*

This Part does not affect the application of section 12 of the *Interpretation Act* in relation to the repeal unless its application is inconsistent with a particular provision of this Part.

26 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function under this Part as:

- (a) the Commissioner; or
- (b) a delegate of the Commissioner.

- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

- (3) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

27 Regulations

- (1) The Administrator may make regulations under this Act.
- (2) Without limiting subsection (1), the regulations may:
- (a) declare a matter to be an excluded matter for section 13 of the Commonwealth Business Names Act in relation to:
 - (i) the whole of the new business names legislation; or
 - (ii) a specified provision of the new business names legislation; or
 - (iii) the new business names legislation other than a specified provision; or

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- (iv) the new business names legislation otherwise than to a specified extent; or
 - (b) declare a specified provision of an Act or subordinate legislation to be a business names legislation displacement provision for the purposes of section 14 of the Commonwealth Business Names Act (either generally or specifically in relation to a provision of the new business names legislation).

28 Transitional regulations

- (1) A regulation may provide for a matter of a transitional nature:
 - (a) because of the enactment of the following Acts and instruments:
 - (i) this Act;
 - (ii) any other Act or instrument to the extent that it amends this Act;
 - (iii) the new business names legislation or any Act or instrument of the Commonwealth that amends the new business names legislation; or
 - (b) to otherwise allow or facilitate the transition from the operation of the Territory Act to the Commonwealth Business Names Act.
- (2) The regulation may have retrospective operation to a day not earlier than the change-over day.
- (3) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.
- (4) The regulation must declare it is made under this section.
- (5) This section, and each regulation made under it, expires on the first anniversary of the change-over day.

Part 3 Repeal

29 Repeal

The *Business Names Act 2007* (Act No. 1 of 2007) is repealed.

Part 4 Consequential amendment of laws

30 Laws amended

The Schedule amends the laws mentioned in it.

Schedule Laws amended

section 30

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
<i>Advance Bank Integration Act</i>		
section 7(1)(d)	<i>Business Names Act</i>	<i>Business Names Registration Act 2011 (Cth)</i>
<i>Agents Licensing Act</i>		
section 50(1)(a)	<i>Business Names Act</i>	<i>Business Names Registration Act 2011 (Cth)</i>
<i>Agents Licensing Regulations</i>		
regulation 3, definition <i>registered business name</i>	<i>Business Names Act</i>	<i>Business Names Registration Act 2011 (Cth)</i>
regulation 22(4)(c)	all words from "certificate" to "Affairs"	copy of an entry in the Business Names Register provided by ASIC under section 60 of the <i>Business Names Registration Act 2011 (Cth)</i>
<i>Architects Act</i>		
section 14A(b)	<i>Business Names Act</i>	<i>Business Names Registration Act 2011 (Cth)</i>
<i>Consumer Affairs and Fair Trading (Motor Vehicle Dealers) Regulations</i>		
Schedule 3, Form 1, clause 11(c)	<i>Business Names Act</i>	<i>Business Names Registration Act 2011 (Cth)</i>

Schedule 3, Form 1, clause 11(c)(i)	whole subclause	(i) A copy of the entry in the Business Names Register provided by ASIC under section 60 of the <i>Business Names Registration Act 2011</i> (Cth) is attached.
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Schedule 3, Form 2, clause 6	all words from " <i>Business</i> " to "attached."	<i>Business Names Registration Act 2011</i> (Cth). A copy of the entry in the Business Names Register provided by ASIC under section 60 of the <i>Business Names Registration Act 2011</i> (Cth) is attached.
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Consumer Affairs and Fair Trading (Travel Agents) Regulations

regulation 3(2)(b)	whole paragraph	(b) for each business name under which the person intends to carry on business – a copy of the entry in the Business Names Register provided by ASIC under section 60 of the <i>Business Names Registration Act 2011</i> (Cth) relating to the name;
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Schedule 1, Forms 1 and 2, note 1	whole note	1. For each business name specified in this form, a copy of the entry in the Business Names Register provided by ASIC under section 60 of the <i>Business Names Registration</i>
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Act 2011 (Cth)
relating to the name
must accompany
this form.

Fines and Penalties (Recovery) Regulations

Schedule 1, list of Acts *Business Names Act*

Schedule 1, list of
regulations *Business Names
Regulations*

Kava Management Regulations

regulation 6(e) *Business Names Act –
a certified copy of a
business name search
showing that
registration;* *Business Names
Registration Act 2011
(Cth) – a copy of the
entry in the Business
Names Register
provided by ASIC under
section 60 of that Act
showing the
registration;*

Partnership Act

section 57(3) *Business Names Act* *Business Names
Registration Act 2011
(Cth)*

section 61 whole section

Printers and Newspapers Act

section 6(a) *Business Names Act* *Business Names
Registration Act 2011
(Cth)*

Private Security (Security Firms) Regulations

Schedule, Form,
Part A, note (a) whole note (a) For each business
name specified in
this form, a copy
of the entry in the
Business Names
Register provided
by ASIC under
section 60 of the
*Business Names
Registration*

Act 2011 (Cth)
relating to the
name must
accompany this
form.

Prostitution Regulations

Schedule 2, Form 13, clause 7 and Form 14, clause 1	<i>certificate of registration of business name</i>	<i>copy of an entry in the Business Names Register provided by ASIC under section 60 of the Business Names Registration Act 2011 (Cth)</i>
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Totalisator Licensing and Regulation Regulations

regulation 2(e)	all words from "Business" to "Commonwealth"	<i>Business Names Registration Act 2011 (Cth)</i>
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