

South Australia

## **Business Names (Commonwealth Powers) Act 2012**

An Act to adopt the *Business Names Registration Act 2011* of the Commonwealth and the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* of the Commonwealth, and to refer certain matters relating to the registration and use of business names, to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the *Constitution of the Commonwealth*, and to provide for related matters.

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### **The Parliament of South Australia enacts as follows:**

#### **1—Short title**

This Act may be cited as the *Business Names (Commonwealth Powers) Act 2012*.

#### **2—Commencement**

- (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or to a provision of this Act.

#### **3—Interpretation**

In this Act, unless the contrary intention appears—

***adoption*** means the adoption under section 5(1);

***amendment reference*** means the reference under section 6(1);

***business name*** has the same meaning as in the *Business Names Registration Act 2011* of the Commonwealth as originally enacted;

***continuing business names matter*** has the meaning given by section 4;

**entity** includes an individual, body corporate or unincorporate, partnership or anything that is an entity within the meaning of the *Business Names Registration Act 2011* of the Commonwealth as originally enacted;

**exemption provision** means a provision in the terms, or substantially in the terms, of section 19(5) or section 20(3) of the *Business Names Registration Act 2011* of the Commonwealth as originally enacted;

**express amendment** of the national business names legislation means the direct amendment of the text of the national business names legislation (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect otherwise than as part of the text of the national business names legislation;

**government body** means—

- (a) the State or an agency or authority of the State or of the State acting jointly with the Commonwealth, another State or a Territory; or
- (b) a council or a subsidiary of a council (within the meaning of the *Local Government Act 1999*);

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

**national business names legislation** means—

- (a) the *Business Names Registration Act 2011* of the Commonwealth; and
- (b) the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* of the Commonwealth,

as in force from time to time;

**notified State register** means a register that is maintained under a State law and is a notified State/Territory register within the meaning given by section 6 of the *Business Names Registration Act 2011* of the Commonwealth as originally enacted;

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

**relevant version of the national business names legislation** means—

- (a) the *Business Names Registration Act 2011* of the Commonwealth; and
- (b) the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* of the Commonwealth,

as in force immediately before the commencement of section 5;

**State law** means an Act of the State, or an instrument made under an Act of the State, whenever enacted or made and as in force from time to time;

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

#### 4—Continuing business names matters

- (1) Each of the following matters is a *continuing business names matter* to the extent that it is included in the legislative powers of the Parliament of the State:
  - (a) the registration of business names;
  - (b) the regulation of the use of business names to assist entities who engage with an entity carrying on a business under a business name to identify the entity;
  - (c) the regulation of the use of business names to assist entities who engage with an entity carrying on a business under a business name to contact the entity;
  - (d) the regulation of the use of business names to reduce the risks that arise from an entity carrying on a business under a name that is not the entity's own;
  - (e) the prohibition or restriction of the use of business names that are undesirable, offensive or confusing;
  - (f) the prohibition or restriction of the use of business names by an entity because—
    - (i) the entity has engaged in unlawful conduct, or
    - (ii) a person involved in the management of the entity has engaged in unlawful conduct.
- (2) However, none of the following matters is a continuing business names matter:
  - (a) the imposition of a restriction on a government body affecting the ability of the body to carry on business under a name;
  - (b) the imposition of a restriction on an entity affecting the ability of the entity to carry on business under a name registered to the entity on a notified State register;
  - (c) the imposition of a restriction on an entity affecting the ability of the entity to carry on business under a name that is specified as the name of the entity in a State law;
  - (d) the imposition of an obligation on a government body to include a name in a communication or to display a name;
  - (e) the imposition of an obligation on an entity to include in a communication, or to display, a name that is registered to the entity on a notified State register;
  - (f) the imposition of an obligation on an entity to include in a communication, or to display, a name that is specified as the name of the entity in a State law;
  - (g) the omission of an exemption provision without the insertion of an equivalent provision, or the imposition of a limitation on the operation of an exemption provision;
  - (h) any matter relating to the imposition or payment of taxes under a State law.

#### 5—Adoption of national business names legislation

- (1) The relevant version of the national business names legislation is adopted within the meaning of section 51(xxxvii) of the *Constitution of the Commonwealth*.

- (2) The adoption has effect for a period—
- (a) beginning when this section commences; and
  - (b) ending at the end of the day fixed under section 8(1)(a) or (c) as the day on which the adoption is to terminate,
- but not longer.

## **6—Reference of continuing business names matters**

- (1) Each continuing business names matter is referred to the Parliament of the Commonwealth, but only to the extent of the making of laws with respect to the matter by making express amendments of the national business names legislation.
- (2) The reference of a matter under subsection (1) has effect only if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference for the purposes of section 51(xxxvii) of the *Constitution of the Commonwealth*).
- (3) Despite any provision other than section 9(4), the amendment reference has effect for a period—
- (a) beginning when this section commences; and
  - (b) ending at the end of the day fixed under section 8(1)(a) or (b) as the day on which the amendment reference is to terminate,
- but not longer.

## **7—Amendment of Commonwealth law**

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

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

## **8—Termination of adoption and amendment reference**

- (1) The Governor may, at any time, by proclamation, fix a day as the day on which—
- (a) the adoption and the amendment reference are to terminate; or
  - (b) the amendment reference is to terminate; or
  - (c) the adoption is to terminate (if the amendment reference has been previously terminated).
- (2) A day fixed under subsection (1) must be no earlier than the first day after the end of the period of 6 months beginning with the day on which the proclamation is published.
- (3) The Governor may, by proclamation, revoke a proclamation published under subsection (1).

- (4) A revoking proclamation has effect only if published before the day fixed under subsection (1).
- (5) If a revoking proclamation has effect the revoked proclamation is taken, for the purposes of sections 5 and 6, never to have been published but the revocation does not prevent publication of a further proclamation under subsection (1).

## **9—Effect of termination of amendment reference before termination of adoption**

- (1) In this section—

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

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

and as in operation immediately before the termination;

*termination* means the termination of the amendment reference.

- (2) A reference in this section to provisions referred to in section 7(b) includes a reference to national business names instruments made to carry out or give effect to the national business names legislation as amended by laws made under the amendment reference.
- (3) It is the intention of the Parliament of the State that, if the amendment reference terminates before the adoption terminates, the termination of the amendment reference does not affect—
  - (a) laws made under the amendment reference before the termination; or
  - (b) the continued operation in the State of the existing legislation or of the existing legislation as—
    - (i) amended after the termination by laws referred to in paragraph (a) that come into operation after the termination; or
    - (ii) amended or affected after the termination by provisions referred to in section 7(a) or (b).
- (4) Accordingly, the amendment reference continues to have effect for the purposes of subsection (3) unless the adoption is terminated.
- (5) Subsection (3) or (4) does not apply to or in relation to an amendment of the national business names legislation that is excluded from the operation of this section by the proclamation that terminates the amendment reference.