

South Australia

Business Names Registration (Transitional Arrangements) Act 2012

An Act to enact ancillary provisions, including transitional provisions, relating to the enactment by the Parliament of the Commonwealth of legislation relating to the registration of business names under its legislative powers, including powers with respect to matters referred to that Parliament for the purposes of section 51(xxxvii) of the *Constitution of the Commonwealth*; to amend the *Bank Merger (BankSA and Advance Bank) Act 1996*, the *Bank Merger (National/BNZ) Act 1997*, the *Bank Mergers (South Australia) Act 1997*, the *Building Work Contractors Act 1995*, the *Motor Vehicles Act 1959*, the *Partnership Act 1891*, the *Plumbers, Gas Fitters and Electricians Act 1995*, the *Security and Investigation Agents Act 1995* and the *Travel Agents Act 1986*; and to repeal the *Business Names Act 1996*.

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The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Business Names Registration (Transitional Arrangements) 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—

ASIC means the Australian Securities and Investments Commission;

change-over day means the day on which Part 2 of the *Business Names Registration Act 2011* of the Commonwealth comes into operation;

Commission means the Corporate Affairs Commission;

Commonwealth Acts means the *Business Names Registration Act 2011*, and the *Business Names Registration (Transitional and Consequential Provisions) Act 2011*, of the Commonwealth;

cut-off day means—

- (a) 11 May 2012; or
- (b) if a later day is prescribed by the regulations for the purposes of this definition—that day;

registration, of a business name, means registration of the business name under the *Business Names Act 1996*;

transitional period means the period commencing on the day after the cut-off day and finishing on the change-over day.

4—Commission may provide information and assistance to ASIC

Despite any other Act or law, the Commission is authorised to provide to ASIC (whether at the request of ASIC or otherwise)—

- (a) such documents and other information in the possession or control of the Commission that may be reasonably required by ASIC in connection with the performance or exercise of its functions or powers under the Commonwealth Acts; and
- (b) such other assistance as is reasonably required by ASIC to perform or exercise a function or power under the Commonwealth Acts.

5—Limitation of operation of Business Names Act during transitional period

Despite a provision of the *Business Names Act 1996* or any other Act or law, the Commission may refuse to exercise a function or power under Part 2 of *Business Names Act 1996* during the transitional period if the Commission is of the opinion that it is appropriate for the matter to be dealt with under 1 or both of the Commonwealth Acts.

6—Continuation of registration of certain business names

- (1) Despite a provision of the *Business Names Act 1996*, where the Commission decides to refuse to exercise a power under Part 2 of that Act to renew the registration of a business name that is due to expire during the transitional period, the Commission may extend the period of registration of that business name under that Act until the change-over day, or for such longer period as may be determined by the Commission (and any such extension will have effect according to its terms).
- (2) This section does not limit or affect the operation of section 7.

7—Resolution of outstanding matters

- (1) This section applies to, or in relation to, the following matters:
 - (a) an application for the registration of a business name under the *Business Names Act 1996* that was made, but not finally determined, before the change-over day;
 - (b) an application for renewal of the registration of a business name under the *Business Names Act 1996*—
 - (i) that was made, but not finally determined, before the change-over day; or

- (ii) that was made within 2 months after the date of expiry of the registration (whether the date of application was before or after the change-over day);
 - (c) the reinstatement of the registration of a business name under section 15 of that Act (being a reinstatement following a request of the proprietor of the business name that was made, but not finally determined, before the change-over day).
- (2) Despite a provision of any other Act or law, the Commission may resolve a matter to which this section applies as if—
 - (a) the *Business Names Act 1996* had not been repealed; and
 - (b) the Commonwealth Acts had not been enacted.
- (3) If—
 - (a) a court finally determines an appeal under the *Business Names Act 1996* after the change-over day; and
 - (b) the court makes an order that a particular business name be registered, or that the registration of a particular business name be renewed or reinstated, under that Act,

the Commission must notify ASIC under item 6 of Schedule 1 of the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* of the Commonwealth in such terms as may be necessary to give effect to the order.

- (4) Without limiting section 5, if a proprietor of a registered business name has given the Commission notice of a change in accordance with section 12 of the *Business Names Act 1996* before the change-over day, but the Commission has not yet corrected or supplied the deficiency in the register under that Act, the Commission may correct or supply the deficiency in the register as if this Act had not been enacted.
- (5) Nothing in this section limits the operation of section 16 of the *Acts Interpretation Act 1915*.

8—Immunity from liability

No civil liability attaches to the Crown, the Commission or a person engaged in the administration of this Act for an act or omission by the Commission or person in the exercise or purported exercise of official powers or functions under this Act.

9—References

- (1) Unless the contrary intention appears or the context requires a different interpretation, a reference in an Act, a statutory instrument, or any other kind of instrument or a contract, agreement or other document, to the *Business Names Act 1996*, or a provision of that Act, will have effect as if it were a reference to the *Business Names Registration Act 2011* of the Commonwealth, or the corresponding provision of that Act.
- (2) Unless the contrary intention appears or the context requires a different interpretation, a reference in an Act, a statutory instrument, or any other kind of instrument or a contract, agreement or other document to a registered business name will be taken to be a reference to a registered business name within the meaning of the *Business Names Registration Act 2011* of the Commonwealth.

10—Evidentiary provision

- (1) An apparently genuine document purporting to be issued by ASIC and certifying—
 - (a) that a business name was or was not registered under the *Business Names Act 1996* or the *Business Names Act 1963* at a specified date before the change-over day; or
 - (b) as to any matter contained in the register under the *Business Names Act 1996* or the *Business Names Act 1963* before the change-over day,is to be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the matter so certified.
- (2) An apparently genuine document purporting to be issued by the Commission and certifying—
 - (a) that a business name was or was not registered under the *Business Names Act 1996* or the *Business Names Act 1963* at a specified date; or
 - (b) as to any matter contained in the register under the *Business Names Act 1996* or the *Business Names Act 1963*,is to be accepted in legal proceedings, in the absence of proof to the contrary, as proof of the matter so certified.
- (3) An apparently genuine document purporting to be a copy of a document lodged with the Commission under the *Business Names Act 1996* or the *Business Names Act 1963* and certified by the Commission as a true copy of the document is to be accepted in any legal proceedings, in the absence of proof to the contrary, as a true copy of the document.
- (4) An apparently genuine document purporting to be a copy of a document lodged with the Commission under the *Business Names Act 1996* or the *Business Names Act 1963* and provided to ASIC under this Act, and certified by ASIC as a true copy of the document, is to be accepted in any legal proceedings, in the absence of proof to the contrary, as a true copy of the document.

11—Regulations

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on—
 - (a) the enactment of this Act; or
 - (b) the enactment of the *Business Names (Commonwealth Powers) Act 2012*; or
 - (c) the transition from the application of provisions of the *Business Names Act 1996*, or any other law of the State otherwise regulating business names, to the application of provisions under the Commonwealth Acts.
- (2) Without limiting the generality of subsection (1), the regulations may fix and provide for the payment of fees to be paid in connection with the operation of this Act (and allow the Commission, if it thinks it appropriate to do so, to waive, reduce or refund any fees).
- (3) A provision of a regulation made under subsection (1) may, if the regulation so provides, take effect from the commencement of the relevant Act or from a later day.

- (4) To the extent to which a provision takes effect under subsection (3) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
- (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.

Schedule 1—Related amendments and repeal

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Bank Merger (BankSA and Advance Bank) Act 1996*

2—Amendment of section 21—Name in which ABAL carries on business

- (1) Section 21(1)(d)—delete "*Business Names Act 1996*" and substitute:

Business Names Registration Act 2011 of the Commonwealth

- (2) Section 21(2)—delete subsection (2)

Part 3—Amendment of *Bank Merger (National/BNZ) Act 1997*

3—Amendment of section 13—Name in which National carries on business

- (1) Section 13(1)(c)—delete "*Business Names Act 1996*" and substitute:

Business Names Registration Act 2011 of the Commonwealth

- (2) Section 13(2)—delete subsection (2)

Part 4—Amendment of *Bank Mergers (South Australia) Act 1997*

4—Amendment of section 3—Regulations for the merging of banks

Section 3(2)(j)—delete paragraph (j)

Part 5—Amendment of *Building Work Contractors Act 1995*

5—Amendment of section 49—Name in which building work contractor may carry on business

Section 49—delete "*Business Names Act 1996*" and substitute:

Business Names Registration Act 2011 of the Commonwealth

Part 6—Amendment of *Motor Vehicles Act 1959*

6—Amendment of section 62—Issue of trade plates

Section 62(6)—delete "*Business Names Act 1996*" and substitute:

Business Names Registration Act 2011 of the Commonwealth

Part 7—Amendment of *Partnership Act 1891*

7—Amendment of section 52—Application for registration

(1) Section 52(1)(c)—delete "*Business Names Act 1996*" and substitute:

Business Names Registration Act 2011 of the Commonwealth

(2) Section 52(3)—delete subsection (3)

8—Amendment of section 53—Registration of limited partnership or incorporated limited partnership

Section 53(2)(b)—delete "*Business Names Act 1996*" and substitute:

Business Names Registration Act 2011 of the Commonwealth

9—Amendment of section 55—Changes in registered particulars

Section 55(4)(b)—delete "*Business Names Act 1996*" and substitute:

Business Names Registration Act 2011 of the Commonwealth

Part 8—Amendment of *Plumbers, Gas Fitters and Electricians Act 1995*

10—Amendment of section 33—Name in which contractor may carry on business

Section 33—delete "*Business Names Act 1996*" and substitute:

Business Names Registration Act 2011 of the Commonwealth

Part 9—Amendment of *Security and Investigation Agents Act 1995*

11—Amendment of section 18—Name in which licensed agent may carry on business

Section 18—delete "*Business Names Act 1996*" and substitute:

Business Names Registration Act 2011 of the Commonwealth

Part 10—Amendment of *Travel Agents Act 1986*

12—Amendment of section 3—Interpretation

Section 3, definition of authorised name, (b)—delete "*Business Names Act 1996*" and substitute:

Business Names Registration Act 2011 of the Commonwealth

Part 11—Repeal of *Business Names Act 1996*

13—Repeal of *Business Names Act 1996*

The *Business Names Act 1996* is repealed.