

[CONFIDENTIAL]

(Rough Draft for Consideration Only.)

No. , 1928.

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# A BILL

To provide for the registration of firms and persons carrying on business under business names, and as to the names, styles, titles, or designations under which businesses are carried on; to amend the Conveyancing Act, 1919, and certain other Acts; to repeal the Registration of Firms Act, 1902, and for purposes connected therewith.

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

**1.** (1) This Act may be cited as the "Business Names Act, 1928." Short title.

(2) This Act shall commence on a day to be appointed by the Governor, and notified by proclamation published in the Gazette. Commencement.

(3) This Act is divided into Parts, as follows:— Division into Parts.

PART I.—PRELIMINARY—*ss.* 1-3.

PART II.—REGISTRATION OF FIRMS AND PERSONS CARRYING ON BUSINESS UNDER BUSINESS NAMES.—*ss.* 4-20.

PART III.—USE OF CERTAIN WORDS IN BUSINESS NAMES.—*ss.* 21-26.

(4) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that when any enactment thereof would but for this subsection have been construed as being in excess of that power, it shall, nevertheless, be a valid enactment to the extent to which it is not in excess of that power. Construction.

**2.** In this Act, unless the context or subject-matter otherwise requires,— Definitions.

"Business" includes trade and profession.

"Business name" means the name, style, title, or designation under which any business is carried on whether in partnership or otherwise, and which does not consist solely of the full or usual name of the person individually carrying on the business or solely of the full  
or

cf. Vict. Act,  
1927, No.  
3,543, s. 3.

or usual names of all the persons in association or partnership carrying on the business, and includes a firm name registered under the Registration of Firms Act, 1902.

“Firm” means an unincorporate body of two or more individuals or one or more individuals and one or more corporations or two or more corporations which have entered into partnership with one another.

“Individual” means a natural person and does not include a corporation.

“Initials” includes any recognised abbreviation of a Christian name;

“Part” means Part of this Act;

“Prescribed” means prescribed by the regulations;

“Registrar-General” includes a Deputy Registrar-General.

“Regulations” means regulations made under the Conveyancing Act, 1919;

“Usual name” includes a signature habitually used for business purposes.

**3.** (1) The Registration of Firms Act, 1902, is hereby repealed. Repeal.  
cf. Act No.  
100, 1902.

(2) Such repeal shall not affect any regulation or order made or any registration effected or any liability incurred or any matter or thing done under the said repealed Act before the commencement of this Act. Savings.

(3) Where the firm-name of any firm or person ibid. has been registered under the Registration of Firms Act, 1902, and such registration was in force immediately before the commencement of this Act, such firm or person shall be deemed to be registered under this Act, and for the purposes and within the meaning thereof such firm-name shall be deemed to be the business name of such firm or person.

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PART II.

REGISTRATION OF FIRMS AND PERSONS CARRYING ON BUSINESS UNDER BUSINESS NAMES.

4. Subject to the provisions of this Act—
- (a) every firm having a place of business in New South Wales and carrying on business under a business name which does not consist of—
    - (i) the true surnames of all partners who are individuals (together with the Christian name or names or the initials thereof); and
    - (ii) the corporate names of all partners (if any) which are corporations—  
without any addition ;
  - (b) every individual having a place of business in New South Wales and carrying on business under a business name which does not consist of his true surname (together with his Christian name or names or the initials thereof) without any addition ;
  - (c) every corporation having a place of business in New South Wales and carrying on business under a business name which does not consist of its corporate name without any addition ;
  - (d) every individual or firm having a place of business in New South Wales who, or a member of which, has either before or after the commencement of this Act changed his name, except in the case of a woman in consequence of marriage,

Firms and persons to be registered.  
cf. 6 and 7, Geo. V, c. 58, s. 1.  
Vict. Act, 1927, No. 3,543, s. 4.

shall, unless the firm-name of such firm, individual or corporation has been registered under the Registration of Firms Act, 1902, and the registration thereof was immediately before the commencement of this Act in force, be registered in the manner directed by this Part :

Provided

Provided that—

- (i) where the addition merely indicates that the business is carried on in succession to a former owner of the business that addition shall not of itself render registration necessary ; and
- (ii) where the business is carried on by a trustee in bankruptcy or a receiver or manager appointed by any court registration shall not be necessary ; and
- (iii) a purchase or acquisition of property by two or more persons as joint tenants or tenants in common is not of itself to be deemed carrying on a business whether or not the owners share any profits arising from the sale thereof.

When registration not necessary.

**5. (1)** Every firm or person required under this Part to be registered shall furnish by sending by post or delivering to the Registrar-General a statement in writing in or to the effect of the prescribed form containing the following particulars :—

Manner and particulars of registration.

- (a) the business name ;
- (b) the general nature of the business ;
- (c) the place or places of the business, and the precise address or addresses at which the business is carried on and at which the person carrying on the business resides ;
- (d) where the registration to be effected is that of a firm, the full name, the usual residence and the other business occupation (if any) of every individual who is a partner, and the corporate name and the registered address in New South Wales of every corporation which is a partner ;
- (e) where the registration to be effected is that of an individual, the full name, the usual residence and the other business occupation (if any) of such individual ;
- (f) where a minor is owner or partner in any firm required to be registered hereunder the date of his birth ;

(g)

- (g) where the registration to be effected is that of a corporation, its corporate name and registered address in New South Wales ;
- (h) the date of commencement of the business.

(2) Where a business is carried on under two or more business names each of those business names must be registered separately. Where more than one business name.

**6.** (1) The statement required for the purpose of registration must— Statement to be signed by persons registering.

- (a) in the case of an individual, be signed by him ; and
- (b) in the case of a corporation, be signed by a director thereof ; and
- (c) in the case of a firm, be signed either by all the individuals who are partners and by a director of each corporation which is a partner or by some individual who is a partner or a director of some corporation which is a partner—

and in either of the last two cases must be verified by a statutory declaration made by the signatory :

Provided that—

- (i) no such statutory declaration stating that any person other than the declarant is a partner, or omitting to state that any person other than as aforesaid is a partner shall be evidence for or against any such other person in respect of his liability or non-liability as a partner ; and
- (ii) the Supreme Court or a judge thereof may, on application of any person alleged or claiming to be a partner, direct the rectification of the register and decide any question arising under this section ; and
- (iii) in the case of a corporation registered under the provisions of the Companies (Amendment) Act, 1906, the statement must be signed for and on behalf of such corporation by its attorney or agent authorised to file the declaration required under the said Act or regulations thereunder.

(2)

(2) The prescribed fee shall be paid to the Registrar-General on filing any statement or statutory declaration under this Act.

**7.** (1) The particulars required to be furnished under this Part shall be furnished within seven days after the firm or person commences the business in respect of which registration is required. Time for registration.

(2) If such firm or person continues to carry on business without such registration being effected, or if such business has been carried on before the commencement of this Act, and—

- (a) the firm-name of such firm or person has not been registered under the Registration of Firms Act, 1902; or
- (b) if registration has not been effected under this Act—

the firm or person required to register as provided in this Act shall, without effecting any liability imposed under this Act, be under a continuing obligation so to register, and notwithstanding anything to the contrary in section fifty-six of the Justices Act, 1902, may be proceeded against in respect of any default accordingly.

**8.** The business name of any firm or person registered under this Part shall be used in all matters connected with or relating to the business carried on by such firm or person, and shall be painted or affixed on the outside of every office or place in which the business is carried on in a conspicuous position in letters easily legible. Registered name always to be used.

**9.** Whenever a change is made or occurs in any of the particulars registered in respect of any firm or person, such firm or person shall within fourteen days after such change or within such longer period as the Registrar-General on application being made in any particular case, whether before or after the expiration of such fourteen days allows, furnish by sending by post or delivering to the Registrar-General a statement in writing in the prescribed form specifying the nature and date of the change signed and where necessary verified in like manner as the statement required on registration. Registration of changes in firm.

**10.**

**10.** (1) If any firm or individual or corporation required by this Act to register abandons the use of a registered business name and carries on business under a name not requiring registration or ceases to carry on business it shall be the duty of the persons who were partners in the firm at the time when it ceased to carry on business or of the individual or if he is dead his legal personal representative or of the corporation or its successor (as the case may be) within one month after the business has ceased to be carried on to send by post or deliver to the Registrar-General notice in the prescribed form that the firm or individual or corporation has ceased to carry on business.

Removal of names from the register.

Such notice shall be signed and where necessary verified in like manner as the statement required on registration.

(2) On receipt of such notice the Registrar-General may remove the name of the firm or individual or corporation from the register.

(3) Where the Registrar-General has reasonable cause to believe that any firm, individual, or corporation registered under this Act is not carrying on business he may send to the firm, individual, or corporation by registered post a notice that, unless an answer is received to such notice within one month from the date thereof the name of the firm, individual, or corporation may be removed from the register.

(4) If the Registrar-General either receives an answer from the firm, individual, or corporation to the effect that the firm, individual, or corporation is not carrying on business or does not within one month after sending the notice receive an answer he may remove the name of the firm, individual, or corporation from the register.

(5) The Registrar-General may remove from the register—

- (a) the name of any corporation registered under this Act the name of which has been struck off any register of companies kept under the Companies Acts; or

(b)



- (b) the name of any firm, individual or corporation convicted of making default without reasonable excuse in sending or delivering any statement required by this Act; or
- (c) the name of any firm the partners or any partner of which are or is or the name of any individual who is, or the name of any corporation the directors or any director of which are or is convicted of a misdemeanour under this Act; or
- (d) the name of any firm or corporation which has been dissolved or deemed to be dissolved.

(6) Any firm, individual or corporation carrying on business under a business name which has been removed from the register shall unless the name has with the written consent of the Minister been again registered under this Act be liable to a penalty of not more than *twenty* pounds.

**11.** If without reasonable excuse any firm, individual or corporation by this Act required to furnish a statement of particulars, or of any change in particulars, or a notice that it or he has ceased to carry on business makes default in so doing in the manner prescribed by this Act—

Penalty for default.

- (a) every partner in the firm or the individual or corporation so in default shall be liable to a penalty of not more than *five* pounds for every day during which the default continues; and
- (b) the court shall order a statement of the required particulars or change in the particulars or a notice that the firm, individual or corporation has ceased to carry on business to be furnished to the Registrar-General within such time as is specified in the order.

**12.** (1) Where any firm or individual or corporation by this Act required to furnish a statement of particulars or of any change in particulars makes default in so doing, then the rights of that defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect to the carrying on of which particulars are required to be

Disability of persons, &c., in default.

cf. 6 and 7 Geo. V, c. 58, s. 8.

Vict. Act, 1927, No. 3,543, s. 12.

be furnished at any time while such firm, individual, or corporation is in default, shall not be enforceable by action or other legal proceeding either in the business name or otherwise :

Provided that—

- (a) the defaulter may apply to the court for relief against the disability imposed by this section, and the court on being satisfied that the default was accidental or due to inadvertence or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally or as regards any particular contracts on condition of the costs of the application being paid by the defaulter, unless the court otherwise orders, and on such other conditions (if any) as the court imposes, but such relief shall not be granted except on such service and such publication of notice of the application as the court orders, nor shall relief be given in respect of any contract if any party to the contract proves to the satisfaction of the court that if this Part had been complied with he would not have entered into the contract ;
- (b) nothing in this section shall prejudice the rights of any other parties as against the defaulter in respect of such contract as aforesaid ;
- (c) if any action or proceeding is commenced by any other party against the defaulter to enforce the rights of such party in respect of such contract, nothing in this section shall preclude the defaulter from enforcing in that action or proceeding by way of counter claim, set-off, or otherwise such rights as he has against that party in respect of such contract.

(2) In this section the expression " Court " means the Supreme Court or a judge thereof :

Interpre-  
tation of  
" Court."

Provided that without prejudice to the power of the Supreme Court or a judge thereof to grant such relief as aforesaid if any proceeding to enforce any contract is

is commenced by a defaulter in a District Court, the District Court may as regards the contract grant such relief as aforesaid.

(3) If any firm or person required to be registered as provided in this Act shall fail to register accordingly, all proceedings in any court of competent jurisdiction may be taken and prosecuted against such firm or person in the name under which such firm or person is carrying on business, and such name shall, for the purposes of such proceedings, be a sufficient designation of such firm or person in all courts, summonses, plaints, and other legal documents and instruments.

(4) Nothing in this section shall be construed to exempt any firm or person from compliance with any provision of this Act.

**13.** If any statement or notice required to be furnished under this Act contains any matter which is false in any material particular to the knowledge of any person signing it, that person shall be guilty of a misdemeanour, and shall be liable to a fine of not more than *five hundred* pounds, or to imprisonment for a term of not more than *two* years, and any person knowingly authorising or permitting the commission of the offence shall be guilty of a misdemeanour, and be liable to the like punishment.

Penalty for false statement.

**14.** (1) The Registrar-General may—

Duty to furnish particulars.

(a) require any person to furnish to the Registrar-General such particulars as appear necessary to him for the purposes of ascertaining whether or not such person or the firm of which he is a partner should be registered under this Act or an alteration made in the registered particulars; and

(b) in the case of a corporation, require the secretary or any other officer of a corporation performing the duties of secretary to furnish such particulars.

(2) If any person, secretary, or officer when so required fails to furnish such particulars as it is in his power

power to give, or furnishes particulars which are false in any material particular, he shall be liable on summary conviction to imprisonment for a term of not more than *three* months or to a penalty of not more than *twenty* pounds or to both such imprisonment and penalty.

(3) If from any information so furnished it appears to the Registrar-General that any firm, individual or corporation ought to be registered under this Act, or an alteration ought to be made in the registered particulars, the Registrar-General may require the firm, individual or corporation to furnish to the Registrar-General the required particulars within such time as he allows, but where any default under this Part has been discovered from the information acquired under this section no proceedings under this Act shall be taken against any person in respect of such default prior to the expiration of the time within which the firm, individual or corporation is required under this section to furnish particulars to the Registrar-General.

**15.** (1) On receiving any statement or statutory declaration made in pursuance of this Act the Registrar-General shall—

Registrar-General to file statement and issue certificate of registration.

- (a) cause the same to be filed; and
- (b) send by post or deliver a certificate of the registration thereof to the firm, individual or corporation registering.

(2) A certificate of the registration of the firm, individual or corporation shall be kept exhibited in a conspicuous position at the principal place of business of such firm, individual or corporation, and, if not kept so exhibited, every partner in the firm or the individual or corporation (as the case may be) shall be liable on summary conviction to a penalty of not more than *twenty* pounds.

**16.** The Registrar-General shall keep a register and an index of all firms, individuals and corporations registered under this Act, and of all the statements registered in reference thereto.

Register to be kept.

**17.**

**17.** (1) Any person may inspect or make a copy of the statements filed by the Registrar-General under this Act or any corresponding previous enactment, and there shall be paid for every such inspection the prescribed fee. Inspection of statements.

(2) Any person may require a certificate of the registration of any firm, individual, or corporation, or a copy of any registered statement to be certified by the Registrar-General; and there shall be paid for every such certificate of registration and for every such certified copy or extract such fees as are prescribed. Certificate of registration.

(3) The register referred to in section sixteen or a certificate of registration, or a copy of any statement registered under this Act purporting to be signed and certified by the Registrar-General, shall in all courts, and before all persons having authority to hear, receive, and examine evidence, be admitted as prima facie evidence of the matter contained therein and of the fact and date of registration as shown thereon. Evidence of registration.

**18.** Where a corporation is guilty of an offence under this Act every director, secretary and officer of the corporation who is knowingly a party to the default shall be guilty of a like offence and liable to a like penalty. Offences by corporations.

**19.** (1) Regulations may be made under the Conveyancing Act, 1919, prescribing all matters or things authorised or required to be prescribed or necessary or convenient to be prescribed for carrying this Act into effect and without limiting the generality of the foregoing power— Regulations.

- (a) prescribing the fees to be paid to the Registrar-General under this Act;
- (b) the forms to be used under this Act (and all such forms or forms to the like effect may be used for the purposes of this Act, and shall be sufficient in law);
- (c) the duties of the Registrar-General for the purposes of this Act;
- (d) generally the conduct and regulation of registration under this Act.

(2) Such regulations may prescribe penalties not exceeding *twenty* pounds for any breach thereof.

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**20.** Service at the registered office of any person or firm registered under this Act of any communication or notice of any writ, declaration, summons, plaint, order or other document, proceeding or process whatsoever in any action, suit, proceeding or matter, either by leaving the same at such office or by sending the same through the post postage prepaid addressed to such person or firm at such registered office, shall be deemed to be service upon the person or firm.

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PART III.

USE OF CERTAIN WORDS IN THE NAMES, &C.,  
OF FIRMS, &C.

**21.** Notwithstanding anything in any Act no person or firm required to register under Part II of this Act shall be so registered under a business name which includes the word "Royal" or the word "King" or the word "Queen" or the word "Crown" or the word "Empire" or the word "Imperial" or the word "Commonwealth" or any word signifying Royal or Government support or patronage, or where it is proposed to use any such word in such manner as would imply or be likely to convey the impression that such person or firm is or will be wholly or partly authorized or supported by or connected with His Majesty's Dominions unless consent thereto has been given to such use by the Governor; or of the words "State," "Australia," or "Australasia," or the name of any State if in the opinion of the Registrar-General the same is calculated to mislead.

Certain words not to be used in firm name.

Provided that nothing in this subsection shall prevent the continuance of the use by any person or firm or his or its successor in interest of the word "Commonwealth" in any name, style, title or designation under which he or it was registered or traded, or carried on business at the date of the commencement of this Act.

**22.**

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**22.** No person or firm not incorporated shall assume or use or continue to assume or use the word "saving" or "savings" or the words "savings bank" or "savings institution" or "savings department" or "savings section" as part of the designation or title or as a description of the business or of any department, section, or other part of the business of such person or firm.

Persons or firms not to use words "saving," "savings," &c., as part of name, &c., or description of their businesses.

**23.** (1) No person or firm not incorporated shall assume or use or continue to assume or use the title of "bank," "banker," "banking company," "banking house," "banking association," or "banking institution," or words of like import, or the word "proprietary" in any way whatever in connection with the trade or business designation or title of such person or firm.

Restriction on use of expression "banking," &c., in connection with business of person or firm.

(2) Every person and every member of any firm guilty of committing, causing, directing, or authorising a breach of either this section or of section twenty-two of this Act shall be guilty of an offence, and shall be liable on summary conviction to a penalty of not more than *ten* pounds, and in the case of a continuing offence to a penalty of not more than *ten* pounds for every day such breach continues.

Penalty.

**24.** (1) No person or firm not incorporated shall use, nor shall any person or firm required to register under Part II of this Act be so registered under—

Persons or firms not to be registered under certain business or other names.

- (a) a business name identical with the business name of a firm or person already registered under Part II of this Act or identical with a firm-name registered under the Registration of Firms Act, 1902, at the commencement of this Act, or so nearly resembling that name as to be calculated to deceive, except where the said firm or person is about to cease carrying on business, and signifies its or his consent in such manner as the Registrar-General requires; or

Registered business names.

- (b) a name identical with that by which—
  - (i) a company in existence is already registered under the Companies Acts; or
  - (ii)

Names of companies, &c.

(ii) a society in existence is already registered or deemed to be registered under the Friendly Societies Acts, Name of friendly societies.

or so nearly resembling that name as to be calculated to deceive, or containing any words or combination of letters which are or is identical with the words or initial letters of the name by which a society in existence is already registered or deemed to be registered as aforesaid, or any words so nearly resembling the words or any of the words of that name as to be calculated to deceive, except where the company or society in existence is in the course of being dissolved, and signifies its consent in such manner as the Registrar-General requires :

Provided that a company so consenting shall add to its name the words "in liquidation" within brackets, and the said words shall be deemed to be part of the name of the said company ; or

- (c) a name identical with the name of any company or society formed or incorporated outside New South Wales which carries on business within New South Wales and has registered in the office of the Registrar-General in the manner specified in section seven of the Companies (Amendment) Act, 1906, or so nearly resembling that name as to be calculated to deceive except where the said company or society is about to cease carrying on business in New South Wales and signifies its consent in such manner as the Registrar-General requires ; or
- (d) any name likely, in the opinion of the Registrar-General, to mislead the public as to the identity of any firm or person required to register or as to the nature of its or his business ;
- (e) a name which indicates or implies that the business proposed to be carried on is connected with gambling, fortune-telling, astrology, marriage agency, or any unlawful occupation.



(2) Where, in the opinion of the Registrar-General, owing to the nature of the business and the locality in which same is carried on, the public are not likely to be misled by the use of a similar name as to the identity of any firm or person required to register he may in his discretion register a firm or person so using a name identical with or similar to one already in use.

**25.** (1) Any person or firm who or which through inadvertence or otherwise is registered under any business name prohibited or containing any word or words or combination of letters prohibited by this Act—

Power to change name, &c., prohibited by this part.

- (a) may with the sanction of the Registrar-General change his or its business name; and
- (b) shall comply with the provisions of Part II of this Act relating to the change of particulars registered in respect of firms or persons so far as such provisions are applicable.

(2) The Registrar-General shall enter the new business name on the register in place of the former name and issue a certificate of registration altered to meet the circumstances of the case.

Duty of Registrar-General.

(3) If any person or firm registered under any business name prohibited or containing any word or words or combination of letters prohibited as aforesaid neglects or refuses to take forthwith all necessary steps to change his or its business name after being required by the Registrar-General by notice in writing to change the same every such person and every member of such firm shall be guilty of an offence and shall be liable on summary conviction to a penalty of not more than *five* pounds and in the case of a continuing offence to a further penalty of not more than *five* pounds for every day such offence continues.

Duty of firms, &c. to take necessary steps to change name in such cases.

(4) Nothing in this section shall affect any liability incurred by any person or firm under this or any other Act.

Saving.