



BUSINESS NAMES

No. 32 of 1978

ANALYSIS

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AN ACT to amend the Business Names Act 1962.

[30 November 1978]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Business Names Act 1978*. Short title and citation.

(2) The *Business Names Act 1962**, as subsequently amended, is in this Act referred to as the Principal Act.

* No. 44 of 1962. For this Act, as amended to 1977, see Vol. 1 of the 1978 General Reprint of Statutes.

Certain business names to be registered.

2 Section 5 of the Principal Act is amended by inserting in subsections (2) and (3), after the numeral “(1)” (wherever occurring), the words “and section 5A (2)”, in each case.

3 After section 5 of the Principal Act the following section is inserted:—

Leave of magistrate required in certain cases before business name used.
Vic., s. 5A.

“5A—(1) This section applies to a person convicted, whether before or after the commencement of the *Business Names Act 1978* and whether within or without the State—

- (a) on indictment of an offence in connection with the promotion, formation, or management of a corporation;
- (b) of an offence involving fraud or dishonesty punishable on conviction with imprisonment for 3 months or more; or
- (c) of an offence which, at the time of his conviction, is or was specified in section 122 (1) (c) of the *Companies Act 1962*.

“(2) A person to whom this section applies shall not, within the prescribed period, carry on business in the State under a business name, unless—

- (a) the business name under which he so carries on business—
 - (i) consists of his name; or
 - (ii) where he carries on business in association with another person or other persons, consists of his name and the name or names of that person or those persons,
 without any addition; or
 - (b) he has, on application made subject to subsection (4), obtained the leave of a magistrate so to carry on business.
- Penalty: \$400 or imprisonment for 6 months or both, together with a default penalty.

“(3) In subsection (2), ‘the prescribed period’, in relation to a person to whom this section applies, means—

- (a) the period of 5 years next succeeding any occasion on which he is convicted as referred to in subsection (1); or
- (b) where he has served a term of imprisonment imposed pursuant to such a conviction, the period of 5 years next succeeding his release from that imprisonment.

“(4) An application shall not be made under subsection (2) (b) unless the Minister has been given not less than 28 days’ notice of the proposed application.

“(5) The Minister may be represented at the hearing of, and may oppose, an application under subsection (2) (b).

“(6) Nothing in this section shall be construed as affecting the operation of section 5.

“(7) Nothing in this section makes it an offence for a person to carry on business under a business name that, immediately before the commencement of the *Business Names Act 1978* and at all times after that commencement, has been a business name registered under this Act under which that person was carrying on business in the State.”.

4 Section 11 of the Principal Act is amended—

Renewal of registration.

- (a) by omitting from subsection (1) the words “, during the period of one month before the expiry of the registration, ” and substituting the words “, at any time within the period of one month before or after the expiry of the registration or within such further time as the Registrar allows, ”; and
- (b) by inserting after that subsection the following subsection:—
“(1A) The renewal of a registration takes effect from the day on which the previous registration expires or has expired, as the case may be.”.

5 Section 12 of the Principal Act is amended—

Notification of changes in particulars relating to registered business names, or cessation of business, &c.

- (a) by omitting from subsections (1), (2), (3), (4), (5), and (6) the words “ 14 days ” (wherever occurring) and substituting, in each case, the words “ one month ”; and
- (b) by inserting in subsection (7), after the word “ Registrar ”, the words “, within one month of his or their so ceasing or within such further time as the Registrar allows,”.

6 Section 14 of the Principal Act is amended—

Disability of persons in default.

- (a) by inserting in subsection (1), after the words “ section 5 ” (first occurring), the words “ or section 5A ”; and
- (b) by omitting from that subsection the words “ section 5 ” (second occurring) and substituting the words “ the appropriate section ”.

7 Section 26 of the Principal Act is repealed and the following section is substituted:—

Invitations to the public to make loans or deposits.

“ 26—(1) No person shall, in connection with an invitation to lend or deposit money, use or refer to a business name that—

(a) is registered under this Act;

(b) is required to be registered under this Act; or

(c) would, if business were carried on in the State under that name, be required to be registered under this Act.

Penalty: \$1 000.

“(2) In subsection (1), ‘ invitation ’ means an invitation made by advertisement or otherwise to the public or to a person as a member of the public.

“(3) This section does not apply to an invitation to the public made by a public company in conformity with the requirements of the *Companies Act 1962* or to an invitation made to a person whose ordinary business it is to lend money.”.

Validation of renewal of certain registrations.

8 The registration of a business name that, before the commencement of the *Business Names Act 1978*, was renewed after the expiry of the registration contrary to the provisions of subsection (1) of section 11 of the Principal Act, is, by force of this section, deemed to have been validly renewed under that subsection and to be effectual for all the purposes of the Principal Act during the period of its renewal.