

AUSTRALIAN CAPITAL TERRITORY.

No. 18 of 1956.

AN ORDINANCE

To Provide for the Registration of Business Names.

I THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1955*.

Dated this twenty-first day of December, 1956.

W. J. SLIM
Governor-General.

By His Excellency's Command,

NEIL O'SULLIVAN
for and on behalf of the Minister of State
for the Interior.

BUSINESS NAMES ORDINANCE 1956.*

1. This Ordinance may be cited as the *Business Names Ordinance 1956*.^{Short title.}*
2. This Ordinance shall come into operation on the first day of January, One thousand nine hundred and fifty-seven. ^{Commencement.}
3. The *Business Names Ordinance 1933*, the *Business Names Ordinance 1935* and the *Business Names Ordinance 1953* are repealed. ^{Repeal.}
4. In this Ordinance, unless the contrary intention appears—^{Definitions.}
 - "Australian Consular Officer" has the same meaning as in the *Consular Fees Act 1955*;
 - "Australian Diplomatic Officer" has the same meaning as in the *Consular Fees Act 1955*;
 - "business" includes trade and profession;
 - "business-name" means the name, style or title under which a business is carried on, whether in partnership or otherwise;

* Notified in the *Commonwealth Gazette* on 24th December, 1956.
4108/55.—PRICE 8d.

"Christian name" includes a forename;

"firm" means—

(a) two or more individuals;

(b) one or more individuals and one or more corporations; or

(c) two or more corporations, who or which are associated together, otherwise than as an incorporated body, for the purpose of business;

"individual" means a natural person and does not include a corporation;

"initial" includes a recognized abbreviation of a Christian name;

"the register" means the register of business-names kept under section eighteen of this Ordinance;

"the Registrar" means the Registrar of Business-Names holding office under this Ordinance, and includes an Acting Registrar of Business-Names and a Deputy Registrar of Business-Names so holding office.

Registrar,
Acting
Registrar and
Deputy
Registrars.

5.—(1.) For the purposes of this Ordinance, the Attorney-General may appoint—

(a) a Registrar of Business-Names;

(b) an Acting Registrar of Business-Names to act in the office of Registrar of Business-Names during a vacancy in that office or during the illness or absence of the Registrar of Business-Names; and

(c) such Deputy Registrars of Business-Names and other officers as the Attorney-General considers necessary.

(2.) An Acting Registrar of Business-Names while acting in the office of Registrar of Business-Names has, and may exercise and perform, all the powers and functions of the Registrar.

(3.) Subject to the directions of the Registrar, a Deputy Registrar of Business-Names has, and may exercise and perform, all the powers and functions of the Registrar.

(4.) The appointment of a Deputy Registrar of Business-Names does not affect the exercise or performance by the Registrar of Business-Names or an Acting Registrar of Business-Names of a power or function.

(5.) The persons holding office immediately before the date of commencement of this Ordinance under the *Business Names Ordinance* 1933-1953 as Registrar of Firms and Deputy Registrars of Firms shall hold office as Registrar of Business-Names and Deputy Registrars of Business-Names respectively as if they were appointed under this Ordinance.

6.—(1.) An individual shall not carry on business in the Territory under a business-name unless— Business-names to be registered.

(a) the business-name consists of—

(i) his Christian names, the initials of his Christian names or a combination of one or more of his Christian names and the initials of his remaining Christian names; and

(ii) his surname, without any addition; or

(b) the business-name is registered under this Ordinance.

Penalty: Fifty pounds.

(2.) A firm shall not carry on business in the Territory under a business-name unless—

(a) the business-name consists of—

(i) the Christian names, the initials of the Christian names or a combination of one or more of the Christian names and the initials of the remaining Christian names of each individual, and the surname of each individual who is a member of the firm; and

(ii) the corporate names of all corporations (if any) which are members of the firm, without any addition; or

(b) the business-name is registered under this Ordinance.

Penalty: Fifty pounds.

(3.) A corporation shall not carry on business in the Territory under a business-name after the thirty-first day of March, One thousand nine hundred and fifty-seven, unless—

(a) the business-name consists of the corporate name of the corporation without any addition; or

(b) the business-name is registered under this Ordinance.

Penalty: Fifty pounds.

(4.) A business-name which is, immediately before the commencement of this Ordinance, registered under the *Business Names Ordinance 1933-1953* shall be deemed to have been registered under this Ordinance, and the provisions of this Ordinance apply to and in relation to that business-name accordingly.

7.—(1.) An application for the registration of a business-name shall be made by posting or delivering to the Registrar a statement in writing, accompanied by the prescribed fee, containing the following particulars:— Manner and particulars of registration.

(a) the business-name;

(b) the nature of the business;

- (c) the address of the place or places and, if there is more than one place, of the principal place where the business is carried on, or is intended to be carried on, in the Territory;
- (d) where the registration to be effected is that of a firm, the Christian name and surname, the usual place of residence and other occupation (if any) of every individual who is a member of the firm, and the corporate name and the registered office in the Territory of every corporation which is a member of the firm;
- (e) where the registration to be effected is that of an individual, the Christian name and surname, the usual place of residence and other occupation (if any) of that individual;
- (f) where the registration to be effected is that of a corporation, its corporate name and registered office in the Territory; and
- (g) the date, or the proposed date, of commencement of the business.

(2.) The Registrar shall, subject to this Ordinance, register the business-name by entering the business-name and the particulars set out in the statement in the register.

(3.) The Registrar shall, upon entering a business-name in the register, certify under his hand and seal that the business-name is registered and shall issue to the applicant a certificate of registration.

(4.) If any of the individuals mentioned in the statement is an infant, he shall be so described in the statement, and, in addition to the other particulars required by sub-section (1.) of this section, the date of the birth of the infant shall be specified in the statement.

(5.) Where a firm, an individual or a corporation carries on business under two or more business-names a separate statement shall be furnished in respect of each of the business-names.

Business-name
always to be
used and
displayed.

8.—(1.) A firm, individual or corporation carrying on business under a business-name registered under this Ordinance shall use the business-name in all matters connected with or relating to the business carried on by the firm, individual or corporation and shall paint or affix the business-name on the outside of every office or place in which the business is carried on in a conspicuous position in letters easily legible.

Penalty: Fifty pounds.

(2.) A firm, individual or corporation, carrying on business under a business-name registered under this Ordinance, shall keep the certificate of registration of the business-name exhibited in a conspicuous position at the place or the principal place of business of the firm, individual or corporation.

Penalty: Not less than Two pounds or more than Twenty pounds for each day during which the offence continues.

9.—(1.) Whenever a change is made or occurs in any of the particulars entered in the register in relation to a business-name the firm, individual or corporation carrying on business under that business-name shall, within fourteen days after the change, or such further time as the Registrar on application in a particular case, whether before or after the expiration of the period of fourteen days, allows, send by post or deliver to the Registrar a statement in writing, specifying the nature and date of the change.

Statement as to changes in particulars.

Penalty: Fifty pounds.

(2.) The Registrar shall cause—

- (a) the statement of change to be filed; and
- (b) a notification of the changed particulars and the date of the change to be entered in the register.

10.—(1.) The registration of a business-name which is, by virtue of sub-section (4.) of section six of this Ordinance, deemed to be registered under this Ordinance remains in force until the anniversary, in the year One thousand nine hundred and fifty-eight, of the date on which it was registered under the Ordinances repealed by section three of this Ordinance.

Renewal of registration.

(2.) A business-name registered after the commencement of this Ordinance remains in force for a period of twelve months.

(3.) Unless an application for the renewal of the registration of a business-name is received by the Registrar on or before the day before the anniversary of the date on which the business-name was registered in any year, the registration of the business-name shall expire on that day.

(4.) If an application for renewal, accompanied by the prescribed fee, is received by the Registrar on or before the day before the anniversary of the date on which the business-name was registered, the Registrar shall note the fact of the renewal on the register and the registration of the business-name shall be deemed to be renewed and the registration shall continue in force for a period of twelve months.

11.—(1.) Where a firm, individual or corporation ceases to carry on business under a business-name registered under this Ordinance, the firm, individual or corporation shall, within one month, or within such time as the Registrar on application in a particular case allows, after the cessation, send by post or deliver to the Registrar a statement that the firm, individual or corporation has ceased to carry on business under the business-name.

Statement to be furnished to Registrar on cessation of business.

Penalty: Fifty pounds.

(2.) The legal personal representative of a deceased individual who carried on business under a business name registered under this Ordinance shall, if the business is no longer carried on under that business-name, send or deliver to the Registrar the statement referred to in the last preceding sub-section.

Penalty: Fifty pounds.

(3.) Sub-section (1.) of this section does not apply where a statement is furnished to the Registrar under section nine of this Ordinance.

Notice to firm, individual or corporation believed not to be carrying on business under business-name.

12.—(1.) Where the Registrar has reasonable cause to believe that a firm, individual or corporation registered under this Ordinance has ceased to carry on business under a business-name registered under this Ordinance, the Registrar may, by notice in writing, require that firm, individual or corporation to show cause why the registration of the business-name should not be cancelled.

(2.) A notice under the last preceding sub-section shall be sent by registered post to the firm, individual or corporation at the place, or if there is more than one place, at the principal place where the business of the firm, individual or corporation is carried on.

Cancellation of registration.

13.—(1.) The Registrar may, by instrument under his hand, cancel the registration of a business-name if—

- (a) he receives a statement made under section eleven of this Ordinance;
- (b) he receives an answer to a notice sent under the last preceding section stating that the firm, individual or corporation has ceased to carry on business under the business-name;
- (c) he does not, within one month after sending a notice under the last preceding section, receive an answer to that notice;
- (d) the firm or corporation to which, or the individual to whom, a notice is sent under the last preceding section does not show, to the satisfaction of the Registrar, cause why the registration of the business-name should not be cancelled;
- (e) a member of the firm, or the individual or the corporation is convicted of an offence against this Ordinance: or
- (f) the firm or the corporation is dissolved or wound up; or
- (g) the registration of the business-name has expired and an application for renewal has not been received by the Registrar.

(2.) The Registrar shall cause—

- (a) the instrument of cancellation to be filed; and

- (b) a notification of the cancellation and of the date of cancellation to be entered in the register.

(3.) Where the registration of a business-name is cancelled under this section—

- (a) the Registrar may, on any grounds which he deems sufficient, revoke the cancellation by instrument under his hand; or
- (b) a member of the firm, the individual or the corporation may apply to the Supreme Court for an order directing the Registrar to restore the registration of the business-name.

(4.) On an application under the last preceding sub-section, the Supreme Court may, if it is satisfied that the firm, individual or corporation is carrying on business under the business-name and that it is just and equitable so to do, make the order applied for upon such terms as it thinks fit but, if not so satisfied, the Court shall dismiss the application.

(5.) Upon the revocation of a cancellation by the Registrar or the making of an order by the Supreme Court under the last preceding sub-section, the business-name shall be deemed to have continued to be registered as if the registration had not been cancelled, and the Registrar shall file the instrument of revocation or the order of the Supreme Court and make such entries and alterations in the register as he considers necessary to give effect to the revocation or the order of the Supreme Court.

14. Where any firm, individual or corporation has made default in furnishing to the Registrar a statement required to be furnished under this Ordinance, and during the default commences any suit or action in the business-name or for a cause of action arising out of any dealing by the firm, individual or corporation in or under the business-name, the Court before which the suit or action is commenced shall order the firm, individual or corporation in default to send or deliver to the Registrar the proper statement required to be furnished under this Ordinance, and may stay all proceedings in the suit or action until the order is complied with, or may allow the proceedings to be continued on an undertaking to comply with the order within a time to be limited by the Court.

Persons in default bringing action.

15.—(1.) If any firm, individual or corporation carries on business under a business-name without the business-name being registered under this Ordinance, proceedings may be taken and prosecuted in any court of competent jurisdiction against the firm, individual or corporation in the business-name under which the firm, individual or corporation is carrying on business, and the

Proceedings against non-registered firms.

name shall, for the purposes of the proceedings, be a sufficient designation of the firm, individual or corporation in all writs, summonses, complaints and other legal documents and instruments.

(2.) Nothing in this section exempts a firm, individual or corporation from compliance with the provisions of this Ordinance.

Penalty for false statement.

16. A person shall not wilfully make, sign, acknowledge, or send or deliver to the Registrar, a statement purporting to be made under this Ordinance which is false in a particular and a person shall not knowingly authorize or permit the making, signing, acknowledging or sending or delivery of such a statement.

Penalty: One hundred pounds or imprisonment for three months or both.

Offences committed by corporations.

17. Where a person convicted of an offence against this Ordinance—

(a) is a body corporate; or

(b) is a person who purported to act for or on behalf of a body corporate,

every person who, on the date of the commission of the offence, was a director, officer or servant actively concerned in the conduct of the business of the body corporate shall be deemed to be guilty of the offence, unless he proves that the offence was committed without his knowledge and that he used all due diligence to prevent the commission of the offence.

Register and index.

18.—(1.) The Registrar shall keep a register and index of the business-names registered under this Ordinance.

(2.) The register and index of firm-names kept under the Ordinances repealed by section three of this Ordinance shall be incorporated with and form part of the register and index under this Ordinance.

Replies to inquiries; inspection of register, &c.

19.—(1.) The Registrar shall, on receiving payment of the prescribed fee, send by post a reply to any inquiry made of him by letter in reference to any registration effected under the provisions of this Ordinance.

(2.) A person may, on payment of the prescribed fee, cause a search to be made in the register and index and may inspect, and make a copy of, or extracts from, statements or instruments filed under this Ordinance.

(3.) The Registrar shall, upon the request made by any person in relation to a business-name and upon payment of the prescribed fee, issue to that person—

(a) a certificate showing in respect of a business-name which is or has been at any time registered under this Ordinance or under the Ordinances repealed by section

three of this Ordinance the particulars entered in the register kept under this Ordinance or under those repealed Ordinances;

- (b) if the business-name has not been registered under this Ordinance or under the Ordinances repealed by section three of this Ordinance—a certificate showing that the business-name has not been so registered;
- (c) a certified copy of, or certified extract from, a statement or instrument filed under this Ordinance or under the Ordinances repealed by section three of this Ordinance; or
- (d) a certified copy of the certificate of registration.

20.—(1.) The Registrar may, on such evidence as to him appears sufficient, correct errors in the register or in an index or certificate. Powers of the Registrar.

(2.) When correcting an error under the last preceding subsection, the Registrar shall not erase or render illegible the original words and shall affix the date upon which the correction was made with his initials.

(3.) Every registration corrected under this section shall have the same validity and effect as if the error had not been made.

21.—(1.) The Registrar may, when a business-name is changed or when an error in the register is corrected or the registration of a business-name is cancelled, by notice in writing under his hand, require the members of the firm, or the individual or corporation, as the case may be, to deliver up the certificate of registration to be corrected or cancelled, as the case may be. Correction and cancellation of certificate of registration.

(2.) A person shall not, without reasonable excuse, neglect or fail to deliver up a certificate to the Registrar within the time specified in the notice.

Penalty: Twenty pounds.

22. Service, at the address of the place of business, or, where there is more than one place of business, at the address of the principal place of business, entered in the register as the address of the place of business or the address of the principal place of business, as the case may be, at which a firm, individual or corporation carries on business under the registered business-name, of any communication or notice or of any writ, summons, plaint, pleading, order or other document, proceeding or process whatsoever in any action, suit, proceeding or matter, either by leaving it at that address or by sending it by registered post postage prepaid addressed to the firm, individual or corporation at that address, shall be deemed to be service upon the members of the firm or upon the individual or corporation, as the case may be. Service of summons.

Signatures and
acknowledg-
ments to be
attested.

23.—(1.) All statements required for the purpose of the Ordinance shall be in a form approved by the Registrar and shall be signed or acknowledged—

- (a) in the case of an individual, by him or his duly appointed attorney;
- (b) in the case of a corporation, by a director or the manager or the secretary of the corporation; and
- (c) in the case of a firm, by either—
 - (i) all the individuals who are members of the firm or by their duly appointed attorneys and by a director or the manager or the secretary of of each corporation which is a member of the firm;
 - (ii) an individual who is a member of the firm or his attorney; or
 - (iii) a director or the manager or the secretary of a corporation which is a member of the firm.

(2.) The statements shall be signed or acknowledged in the presence of—

- (a) if in the Territory—the Registrar, a Justice of the Peace, a Commissioner for Declarations or a barrister or solicitor practising in the Territory; or
- (b) if elsewhere than in the Territory—an Australian Diplomatic Officer, an Australian Consular Officer, a British Consul, a notary public, a Justice of the Peace, a Commissioner for Declarations or a Commissioner for Affidavits for any State of the Commonwealth,

by whom respectively the signatures or acknowledgments shall be attested.

(3.) Where a statement is not signed by all the individuals who are members of the firm or by their duly appointed attorneys and by a director or the manager or the secretary of each corporation which is a member of the firm, the statement shall not be accepted by the Registrar unless the person signing or acknowledging the statement forwards to the Registrar, with the statement, a statutory declaration verifying the statement.

Prohibited
names and
words.

24.—(1.) A firm, individual or corporation shall not be registered under, or change his or its name, to a business-name—

- (a) which is the same as, or, in the opinion of the Registrar, is likely to be mistaken for—
 - (i) the business-name of a firm, individual or corporation registered under this Ordinance unless the firm, individual or corporation

has ceased to carry on business under the business-name and consents, by notice to the Registrar, to the use of the business-name;

- (ii) the name of a company or of a foreign company registered under the *Companies Ordinance* 1954 unless that company or foreign company is in the course of dissolution and consents, by notice to the Registrar, to the use of its name;
 - (iii) a name which has been reserved under the *Companies Ordinance* 1954 for use by a company to be formed;
 - (iv) the name of an association incorporated under the *Associations Incorporation Ordinance* 1953-1956;
 - (v) the name of a co-operative trading society registered under the *Co-operative Trading Societies Ordinance* 1939-1956;
 - (vi) the name of a friendly society registered under the following Acts of the State of New South Wales: the Friendly Societies Act, 1899, the Friendly Societies (Amendment) Act 1900, the Friendly Societies (Further Amendment) Act 1901, and the Friendly Societies (Amendment) Act 1906;
- (b) which, unless the name has been approved by the Attorney-General for use by the firm, individual or corporation—
- (i) contains the words, or an abbreviation of the words, “building society”, or the word or an abbreviation of the word, “chartered”, “co-operative”, “municipal”, “trust”, “trustee”, “fidelity” or “guarantee”; or
 - (ii) in the opinion of the Registrar, is likely to suggest to members of the public connexion with the Government of the Commonwealth, of a State or of any other part of the Queen’s dominions;
- (c) which, unless the name has been approved by the Governor-General for use by the firm, individual or corporation, contains the word “Royal”, “King”, “Queen” or “Imperial” or, in the opinion of the Registrar, is likely to suggest to members of the public the patronage of the Sovereign or of a member of the Royal Family;

- (d) which contains the words "Chamber of Commerce", "Chamber of Manufactures", "limited", "no liability", "proprietary" or "unlimited";
- (e) which, in the opinion of the Registrar, is blasphemous or is likely to be offensive to members of the public, or is likely to mislead members of the public as to the identity of the firm, individual or corporation or as to the nature of the business; or
- (f) which contains any words, initials, or letters capable of conveying the meaning that Her Majesty has conferred any title, order, or distinction upon any person unless the Registrar is satisfied that the person claiming to use those words, initials or letters in a business-name is entitled so to do, and unless the Registrar is satisfied that the use of those words, initials or letters would not be capable of conveying the meaning that another person is entitled to use them.

(2.) The provisions of the last preceding sub-section shall not prevent the registration of a business-name containing a word prohibited by that sub-section if that word is a Christian name or the surname of a person.

Power to require
change of name,

25.—(1.) Where a business-name which is registered, or is deemed to be registered, under this Ordinance is a business-name the registration of which is prohibited under the last preceding section, the Registrar may, by notice in writing require the firm, individual or corporation to change his or its business-name.

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

(3.) If, after receipt of a notice from the Registrar under sub-section (1.) of this section, a firm, individual or corporation neglects or refuses to take all necessary steps to change his or its business-name, the Registrar shall cancel the registration of the business-name.

Seal.

26.—(1.) The Registrar shall have and use as the seal of his office a seal of a design approved by the Attorney-General.

(2.) In any legal proceedings, a document that purports to bear the imprint of the seal of office of the Registrar and to be signed and issued by the Registrar shall, unless the contrary is proved, be deemed to be sealed, signed and issued by, or under the direction of, the Registrar and a document so sealed, signed and issued is evidence of the facts stated in the document.

27. The respective fees specified in the Schedule to this **Fees.** Ordinance are payable in respect of the several matters in respect of which they are so specified.

28. The Attorney-General may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance. **Regulations.**

THE SCHEDULE.

FEEs.

Section 27.

Item.	Matter in respect of which fee payable.	Fee.
		£ s. d.
1	On lodging an application for registration under section 7 (including search as to availability of name)— (a) if made before commencement of carrying on business in the Territory (b) if made after commencement of carrying on business in the Territory	1 0 0 2 0 0
2	On lodging a statement of change of particulars under section 9— (a) if made within fourteen days of the change .. (b) if made more than fourteen days after the change ..	1 0 0 2 0 0
3	On lodging application for renewal of registration ..	0 10 0
4	Upon lodging an application for an extension of time ..	0 5 0
5	For every certificate by the Registrar	1 0 0
6	For a certified copy of, or certified extract from, any document— (a) if copy or extract prepared by the applicant, per folio of 72 words (b) if copy or extract prepared by the Registrar, per folio of 72 words (c) if copy or extract prepared by the Registrar by photographic process, per page	0 0 9 0 1 4 0 2 6
7	For a search in the register and index (including inspection of or making extracts from or a copy of any document)	0 5 0
8	For every inquiry by letter in reference to any registration under the Ordinance, including any necessary search ..	0 10 0
9	For search as to whether a name proposed to be adopted as a business-name is available—each name ..	0 5 0

By Authority: A. J. ARTHUR, Commonwealth Government Printer, Canberra.