

1990

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY**

BUSINESS NAMES (AMENDMENT) BILL 1990

EXPLANATORY MEMORANDUM

**(Circulated by authority of the Attorney-General
Bernard Collaery MLA)**

Explanatory Memorandum

BUSINESS NAMES (AMENDMENT) BILL 1990

Outline

- . The purpose of the Business Names (Amendment) Bill 1990 is to amend the Business Names Act 1963 (the Act).
- . The amendments transfer the administration of the Act from the Commonwealth Corporate Affairs Commission to the ACT Registrar's Office.
- . the amendments include transitional and savings provisions to preserve actions of the Corporate Affairs Commission and the status of existing business names.
- . the amendments are part of a package of similar amendments made to the Associations Incorporation Act 1953 and Unclaimed Moneys Act 1950.

Financial Considerations

- . The amendments allow the Minister to set fees under the Act by determination. The level of fees set by the Minister will have an effect upon income.

Notes on Clauses

- Clause 1 provides for the citation of the Act.
- Clause 2 provides for the commencement of the Act. Clauses 1, 2 and 3 commence on the day the Act is notified in the Gazette, and the remaining provisions commence on 3 September 1990. This date was specified because the agency agreement under which the Corporate Affairs Commission administers the Principal Act, as well as the Associations Incorporation Act 1953 and the Unclaimed Moneys Act 1950, expires upon this date.
- Clause 3 defines the "Principal Act" as the Business Names Act 1963.
- Clause 4 amends section 3 of the Principal Act, dealing with repeal, savings and transitional provisions which apply to the earlier Legislation that the Act repealed, by changing the reference from "Commission" to "Registrar".
- Clause 5 amends section 2 of the Principal Act, the interpretation section, by omitting from subsection (1) the definition of "Commission", and by inserting into subsection (1) definitions of "approved form" and "Registrar".
- Clause 6 inserts sections 4AA and 4AB after section 4 of the Principal Act. Subsection 4AA(1) provides for the appointment of a Registrar, Acting Registrar, and Deputy Registrars of Business Names and other officers by the Minister by instrument. Subsection 4AA(2) allows a Deputy Registrar to exercise and perform all the powers and functions of the Registrar, subject to the directions of the Registrar, and subsection 4AA(3) provides that the appointment of a Deputy Registrar does not affect the exercise or performance of a power or function by the Registrar.
- Subsection 4AB(1) provides that the Registrar shall have an official seal, and subsection 2AB(2) provides that a document shall not be invalid due to a failure to affix a seal or an informality in doing so.
- Clause 7 amends section 4A of the Principal Act, dealing with fees. Subsection (1) is omitted and replaced by subsections (1) and (1A), which provide that the Minister may determine fees by notice published in the Gazette, and fees should be payable to the Registrar.

Clause 8 inserts section 32 after section 31 of the Principal Act. Section 32 provides that the forms used under the Act shall be approved by the Registrar. Previously the forms which prescribed the form in which an application, notice, declaration or certificate should be made, given, published, issued or filed were prescribed in the Regulations to the Principal Act. Allowing the Registrar to approve the required forms increases the ease with which those forms can be amended. As the forms are purely administrative mechanisms and do not affect a person's rights or liabilities under the Act, there is no necessity for the forms to be approved by the Legislative Assembly.

Clause 9 provides that section 33 of the Principal Act, dealing with the power to make Regulations, is amended as a consequence if the new arrangements made with respect to fees and approved forms under the Principal Act.

Clause 10 repeals the Schedule to the Principal Act. The Schedule had prescribed the fees which could be charged under the Act.

Clause 11 provides that further amendments to the Principal Act are made in Schedule 1. The amendments change the name of the administering body from "Commission" and "it" to the "Registrar" and "he or she", and from "prescribed" form to "approved" form.

Clause 12 makes similar amendments to the Regulations in Schedule 2.

Clause 13 makes transitional provisions for the change over to the new administration. Subsection (1) provides for the continued status, operation, or effect of all persons, things and circumstances appointed or created by or under the Principal Act before the Principal Act was amended. The subsequent subsections are designed to ensure that an action commenced under a provision in the Principal Act before that provision was amended will not be affected by the amendments and will be preserved as though it had been commenced under the amended provisions, so that it can be completed by the Registrar.