Business Names Registration (Application of Consequential Amendments) Bill 2011

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Law and Bills Digest Section

Contents

Purpose ............................................................................................................................ 2
Background ....................................................................................................................... 2
  Basis of policy commitment ......................................................................................... 3
  Commencement dates ................................................................................................. 3
  Operation of this Bill ..................................................................................................... 4
  Exception—Australian Securities and Investments Commission Act 2001 .............. 5
Committee consideration ............................................................................................... 6
  Senate Selection of Bills Committee ........................................................................... 6
Financial implications ..................................................................................................... 6
Key provisions ................................................................................................................. 6
  Schedule 1—Application of consequential amendments ............................................. 6
Concluding comments ..................................................................................................... 6
Business Names Registration (Application of Consequential Amendments) Bill 2011

Date introduced: 3 November 2011

House: Senate

Portfolio: Innovation, Industry, Science and Research

Commencement: Sections 1–3 on the day of Royal Assent; Section 4 and Schedule 1 at the same time as Part 1 of Schedule 2 to the Business Names Registration (Transitional and Consequential Provisions) Act 2011 commences.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/bills/. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The purpose of the Business Names Registration (Application of Consequential Amendments) Bill 2011 (the Bill) is to clarify the date when the amendments to other Commonwealth Acts contained in Part 1 of Schedule 2 of the Business Names Registration (Transitional and Consequential Provisions) Act 2011 (Consequential Provisions Act) will apply. They will apply when the National Business Names Registration System commences.

Background

On 13 October 2011, Parliament passed a package of Bills to create a National Business Names Registration System.

The main purpose of the national registration scheme is to ensure that businesses not operating under their own entity names, register their business names and details on a national register so that those engaging or who propose to engage with these businesses are able to determine the identity of the entities behind the business names, as well as their contact details. It is also expected that a national registration scheme would remove the inconvenience experienced and compliance costs incurred in the current situation where business names are registered across the various states and territories, each with its own business names registration scheme.

The package of legislation consists of the following Acts:

1. Explanatory Memorandum, Business Names Registration Bill 2011, p. 3.
2. Ibid.

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• Business Names Registration Act 2011[^3],
• Business Names Registration (Fees) Act 2011[^4] and
• Business Names Registration (Transitional and Consequential Provisions) Act 2011[^5].

**Basis of policy commitment**

On 2 July 2009, the Commonwealth, states and territories entered into an Intergovernmental Agreement for Business Names (the Intergovernmental Agreement).[^6] Under the terms of the Intergovernmental Agreement, the states and territories agreed to refer their legislative power over business name registration to the Commonwealth.[^7] The package of legislation listed above was based on the terms of the Intergovernmental Agreement.

**Commencement dates**

The Commonwealth legislation to give effect to the National Business Names Registration System is drafted in such a way that the system cannot commence if any state does not refer or adopt the legislation.[^8] As a result, the package of legislation was characterised by a system of cascading commencement dates.

The primary act—the Business Names Registration Act 2011 (the Business Names Registration Act) —operates so that the following provisions will commence on a single day to be fixed by Proclamation (the first Proclamation day):

• provisions covering preliminary matters[^9]


[^7]: Ibid., recitals A and B.


[^9]: Sections 1–17.

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• the establishment of the Business Names Register\(^{10}\)
• obligations to give the Australian Securities and Investments Commission (ASIC) information\(^{11}\)
• provisions covering general and administration matters\(^{12}\), and
• provisions about state and territory Registers.\(^{13}\)

The remaining provisions of the Business Names Registration Act operate so that they, too, will commence on a single day to be fixed by Proclamation (the second Proclamation day). It is on this second Proclamation day that the National Business Names Registration System goes ‘live’.\(^{14}\)

The companion to the primary Act—the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* (the Transitional and Consequential Provisions Act)—introduces the concept of the ‘change-over day’. This is defined as the day on which Part 2 of the Business Names Registration Act commences. In effect, the ‘change-over day’ is the second Proclamation day.

The Transitional and Consequential Provisions Act also contains differing commencement days. The purpose of the transitional provisions is to provide an orderly and seamless transfer of the Business Names Registers between the state and territory governments and the Commonwealth Government. They are contained in Schedule 1 of the Transitional and Consequential Provisions Act and commence on the first Proclamation day.

The consequential amendments contained in Schedule 2 of the Transitional and Consequential Provisions Act, are divided into two parts. The amendments in Part 1 apply to eleven Commonwealth statutes and are described in the heading as ‘commencing on the change-over day’—that is, the second Proclamation day. However, this description is not consistent with the commencement provisions of the Transitional and Consequential Provisions Act. The commencement provisions state that consequential amendments in Part 1 of Schedule 2 are to commence at the same time as section 3 of the Business Names Registration Act—that is, the first Proclamation day. This is not correct. The amendments are not intended to apply until the second Proclamation day.

**Operation of this Bill**

The purpose of this Bill is to correct the inconsistency.

The Minister’s second reading speech to this Bill explains the problem as follows:

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10. Section 22.
11. Section 37.
12. Sections 63–90.

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The Business Names Registration (Transitional and Consequential Provisions) Bill 2011 has been drafted such that currently both the transitional and most of the consequential amendments commence on the same day, prior to the commencement of the National Business Names Registration System.

However, the policy is for most of the consequential amendments to commence on the day that the national system commences. This Bill clarifies that consequential amendments to most other Commonwealth Acts will not apply until the National Business Names Registration System commences. ¹⁵

This Bill operates so that the consequential amendments to ten of the eleven Commonwealth statutes listed in the Transitional and Consequential Provisions Act apply on or after the ‘change-over day’—that is the second Proclamation day.

Exception—Australian Securities and Investments Commission Act 2001


This Bill does not apply to those amendments. This means that the amendments to the ASIC Act will commence at the same time as section 3 of the Business Names Registration Act—the first Proclamation day.

This will enable ASIC to exercise those functions and powers which are conferred by the Business Names Registration Act on the first Proclamation day. ASIC will be providing an online business names registration service on its website which will include a link to TM Check so that applicants can compare their proposed business names with registered Australian trademarks. ¹⁶ ASIC will be registering business names and will establish and maintain the Australian Business Register, as well as the requirements relating to applying for and obtaining registration of business names. It will control access to information on the Register. Businesses will have obligations to provide ASIC with particular information in relation to the Register.

ASIC is also responsible for cancelling the registration of a business name at the entity’s request. It also has discretionary power to cancel the registration of an entity’s business name if it becomes


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aware of certain circumstances which are set out in section 48 of the Business Names Registration Act.\textsuperscript{17}

**Committee consideration**

**Senate Selection of Bills Committee**

The Senate Selection of Bills Committee resolved to recommend that the Business Names Registration (Application of Consequential Amendments) Bill 2011 not be referred to committee.\textsuperscript{18}

**Financial implications**

The Explanatory Memorandum states that the Application Bill does not have any financial impact.\textsuperscript{19}

**Key provisions**

**Schedule 1—Application of consequential amendments**

*Items 1 to 7* refer to the amendments to ten of the eleven Acts set out in Part 1 of Schedule 2 to the *Transitional and Consequential Provisions Act 2011*. Although the amendments will come into force as at the first Proclamation day, the application provisions make it clear that those amendments will apply on or after *change-over day*—that is, the second Proclamation day.

**Concluding comments**

The Bill corrects the uncertainty created by the drafting of the Transitional and Consequential Provisions Act by making clear when the amendments to the ten of the eleven Acts listed in the Transitional and Consequential Provisions Act will apply. It clarifies that those amendments will not apply until the National Business Names Registration System commences.

\textsuperscript{17} Ibid.


\textsuperscript{19} Explanatory Memorandum, Business Names Registration (Application of Consequential Amendments) Bill 2011, p. 4.

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