



ANNO DECIMO NONO

GEORGII V REGIS.

A.D. 1928.

No. 1851.

An Act to make further and better provision for the Registration of Firms and Persons carrying on Business under Business Names, and for purposes connected therewith.

[Assented to, September 12th, 1928.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. This Act may be cited as the "Registration of Business Names Act, 1928", and shall come into operation on a day to be fixed by proclamation. **Short title and commencement.**

2. The Registration of Firms Act, 1899, and the Registration of Firms Act Amendment Act, 1922, are hereby repealed. **Repeal of 723, 1899, and 1518, 1922.**

3. In this Act, unless the context otherwise requires— **Interpretation.**

"Business" includes profession :

"Business-name" means the name or style under which any business is carried on, whether in partnership or otherwise :

"Christian name" includes any forename :

"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, who have entered into partnership with one another with a view to carrying on business for profit :

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“ Foreign firm ” means any firm, individual, or corporation whose principal place of business is situated outside South Australia :

“ Individual ” means a natural person, and shall not include a corporation :

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

“ Registrar ” means the Registrar of Companies.

Firms and persons
to be registered.

Cf. 6 and 7, Geo. V.,
c. 58, s. 1.

4. Subject to the provisions of this Act—

(a) every firm having a place of business in South Australia, 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 his true Christian 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 South Australia, and carrying on business under a business-name which does not consist of his true surname without any addition other than his true Christian names or the initials thereof,

shall be registered in the manner directed by this Act : 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 insolvency 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 ; and

IV. any individual or firm who or which does not publicly notify or advertise himself or itself as carrying on any specified business at any specified place of business in South Australia, and who or which merely contracts to perform specified work for or supply specified materials to any particular person within any period not exceeding twelve months from the time of so contracting, shall be exempt from registration under this Act.

5. Where

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5. Where a firm, individual, or corporation having a place of business within South Australia carries on the business wholly or mainly as nominee or trustee of or for another person, or other persons, or another corporation, or acts as general agent for any foreign firm, the first-mentioned firm, individual, or corporation shall be registered in manner provided by this Act, and, in addition to the other particulars required to be furnished and registered, there shall be furnished and registered such other particulars as may be prescribed: Provided that where the business is carried on by a trustee in bankruptcy or insolvency or a receiver or manager appointed by any Court, registration under this section shall not be necessary.

Registration by nominee, &c.

Ibid., s. 2.

6. (1) Every firm or person required under this Act to be registered shall furnish by sending by post or delivering to the Registrar a statement in writing in the prescribed form containing the following particulars:—

Manner and particulars of registration.

Cf. *ibid.*, s. 3.

- (a) The business name :
- (b) The general nature of the business :
- (c) The place or places of the business including the name (if any) of the street or road where the particular place of business is situated, and the number (if any) of the place of business therein :
- (d) Where the registration to be effected is that of a firm, the present Christian name and surname, any former Christian name or surname, the usual residence, and the other business occupation (if any) of each of the individuals who are partners, and the corporate name and registered or principal office of every corporation which is a partner :
- (e) Where the registration to be effected is that of an individual, the present Christian name and surname, any former Christian name or surname, the usual residence, and the other business occupation (if any) of such individual :
- (f) Where the registration to be effected is that of a corporation, its corporate name and registered or principal office :
- (g) If the business is commenced after the passing of this Act, the date of the commencement of the business :
- (h) Such other particulars as may be prescribed.

(2) If any of the persons mentioned in such statement is a minor, he shall be so described in such statement, and, in addition to the other particulars required by subsection (1) hereof, the date of such person's birth shall be stated in such statement.

(3) Where a business is carried on under two or more business names, each of those business names shall be stated.

7. (1) Registration under the Registration of Firms Act, 1899, shall be deemed for all purposes to be registration under this Act, and such registration shall continue for the term of five years from the making thereof.

Periodical registration.

(2) Subject

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(2) Subject to subsection (1) of this section, registration under this Act shall continue for the term of three years. Prior to the termination of that period and each succeeding period of three years a new registration shall be effected.

Particulars for registration.
Cf. 723, 1899, s. 8.

8. (1) The statement required for the purposes of registration shall in the case of an individual be signed by him, and in the case of a corporation be signed by a director or secretary thereof, and in the case of a firm either by all the individuals who are partners and by a director or the secretary of all corporations which are partners.

(2) The foregoing provisions of this section shall, in the case of a firm, which has previously been registered under this Act or the Registration of Firms Act, 1899, be deemed to be complied with—

(a) where the firm consists of fewer than five individuals, if one of such individuals in South Australia signs or acknowledges the said statement ; or

(b) where the firm consists of five individuals or more, if two of such individuals in South Australia sign or acknowledge the said statement.

(3) If there is in South Australia no partner carrying on or intending to carry on a business carried on under a business-name, the foregoing provisions of this section shall, in the case of a firm which has previously been registered under this Act or the Registration of Firms Act, 1899, be deemed to be sufficiently complied with if the said statement is signed or acknowledged by any person who has previously filed in the office of the Registrar a statutory declaration that he is duly authorised by and on behalf of such persons as are described in such declaration to carry on the business the firm-name of which he desires to have registered.

(4) Every such statement made by any person as aforesaid shall be made by signing or acknowledging the same in the presence, if in South Australia, of a Justice, proclaimed bank manager, Commissioner for taking affidavits in the Supreme Court, or solicitor, and, if elsewhere than in South Australia, in the presence of a Justice, a British Consul, or a notary public, by whom respectively such signatures or acknowledgments shall be attested.

Time for registration.

9. The particulars required to be furnished under this Act shall be furnished within fourteen days after the firm or person commences business, or commences the business in respect of which registration is required, as the case may be.

Registered name always to be used.
Ibid., s. 10.

10. The business-name of any firm or person registered under this Act shall be used in all matters connected with or relating to the business carried on by such firm or person.

11. Whenever

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11. 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 such longer period as the Registrar may, on application being made in any particular case, whether before or after the expiration of such fourteen days, allow, furnish by sending by post, or delivery to the Registrar 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.
6 and 7 Geo. V.,
c. 58, s. 6.

12. A firm or person changing its or his business-name shall register such change as if it were a new registration, and the statement sent or delivered to the Registrar shall mention the former name of the firm as being abandoned by it, as well as the particulars required for a new registration.

Re-registrations on change of business name.
723, 1899, s. 12.

13. (1) The Registrar may require any person to furnish to the Registrar such particulars as appear necessary to the Registrar for the purpose of ascertaining whether or not he or the firm of which he is a partner should be registered under this Act, or an alteration made in the registered particulars, and may also 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, and if any person when so required fails to supply such particulars as it is in his power to give, or furnishes particulars which are false in any material particular, he shall be liable to a penalty not exceeding Twenty Pounds.

Duty to furnish particulars to Registrar.
6 and 7 Geo. V.,
c. 58, s. 10.

(2) If from any information so furnished it appears to the Registrar that any firm or person ought to be registered under this Act, or an alteration ought to be made in the registered particulars, the Registrar may require the firm or person to furnish to the Registrar the required particulars within such time as may be allowed by the Registrar, but, where any default under this Act 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 or person is required by the Registrar under this section to furnish particulars to the Registrar.

14. The registration of a business name under this Act shall not be construed as authorising the use of that name if apart from such registration the use thereof is or could be prohibited by any Act or law.

Limitations of registration.
Ibid., s. 14 (2).

15. If any firm or person by this Act required to furnish a statement of particulars or of any change in particulars shall without reasonable excuse make default in so doing in the manner and within the time specified by this Act, every partner in the firm or the person so in default shall be liable to a penalty not exceeding Five Pounds for every day during which the default continues, and the Court shall order a statement of the required particulars or change in the particulars to be furnished to the Registrar within such time as may be specified in the order.

Penalty for default in registration.
Ibid., s. 7.

16. Wh re

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Persons in default
bringing action.
723, 1890, s. 14.

16. Where any firm or person by this Act required to send or deliver any statement to the Registrar has therein made default, and during the default commences any action in the business-name, or for a cause of action arising out of any dealing by such firm or person in the business-name, the Court shall order the firm or person in default to send or deliver to the Registrar the proper statement, and may stay all proceedings in the action until the order be complied with, or allow proceedings to be continued on an undertaking to comply with the order within a time to be limited by the Court. The power by this section given to the Court may be exercised by a Judge at chambers, or in Local Court actions by a Local Court Judge, or a Special Magistrate.

Certificate of regis-
tration.
Cf. *ibid.*, s. 16.

17. (1) On receiving any statement made in pursuance of this Act and the prescribed fee, the Registrar shall cause the statement to be filed, and he shall send by post or deliver a certificate of the registration thereof to the firm or person registering.

(2) The said certificate or a certified copy thereof shall be kept exhibited in a conspicuous position at the principal place of business of the firm or individual, and if not so exhibited, every partner in the firm or the person, as the case may be, shall be liable to a penalty not exceeding Five Pounds.

Register and index.
Ibid., s. 17.

18. The Registrar shall keep, in proper books to be provided for the purpose, a Register and an index of all the firms and the business-name of persons registered, and of all the statements registered in reference thereto.

Inspection and
copies.
Ibid., s. 18.

19. (1) Any person, on payment of the prescribed fee, may inspect, make extracts from or copies of, the statements filed by the Registrar.

(2) Any person, on payment of the prescribed fee, may require a certificate of the registration of any firm or person, or a copy of or extract from any registered statement, to be certified by the Registrar.

Certificate, evidence.
Ibid., s. 19.

20. A certificate of registration, or a copy of or extract from any statement registered under this Act, purporting to be signed and certified by the Registrar shall be *prima facie* evidence thereof, and of the fact and date of registration as shown thereon.

Removal of names
from Register.
6 and 7 Geo. V.,
c. 58, s. 13 (1)
and (2).

21. (1) If any firm or individual registered under this Act ceases to carry on business or abandons the use of the business-name, 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 abandoned the business-name or of the individual or, if he is dead, his personal representatives, within three months after the business has ceased to be carried on, or the business-name has been abandoned, to send by post or deliver to the Registrar notice in the prescribed form that the firm or individual has ceased to carry on business or, as the case may be, that the business-name has been abandoned, and if
any

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any person whose duty it is to give such notice fails to do so within such time as aforesaid, he shall be liable to a penalty not exceeding Twenty Pounds.

(2) On receipt of such a notice as aforesaid the Registrar may remove the firm or individual from the Register.

22. (1) In any case where the Registrar has reasonable cause to believe that any firm or individual registered under this Act under a business-name is not carrying on business under that business-name, the Registrar may send by post to the members of the firm or to such individual a letter enquiring whether such firm or individual is still carrying on business under such business-name.

Power of Registrar to strike name of defunct firm off Register.

1518, 1922, s. 8.

(2) If the Registrar does not, within one month of sending such letters, receive any answer thereto, he may, within fourteen days after the expiration of that time, send by post to such members or person a registered letter referring to the first letter, and stating that no answer thereto has been received by the Registrar, and that, if an answer is not received to the second letter within a month from the date thereof, a notice will be published in the *Government Gazette* with a view to striking such business-name off the Register.

(3) If the Registrar does not within the specified time after sending the second letter or letters receive an answer or explanation which satisfies him that the firm or person to whom the letter or letters were addressed is still carrying on business under such business-name, the Registrar may publish in the *Government Gazette* and send by post to such members or person a notice that at the expiration of three months from the date of that notice the business-name mentioned therein will, unless cause is shown to the contrary, be struck off the Register.

(4) At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by such members or person to whom the notice was sent, strike the business-name off the Register and shall publish notice thereof in the *Government Gazette*.

(5) If any such person feels aggrieved by the business-name having been struck off the Register pursuant to this section, such person may apply to the Supreme Court, and the Supreme Court, if satisfied that such person or a firm of which such person is a member, at the time of the striking off, was carrying on business under the business-name, and that it is just so to do, may order the business-name to be restored to the Register, and thereupon the business-name shall be deemed to have continued to be registered as if it had never been struck off.

(6) A letter or notice authorised for the purposes of this section to be sent to any person may be sent by post addressed to such person at the place of business of the firm or individual registered under the business-name as appears from the registration thereof.

23. (1) The

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Registrar may
refuse to register
certain names.

Cf. *ibid.*, s. 5.

- 23.** (1) The Registrar may refuse to register any business-name—
- (a) which is the same as any registered business-name, or so similar to any registered business-name as to be likely to be mistaken for it; or
 - (b) which is the same as that under which any existing company or society is registered under any other Act, or so similar thereto as to be likely to be mistaken for it; or
 - (c) which contains any of the words following, namely:—
“proprietary,” “bank,” “limited,” or “unlimited”; or
 - (d) which contains any words, initials, or letters capable of conveying the meaning that His Majesty has conferred any title, order, or distinction upon any person unless the Registrar is satisfied that the person claiming to use such words, initials, or letters in a business name as aforesaid is entitled so to do, and unless the Registrar is satisfied that the use of the said words, initials, or letters would not be capable of conveying the meaning that any person other than the person aforesaid is entitled to use the same; or
 - (e) the use of which is prohibited by any Act or law.

(2) If any firm or individual carries on business under any business name in contravention of the provisions of this section then every partner in the firm or, as the case may be, the individual shall be liable to a penalty not exceeding Five Pounds for every day during which business is carried on as aforesaid.

Penalty for false
statements.

24. If any statement 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 liable to imprisonment for a term not exceeding three months, or to a fine not exceeding Twenty Pounds, or to both such imprisonment and fine.

Regulations.

25. The Governor may make regulations for all or any of the following matters, namely:—

- (a) Prescribing the fees to be paid to the Registrar under this Act:
- (b) Prescribing the forms to be used:
- (c) Prescribing the conduct and regulation of registration under this Act, and as to any matters incidental thereto.

Summary
proceedings.

26. All proceedings for offences against this Act shall be disposed of summarily.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

A. HORE-RUTHVEN, Governor.