

# **Business Registration Acts (Amendment) Bill**

## **As Sent Print**

### **EXPLANATORY MEMORANDUM**

#### **General**

This Bill makes miscellaneous amendments to the business registration Acts and other Acts administered by the Minister. It amends various business registration Acts to facilitate electronic service delivery for registration services provided under those Acts. It amends provisions in certain of those Acts to make further provision for forms and other matters to assist in the administration of the Acts. It also amends various Acts administered by the Minister to provide for the change of name of the Office of Fair Trading or the Office of Fair Trading and Business Affairs to Consumer and Business Affairs Victoria and of the Director of Fair Trading to the Director of Consumer and Business Affairs.

#### **Clause Notes**

#### **PART 1—PRELIMINARY**

- Clause 1 sets out the purposes of the Act.
- Clause 2 provides for the commencement of the Act.

#### **PART 2—ASSOCIATIONS INCORPORATION**

- Clause 3 makes miscellaneous amendments to the **Associations Incorporation Act 1981** (the Act) to allow the Registrar of Incorporated Associations to approve certain forms and to require the particulars to be included in those forms to prescribed by the Act and regulations.
- Clause 4 updates a reference to the Australian Securities and Investments Commission in section 10(4)(b)(i) of the Act.
- Clause 5 provides power for the Registrar in section 35(2) of the Act to wind up an incorporated association where it has failed to

become registered or incorporated as a prescribed body corporate within the time specified.

- Clause 6 inserts a new section 38B into the Act to enable the delegation of the Minister's powers to give consent under section 12(1) to the Registrar.
- Clause 7 inserts a new section 39A into the Act to enable the Registrar to correct the register where he/she decides it is necessary but not to omit any entry unless satisfied that the whole of the entry was included in error. This will ensure that there is a record of the entries and amendments to the register for the benefit of persons who rely upon the registers.
- Clause 8 inserts new sections 45B and 45C into the Act. Section 45B provides that the Registrar may approve special lodging arrangements with the public officer of the incorporated association or another person to electronically lodge documents under the Act. Section 45C allows the Registrar to accept an unsigned document where he/she is satisfied that it is not practicable to obtain the signature of the person required to sign, but it does not relieve that person from the obligation to sign the document. It also provides that if a document is received by the Registrar for the purposes of lodgment it is sufficient compliance with the requirement to sign if the original document is signed. This enables the Registrar to receive documents signed by the public officer or agent without having to also receive the signed originals.
- Clause 9 provides for the re-submission of certain documents in an electronic form, which is useable by the Registrar.
- Clause 10 inserts a new section 49A into the Act. The section provides that if a public officer or other person has lodged a document electronically in accordance with section 45B, he or she must keep the original signed document for 7 years after the document was lodged with the Registrar. Penalty: 30 penalty units.
- Clause 11 amends section 54(2) of the Act to enable the Governor in Council to make regulations which provide for the keeping of records of documents required under the Act in any form approved by the Registrar.

Clause 12 makes a minor statute law revision amendment to section 36(1)(b) of the Act.

### **PART 3—BUSINESS NAMES**

Clause 13 inserts new definitions into the **Business Names Act 1962** (the Act).

Clause 14 updates a reference to the Australian Securities and Investments Commission in section 4A of the Act.

Clause 15 inserts a new delegation provision into the Act, which enables the Minister's power under section 9(1) to be delegated to the Director.

Clause 16 increases the penalty for trading under an unregistered business name from \$200 to 30 penalty units (\$3000) in section 5(1) of the Act.

Clause 17 updates a reference to the Corporations Law in section 5A(1)(c) of the Act, and increases the penalty for trading under a business name while a disqualified person from 25 penalty units to 60 penalty units and removes the reference to 6 months' imprisonment in section 5A(2) of the Act.

Clause 18 substitutes "the form approved by the Director" for "the prescribed form" in section 7(1) of the Act, inserts a new paragraph (g) to enable an applicant to nominate a postal or electronic address in addition to the registered address of the business and substitutes the words "in the prescribed form" in section 7(4) with "form approved by the Director containing the prescribed particulars".

Clause 19 substitutes a new section 9(2) in the Act to update references in that sub-section to ensure that the Minister publishes a direction under the section in the Government Gazette and a copy of the direction is sent to each State or Territory Minister and the Commonwealth Minister who administers a similar law.

Clause 20 substitutes "the form approved by the Director and containing the prescribed particulars" for "prescribed form" in section 11(1) of the Act. It also inserts a new section 11(5) to provide that renewals of registration lodged electronically do not require manual signatures.

- Clause 21 inserts a new section 12(1A) into the Act to provide that changes in addresses must be notified to the Director. Sections 12(1), (1C), (2), (3), (4), (5)(a), (6) and (7) are amended to provide for forms approved by the Director containing prescribed particulars.
- Clause 22 inserts a new section 15AB into the Act to allow the Director to approve special lodging arrangements for electronic lodging of statements under the Act with a specified person or agent on behalf of a specified person or persons or class of persons.
- Clause 23 amends section 15B(1) of the Act to provide for the resubmission of statements electronically lodged to be in a form which is useable by the Director.
- Clause 24 inserts new sections 17 and 17A into the Act. New section 17 makes it an offence to knowingly or negligently provide false or misleading statements under the Act and sets a maximum penalty of 60 penalty units in either case. New section 17A requires an approved agent or other person who lodges a copy of a statement signed by another person to retain the original of the statement for a period of 7 years. Penalty: 30 penalty units.
- Clause 25 amends section 19(1)(d) of the Act to allow the Director to cancel the registration of a business name where the name of a corporation has been deregistered under Corporations Law.
- Clause 26 replaces the reference to the **Companies Act 1961** in section 26(2) of the Act with a reference to the Corporations Law.
- Clause 27 amends section 31(1)(b) of the Act by allowing the Director by agreement with the person or persons in respect of whom the business name is registered to serve notices under this Act to the postal address that appears on the register or to an electronic mailing address that appears on the register.
- Clause 28 amends section 32(1) of the Act to enable the Governor in Council to make regulations which provide for the keeping of records of documents required under the Act in any form approved by the Director. It also updates section 32(1B) which provides that the regulations are subject to disallowance by a House of Parliament.

## PART 4—CO-OPERATIVES

- Clause 29 inserts sections 438A and 438B into the **Co-Operatives Act 1996** (the Act) to provide for the signing of documents, and for approval of special arrangements for documents electronically lodged under this Act. Section 438A allows the Registrar to accept an unsigned document where she/he is satisfied that it is not practicable to obtain the signature of the person required to sign, but it does not relieve that person from the obligation to sign the document. It also provides that if a document is received by the Registrar for the purposes of lodgment it is sufficient compliance with the requirement to sign if the original document is signed. This enables the Registrar to receive documents signed by the specified agent or person without having to also receive the signed originals. Section 438B provides that the Registrar may approve special lodging arrangements with a specified agent or person on behalf of a specified person or persons or class of persons.
- Clause 30 inserts a new paragraph (f) into section 439(1) of the Act to enable the Registrar to refuse to register documents or to reject a document electronically lodged which is not readily accessible to the Registrar so as to be useable by the Registrar.
- Clause 31 inserts a new section 409A into the Act to require an agent or person who lodges a copy of a document signed by another person to retain the original of the document for a period of 7 years. Penalty: 30 penalty units.
- Clause 32 inserts section 433(4) into the Act to allow the Registrar to correct any error or omission in the Register where he or she decides that it is necessary but not omit any entry unless satisfied that the whole of the entry was included in error. This will ensure that there is a record of the entries and amendments to the register for the benefit of persons who rely upon the registers.
- Clause 33 amends section 463 (2) of the Act to enable the Governor in Council to make regulations which provide for the keeping of records of documents required under the Act in any form approved by the Registrar.

Clause 34 makes a number of minor statute law revision amendments to the Act.

## **PART 5—PARTNERSHIPS**

Clause 35 inserts section 57(4) and (5) into the **Partnership Act 1958** (the Act) to enable the Commissioner to correct any error or omission in the Register where he/she decides it is necessary but not to omit any entry unless satisfied that the whole of the entry was included in error. This will ensure that there is a record of the entries and amendments to the register for the benefit of persons who rely upon the registers.

Clause 36 inserts a new section 79 into the Act which makes it an offence to provide a false or misleading statement to the Commissioner knowingly or negligently and sets a penalty of 60 penalty units in each case.

Clause 37 inserts a new Part 4 (sections 79A to 79F) into the Act.

- Section 79A provides for the signing of documents. It allows the Commissioner for Corporate Affairs to accept an unsigned document where satisfied that it is not practicable to obtain the signature of the person required to sign, but it does not relieve that person from the obligation to sign the document. It also provides that if a document is received by the Commissioner for the purposes of lodgment it is sufficient compliance with the requirement to sign if the original document is signed.
- Section 79B provides for the lodging of documents and makes the payment of the prescribed fee a condition for lodgment.
- Section 79C provides for the method of lodgement by electronic transmission in addition to facsimile. It also allows the Commissioner to require that the original be produced and lodged within a time specified by the Commissioner.
- Section 79D provides that the Commissioner may approve special lodging arrangements with a specified agent or person on behalf of a specified person or class of persons.

- Section 79E provides that if an agent or person has lodged a copy of a document electronically in accordance with section 79D, he or she must keep the original signed document for 7 years after the document was lodged with the Commissioner. Penalty: 30 penalty units.
- Section 79F gives the Commissioner the power to refuse to register or reject documents under certain circumstances, for example where the document contains a matter which is false or misleading in a material particular or does not comply with the requirements of the Act.

Clause 38 amends section 80 of the Act to enable the Governor in Council to make regulations for the keeping of records of documents required under this Act in any form approved by the Commissioner and to create penalties for offences not exceeding 5 penalty units.

## **PART 6—CHANGE OF REFERENCES TO DIRECTOR OF FAIR TRADING**

Clause 39 inserts a new section 98 into the **Fair Trading Act 1999** which replaces the reference to the Director of Fair Trading with a reference to the Director of Consumer and Business Affairs.

Clause 40 makes a number of consequential amendments to the **Fair Trading Act 1999** which replace references to the Director and the Director of Fair Trading with a reference to the Director of Consumer and Business Affairs, repeal the definition of OFTBA Act, omit any reference to the Office of Fair Trading and Business Affairs, define Consumer Act and substitute OFTBA Act or Acts with a reference to Consumer Act or Acts.

Clause 41 inserts new clauses 6 and 7 into Schedule 3 of the **Fair Trading Act 1999** which deem references to the Director of Fair Trading and the Office of Fair Trading and Business Affairs in any other Act or instrument made under any Act or document to be a reference to the Director of Consumer and Business Affairs and Consumer and Business Affairs Victoria in the Department of Justice as appropriate. It also enables any act, matter or thing commenced under any Act or regulation by or against or in

relation to the Director of Fair Trading to be completed by or against or in relation to the Director of Consumer and Business Affairs, and substitutes the Director of Consumer and Business Affairs for the Director of Fair Trading as a party to any proceedings pending or existing in any court or tribunal to which the Director of Fair Trading was a party.

- Clause 42 substitutes a reference to the Director of Consumer and Business Affairs for a reference to the Director of Fair Trading in the **Building Act 1993**.
- Clause 43 substitutes the words "with the Director" for a reference to the Office of Fair Trading and Business Affairs in the **Business Names Act 1962**.
- Clause 44 substitutes a reference to the Director of Consumer and Business Affairs for a reference to the Director of Fair Trading in the **Co-Operative Housing Societies Act 1958**.
- Clause 45 substitutes a reference to an office of the Director for a reference to the Office of Fair Trading and Business Affairs, substitutes Consumer Act for OFTBA Act and removes a reference to the Office of Fair Trading and Business Affairs in the **Credit (Administration) Act 1984**.
- Clause 46 substitutes a reference to persons employed in the Office of Fair Trading and Business Affairs with a reference to persons employed under the **Public Sector Management and Employment Act 1998** in the **Estate Agents Act 1980**.
- Clause 47 substitutes Consumer Act for OFTBA Act, removes a reference to the Office of Fair Trading and Business Affairs, substitutes the words "an office of the Director" for a reference to the Office of Fair Trading and Business Affairs, and substitutes references to persons employed in the Office of Fair Trading and Business Affairs with references to persons employed under the **Public Sector Management and Employment Act 1998** in the **Motor Car Traders Act 1996**.
- Clause 48 substitutes a reference to the Director of Consumer and Business Affairs for a reference to the Director of Fair Trading in the **Petroleum Retail Selling Sites Act 1981**.

- Clause 49 substitutes references to the Director of Consumer and Business Affairs for references to the Director of Fair Trading, substitutes references to persons employed in the Office of Fair Trading and Business Affairs with references to persons employed under the **Public Sector Management and Employment Act 1998**, substitutes Consumer Act for OFTBA Act, removes references to the Office of Fair Trading and Business Affairs, and substitutes the words "an office of the Director" for a reference to the Office of Fair Trading and Business Affairs in the **Prostitution Control Act 1994**.
- Clause 50 updates a heading and substitutes references to persons employed in the Office of Fair Trading and Business Affairs with references to persons employed under the **Public Sector Management and Employment Act 1998** in the **Residential Tenancies Act 1997**.
- Clause 51 substitutes a reference to persons employed in the Office of Fair Trading and Business Affairs with a reference to persons employed under the **Public Sector Management and Employment Act 1998** in the **Second-Hand Dealers and Pawnbrokers Act 1989**.
- Clause 52 substitutes Consumer Act for OFTBA Act, removes a reference to the Office of Fair Trading and Business Affairs, substitutes the words "an office of the Director" for a reference to the Office of Fair Trading and Business Affairs, and substitutes a reference to persons employed in the Office of Fair Trading and Business Affairs with a reference to persons employed under the **Public Sector Management and Employment Act 1998** in the **Travel Agents Act 1986**.
- Clause 53 substitutes a reference in the **Victorian Civil and Administrative Tribunal Act 1998** to persons employed in the Office of Fair Trading and Business Affairs with a reference to persons employed under the **Public Sector Management and Employment Act 1998** in the administration of the **Credit Act 1984** or the **Consumer Credit (Victoria) Code**.

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