

INTERGOVERNMENTAL AGREEMENT FOR BUSINESS NAMES AGREEMENT

Council of
Australian
Governments

An agreement made among the following parties:

THE COMMONWEALTH OF AUSTRALIA
THE STATE OF NEW SOUTH WALES
THE STATE OF VICTORIA
THE STATE OF QUEENSLAND
THE STATE OF WESTERN AUSTRALIA
THE STATE OF SOUTH AUSTRALIA
THE STATE OF TASMANIA
THE AUSTRALIAN CAPITAL TERRITORY
THE NORTHERN TERRITORY OF AUSTRALIA

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RECITALS:

- A. The parties agree to establish a national system for business name registration to be implemented by Commonwealth legislation, supported by State text-based referrals of certain matters to the Commonwealth Parliament, in accordance with paragraph 51(xxxvii) of the Commonwealth Constitution.
- B. The Legislative Assembly of the Australian Capital Territory and the Legislative Assembly of the Northern Territory have legislative powers in relation to business names and the registration of business names under Commonwealth self-government legislation, and therefore the Australian Capital Territory and the Northern Territory are parties to this agreement, but, having regard to paragraph 51(xxxvii) and section 122 of the Commonwealth Constitution, they will not make a referral.
- C. The Commonwealth will introduce legislation to establish a national system for the registration of business names.

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PART 1 — PRELIMINARY

PURPOSE

- 1.1. (1) The purpose of business names registration is to:
- (a) allow consumers and traders to identify and locate those trading under a business name through a Register of Business Names, thereby facilitating consumer protection;
 - (b) attempt to prevent the registration of business names which are inappropriate, and business names that are likely to offend, mislead or deceive consumers and traders.
- (2) The purpose of this Agreement is to endorse a national business names registration scheme that will allow businesses to register once, regardless of how many State/Territory jurisdictions those businesses operate in. The national business names registration scheme will form part of a range of measures that will, in addition to business names registration, provide a variety of on-line services to businesses. The parties agree that the levels of service provided by the Commonwealth's national business names registration scheme will not be less than the levels of service currently provided in the State/Territory systems.
- (3) This Agreement is entered into on the basis that the national business names registration scheme established by the Commonwealth will be the primary vehicle for business names registration.

CITATION

- 1.2. This Agreement may be referred to as the Business Names Agreement 2009.

DEFINITIONS

- 1.3. (1) In this Agreement, unless the contrary intention appears:

'approval of the Ministerial Council' means an affirmative vote of the Commonwealth Minister who is a member of the Ministerial Council, or the Commonwealth Minister's delegate; plus the affirmative vote of at least three of the remaining members of the Ministerial Council, or their delegates, at least two of whom must represent States. Any State or Territory may notify the Ministerial Council that it wishes to abstain from voting until further notice.

'Commission' means the Australian Securities and Investments Commission.

'draft legislation' means bills and draft regulations.

'legislation' means acts and regulations.

'Minister' means:

- (a) until the commencement of the national law, each party's Minister responsible for business names registration; and

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(b) upon commencement of the national law, a Minister appointed to the Ministerial Council.

'Ministerial Council' means the Ministerial Council for Corporations which is responsible for the Commonwealth's business names registration system.

'national law' means the Commonwealth Act relating to business names and for related purposes, which is the subject of referrals under this Agreement.

'national system' means the system for the national registration and use of business names mentioned at recital (1) to this Agreement.

'party' means the Commonwealth, a Territory that is a signatory to this Agreement and a referring State which is a signatory to this Agreement and has not terminated its referral of matters to the Commonwealth.

'referring State' means a State which:

- (a) in accordance with paragraph 51(xxxvii) of the Commonwealth Constitution, has referred matters to the Commonwealth Parliament sufficient to enable the following to extend, of its own force, to the State:-
 - (i) the national law as first enacted by the Commonwealth Parliament, and
 - (ii) later amendments to the national law; and
- (b) has not withdrawn either or both of the referred matters covered by subparagraphs (a)(i) and (ii).

'State' means a State of the Commonwealth of Australia.

'State referral' means a referral made by a referring State.

'Territory' means the Australian Capital Territory or the Northern Territory.

- (2) In this Agreement, a reference to legislation (whether of the Commonwealth or a State or Territory) includes a reference to:
 - (a) that legislation as amended and in force for the time being; and
 - (b) legislation passed in substitution for other legislation.

PART 2 — EFFECT AND OPERATION OF AGREEMENT

COMMENCEMENT

- 2.1. (1) This Agreement comes into operation on the first day of September 2009.
- (2) A party which signs this Agreement after this date, becomes bound by this Agreement from the date it signs.

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AMENDMENT OF AGREEMENT

- 2.2. This Agreement may be amended at any time only by the unanimous decision of all parties to it at that time.

PART 3 — COMMISSION'S RESPONSIBILITIES

COMMISSION'S RESPONSIBILITIES

- 3.1. The Commission will have sole responsibility for the general administration of the national law and will have the functions and powers in relation to business names registration set by the national law and subject to this Agreement.

PART 4 — LEGISLATION

DIVISION 1 — THE NATIONAL LAW

PURPOSE OF THIS PART

- 4.1. This Part establishes procedures, involving both agreement and consultation among the parties, on development of the national law and subsequent amendments of the national law, and a commitment by the Commonwealth not to support amendments of the national law without the approval of, or consultation with, the Ministerial Council in accordance with this Agreement.

USE OF REFERRED POWER

- 4.2. (1) The Commonwealth will not introduce a Bill that depends, in whole or in part, on a State referral, for a purpose other than the registration and/or use of business names.
- (2) The Commonwealth will oppose any proposed amendment of the national law that relies, in whole or in part, on a State referral and is for a purpose other than the registration and/or use of business names.

BASIC NATURE OF THE LEGISLATIVE SCHEME

- 4.3. The legislative scheme agreed to by the parties involves:
- (a) the enactment by State Parliaments of legislation referring certain matters to the Commonwealth Parliament in accordance with paragraph 51(xxxvii) of the Commonwealth Constitution;
 - (b) the enactment of the national law, partly in reliance on State referrals mentioned in paragraph (a), for the purposes of the registration and use of business names; and
 - (c) the amendment from time to time of the laws mentioned in paragraph (b) in accordance with this Agreement.

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COMMONWEALTH LEGISLATION RELATING TO THE NATIONAL LAW

- 4.4. (1) Subject to this clause, the Commonwealth will not repeal or amend the national law without the approval of the Ministerial Council.
- (2) The approval of the Ministerial Council is not required if the amendment is of a minor or technical nature or could be made without reliance on State referrals.
- (3) If any member of the Ministerial Council considers that a legislative proposal is not of a minor or technical nature (notwithstanding any advice to the contrary) and writes to all other parties accordingly, the question whether the legislative proposal is of a minor or technical nature will be put to the Ministerial Council for a determination of the matter.
- (4) Commonwealth draft legislation that would amend the national law, and which would require the approval of the Ministerial Council, must be approved by the Ministerial Council substantially in the form in which it is to be introduced or made.
- (5) If amendments are proposed in the Commonwealth Parliament that would amend draft legislation that has been approved by the Ministerial Council, the Commonwealth will use its best endeavours to consult the Ministerial Council and, in relevant cases, seek the approval of the Ministerial Council.
- (6) If the approval of the Ministerial Council is sought under subclause (5), then members of the Ministerial Council, except those representing jurisdictions that have notified the Ministerial Council that they intend to abstain from voting, will use their best endeavours to vote within the timeframe nominated by the Commonwealth.
- (7) If the Commonwealth seeks the approval of the Ministerial Council for an amendment of the national law, a statement of the amendment (including commentary) will be provided to the Ministerial Council as soon as practicable and not later than the day by which the approval of the Ministerial Council is sought.
- (8) All Commonwealth legislation relating to the national law will be exposed for public comment for at least three months before its introduction or making, unless:
- a) the Ministerial Council approves otherwise; or
 - b) it is of a minor or technical nature; or
 - c) the legislation relates exclusively to the imposition or alteration of fees or taxes, in which case the Commonwealth may expose the legislation for public comment for any period it considers appropriate or may decide not to expose it for public comment at all (the Commonwealth will advise the Ministerial Council if the legislation is to be exposed with a statement regarding the period of exposure, or reasons for the regulation not being exposed).
- (9) When introducing into the Commonwealth Parliament any Bill to amend the national law, a Minister will inform the house of the outcome of any consultation with the Ministerial Council and, in the case of matters requiring the approval of the Ministerial Council, the outcome of the Ministerial Council's vote.

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- (10) If a State or Territory requests the Commonwealth to amend the national law, the Commonwealth must determine that request within six weeks of receiving a written request, unless the approval of the Ministerial Council is given for a longer period. The Commonwealth must not refuse any such request without reasonable cause, and must inform the Ministerial Council of any refusal, and the reasons for it, in writing.
- (11) If the Commonwealth agrees to proceed with an amendment requested by a State or Territory under subclause (10), that amendment must be submitted, unless it is an amendment covered by subclause (2), to the Ministerial Council for the approval of the Ministerial Council.
- (12) All business names data held by the Commission, whether originating in State or Territory agencies or collected directly by Commonwealth agencies, will from the commencement of the national law be subject to the Commonwealth's privacy and secrecy legislation.
- (13) The Commonwealth will notify the Ministerial Council of all Commonwealth legislative proposals that would alter the effect, scope or operation of the national law.
- (14) The notification required by subclause (13) should ordinarily occur at the earliest practicable time after the development of a legislative proposal and preferably before the introduction of any Bill concerned, or the submission of any subordinate legislation concerned to the Governor-General in Council, to maximise the opportunity for members of the Ministerial Council to comment on the proposed legislation.

OPERATION OF CONTINUING STATE AND TERRITORY LEGISLATION

- 4.5. (1) The national law will provide for the operation of existing and new State/Territory legislation relating to business names that is outside the State referrals. For the avoidance of doubt, State and Territory acts and subordinate legislation, where they relate to matters covered by the national law, will have no effect. The continuing operation of existing and new State and Territory legislation will require that:
- (a) States and Territories notify the Commission of any names which are to be protected or restricted from time to time under such legislation, in which case the Commission will, without charge, add such names to its business names register or restrict the use of the relevant words;
 - (b) the Commission will, without charge, provide to relevant State and Territory agencies direct, on-line access to relevant data bases and search engines in order to facilitate the registration by State and Territory agencies of associations, co-operatives, limited partnerships and other registered entities as agreed between the Commission and relevant State and Territory agencies; and

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- (c) States and Territories will notify the Commission of names which, from time to time, are allocated to associations, co-operatives, limited partnerships and other registered entities, in the various States and Territories, for the purpose of the Commission, without charge, keeping lists of such names and/or restricting the use of relevant words.

DIVISION 2 – ALTERATION OF STATE REFERRAL LEGISLATION

STATE REFERRAL LEGISLATION

- 4.6. (1) The States shall enact State referrals.
- (2) A State shall not introduce a Bill that would amend its State referral unless the Ministerial Council has been informed of the proposed amendment.
- (3) A State referral may include provision for termination of its referral.
- (4) If an amendment of a State referral is, or is to be, moved in a State Parliament, that State will use its best endeavours to ensure adequate notice is given to the Ministerial Council.

PART 5 — ADMINISTRATION

SERVICES TO BE PROVIDED NATIONALLY

- 5.1. The Commission will use its best endeavours to provide the following services as part of the national system:
 - (a) business name registration services via the Internet;
 - (b) on-line business name registration point at the Commission's Services Centres in capital cities;
 - (c) on-line business name registration points via appropriate agents and networks;
 - (d) paper forms, in an electronic format, which may be printed at the various service points and, after completion, lodged with the Commission;
 - (e) a telephone support system for those registering, or considering registering, a business name;
 - (f) an online service for the searching of the business names register by the public, States and Territories, and information brokers; and
 - (g) an extract service for brokers on commercial terms agreed with individual brokers.

DATA

- 5.2. (1) The Commission will maintain a national business names database and register, portions of which will be accessible to the public, and a document imaging system.

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- (2) The Commission will have responsibility under the national law for:
 - (a) keeping a public register of business names registrations;
 - (b) all documents, or copies of documents, in electronic or other formats, relevant to national business names registrations; and
 - (c) other material identified by the Commission as necessary for the ongoing activities of the Commission with regard to national business names registration.

PROVISION OF DATA

- 5.3
- (1) Where registers of business names exist currently in the States and Territories, these registers, and associated documentation, will be made available without charge to the Commission.
 - (2) Each State and Territory may, subject to its privacy and secrecy legislation, and subject also to the Commission's business needs, provide the Commission with business names registration data, on or before the commencement of the national law.
 - (3) Each State and Territory will use its best endeavours to transform the data in its electronic business names register into a format acceptable to the Commission and make such electronic registry data available for transfer to the Commission. The Commission will use its best endeavours to minimise the costs incurred in transforming data into the form determined by the Commission.
 - (4) Each State and Territory may give the Commission, subject to the Commission's business needs, other business names records additional to electronic registry data, in their current form, electronic or other, or conclude an agreement with the Commission to transform such records into an electronic format acceptable to the Commission.
 - (5) The Commission may copy and/or transform business names records, subject to the Commission's business needs and subject also to the agreement of the relevant States and Territories, which are held by the States and Territories into an electronic format acceptable to the Commission, leaving the originals with the relevant State or Territory.

LEVELS OF SERVICE

- 5.4.
- (1) The Commission will use its best endeavours to, at least, maintain existing service levels provided by States and Territories agencies in relation to business names registration, and strive to enhance progressively existing levels of service in each referring State and Territory.
 - (2) The Commission will, in its annual report, include a statement on the performance of the Commission, in relation to the registration and use of business names, with regard to the Commission's service charter and a number of the Commission's key performance indicators agreed in consultation with State and Territory agencies.

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- (3) Any party may query the levels of service provided by the Commission at meetings of the Ministerial Council and, if the Ministerial Council so resolves, the Commonwealth Minister will provide written responses to such queries to all parties within three months or 21 Commonwealth parliamentary sitting days (whichever is the shorter) from the date of the relevant Ministerial Council meeting.

ACCESS TO INFORMATION

- 5.5. (1) The parties recognise that many agencies currently may receive information without charge from State or Territory business names registration databases. The parties agree that such arrangements will continue and agencies will be able to obtain, directly from the Commission, without charge, information (not limited to publicly available information) from the national business names registration database for law enforcement, regulatory and administrative purposes. Relevant agencies include, but are not limited to:
- Commonwealth/State/Territory police agencies, other law enforcement agencies, and agencies dealing with terrorism, crime and misconduct matters;
 - Commonwealth/State/Territory directors of public prosecutions and officers of the various Crown Solicitors;
 - agencies dealing with anti-discrimination matters;
 - Australian Taxation Office and the various State/Territory revenue offices;
 - Centrelink;
 - State/Territory fair trading agencies;
 - Insolvency and Trustee Service Australia;
 - Commonwealth/State/Territory licensing authorities;
 - Department of Veterans' Affairs; and
 - Workcover and similar government agencies.
- (2) The Commission will provide to State/Territory fair trading agencies direct, free, on-line access to its names databases, as well as access to the documents stored on its document imaging systems and access to documents stored elsewhere. This will include records transferred to the Commission by States and Territories.
 - (3) The Commission will provide to each referring State and Territory, without charge, certification of documents produced from its public national business names database.
 - (4) After the commencement of the national law, the Commission will be able to obtain archived or stored records relating to business names from the States and Territories. Any costs incurred by the States or Territories for the retrieval of such records (other than their own administrative costs) will be borne by the Commission.
 - (5) State and Territory Ministers may request information regarding the administration and enforcement of the national law, and information that is not available on the public national database of business names registrations, from the Commission. In relation to such requests:
 - (a) the Commission will provide the information requested by State/Territory Ministers unless the Commission determines that it is not reasonable or practicable to provide such information; and

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- (b) where the information requested is not provided by the Commission the requesting State/Territory Minister may raise the matter with the Commonwealth Minister.

REVIEWS

- 5.6. The Commission will have an internal review procedure to deal with decisions made about the business names registration process. The Commission will respond to requests for review within one month of the Commission receiving a written request. Where interested parties still remain dissatisfied, they may lodge a request for review with the Commonwealth Administrative Appeals Tribunal.

PART 6 — FINANCE

FUNDING

- 6.1. The Commonwealth will levy fees on private individuals and non-government corporate entities for registering a business name. These fees will be commensurate with the total costs involved in setting up and administering the national business names registration system.
- 6.2. Consistent with the objective of full cost recovery, the Commonwealth will seek to ensure that any new fee for national business name registrations will not be higher than the lowest business name registration fee currently paid by any State or Territory, taking account of the consumer price index increases. ASIC will consult with the States and Territories prior to recommending the level of registration fees or any change in the level of registration fees, to the Government.

PART 7 — CEASING TO BE A PARTY

WITHDRAWAL AND CESSATION

- 7.1. A party may withdraw from this Agreement on giving at least six months notice to the Ministerial Council.

AGREEMENT CONTINUES WITH REMAINING PARTIES

- 7.2. (1) The failure of a State to remain a party does not terminate this Agreement, which will remain in force in relation to the remaining parties.
- (2) If a State ceases to be a party, the Commonwealth will, within three months of the ceasing becoming effective, convene a meeting of the remaining parties for the purpose of negotiating such amendments to this Agreement as might be necessary (including amendments relating to the voting arrangements for the Ministerial Council).

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The Parties have confirmed their commitment to this agreement as follows:

Signed *for and on behalf of the Commonwealth of Australia by*

The Honourable Kevin Rudd MP
Prime Minister of the Commonwealth of Australia
2 July 2009

Signed *for and on behalf of the State of New South Wales by*

The Honourable Nathan Rees MP
Premier of the State of New South Wales
2 July 2009

Signed *for and on behalf of the State of Queensland by*

The Honourable Anna Bligh MP
Premier of the State of Queensland
2 July 2009

Signed *for and on behalf of the State of South Australia by*

The Honourable Mike Rann MP
Premier of the State of South Australia
2 July 2009

Signed *for and on behalf of the Australian Capital Territory by*

Jon Stanhope MLA
Chief Minister of the Australian Capital Territory
2 July 2009

Signed *for and on behalf of the State of Victoria by*

The Honourable John Brumby MP
Premier of the State of Victoria
2 July 2009

Signed *for and on behalf of the State of Western Australia by*

The Honourable Colin Barnett MLA
Premier of the State of Western Australia
2 July 2009

Signed *for and on behalf of the State of Tasmania by*

The Honourable David Bartlett MHA
Premier of the State of Tasmania
2 July 2009

Signed *for and on behalf of the Northern Territory by*

The Honourable Paul Henderson MLA
Chief Minister of the Northern Territory of Australia
2 July 2009