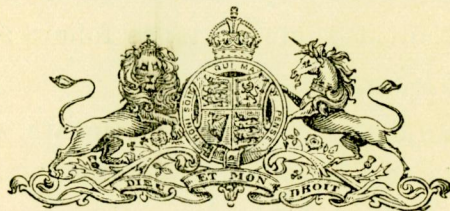


This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

W. R. McCOURT,
Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, 31 October, 1934.

New South Wales.



ANNO VICESIMO QUINTO

GEORGII V REGIS.

Act No. , 1934.

An Act to provide for the registration of firms, individuals, and corporations carrying on business under business names, and as to the names, styles, titles, or designations under which businesses are carried on; to amend the Conveyancing Act, 1919-1932, and certain other Acts; to repeal the Registration of Firms Act, 1902; and for purposes connected therewith.

Business Names.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the “ Business Names Act, 1934.” Short title.

10 (2) This Act shall commence on a day to be appointed by the Governor, and notified by proclamation published in the Gazette. Commence-ment.

(3) This Act is divided into Parts, as follows:— Division into Parts.

PART I.—PRELIMINARY—ss. 1-3.

15 PART II.—REGISTRATION OF FIRMS, INDIVIDUALS, AND CORPORATIONS CARRYING ON BUSINESS UNDER BUSINESS NAMES—ss. 4-20.

PART III.—USE OF CERTAIN WORDS IN THE NAMES, ETC., OF FIRMS, ETC.—ss. 21-26.

20 (4) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act, or the application thereof to any person or circumstances is held invalid, the remainder of this Act, and the applica-
25 tion of such provision to other persons or circumstances shall not be affected. Construction.

2. In this Act, unless the context or subject-matter otherwise requires,— Definitions.

30 “ Business ” includes trade and profession.

“ Business name ” means the name, style, title, or designation under which any business is carried on whether in partnership or otherwise, and includes a firm-name registered under the
35 Registration of Firms Act, 1902.

“ Christian name ” includes any forename.

“ Firm ”

cf. 6 & 7
Geo. V, c. 58,
s. 22;
Vict. Act,
1928, No.
3648, s. 3.

Business Names.

“ Firm ” means an unincorporated body of two or more individuals or one or more individuals and one or more corporations or two or more corporations who or which have entered into partnership with one another.

“ Individual ” means a natural person and does not include a corporation.

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

“ Part ” means Part of this Act.

“ Prescribed ” means prescribed by the regulations.

“ Registrar-General ” includes a Deputy Registrar-General.

“ Regulations ” means regulations made under the Conveyancing Act, 1919-1932.

3. (1) The Registration of Firms Act, 1902, is hereby repealed.

Repeal
of Act No.
100, 1902.

(2) Such repeal shall not affect any regulation or order made or any registration effected or any liability incurred or any matter or thing done under or by virtue of the said repealed Act before the commencement of this Act.

Savings.

(3) Where the firm-name of any firm or person was registered under the Registration of Firms Act, 1902, and no entry of abandonment of the use of such firm-name had, before the commencement of this Act, been made by the Registrar-General, such firm or person shall be deemed to be registered under this Act, and for the purposes and within the meaning thereof such firm-name shall be deemed to be the business name of such firm or person.

(4) The provisions of this section shall not affect any saving in the Interpretation Act of 1897.

Business Names.

PART II.

REGISTRATION OF FIRMS, INDIVIDUALS, OR CORPORATIONS
CARRYING ON BUSINESS UNDER BUSINESS NAMES.

4. Subject to the provisions of this Part—

- 5 (a) every firm having a place of business in New
South Wales and carrying on business under a
business name which does not consist of—
- Firms, etc.,
to be
registered.
cf. 6 & 7
Geo. V, c. 58,
s. 1;
Vict. Act,
1928, No.
3648, s. 4;
S.A. Act,
1928, No.
1851, s. 4.
- 10 (i) the surnames of all partners who are
individuals (together with their Christian
name or names or the initials thereof);
and
- (ii) the corporate names of all partners (if
any) which are corporations—
without any addition;
- 15 (b) every individual having a place of business in
New South Wales and carrying on business
under a business name which does not consist
of his surname (together with his Christian
name or names or the initials thereof) without
20 any addition;
- (c) every corporation having a place of business in
New South Wales and carrying on business
under a business name which does not consist
of its corporate name without any addition,
- 25 shall, unless the firm-name of such firm, individual, or
corporation was registered under the Registration of
Firms Act, 1902, and no entry of abandonment of the
use of such firm-name had, before the commencement of
this Act, been made by the Registrar-General, be regis-
30 tered in the manner directed by this Part:
- Provided that—
- When
registra-
tion not
necessary.
- (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
35 of itself render registration necessary; and
- (ii)

Business Names.

(ii) where the business is carried on by an official receiver or a trustee in bankruptcy or a receiver, manager, or other person appointed by any court to carry on the business, 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.

5. Where a firm, individual, or corporation having a place of business within New South Wales carries on business wholly or mainly as attorney, nominee, or trustee of or for another firm, individual, or 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 Part.

Registration by nominee.
cf. 6 & 7
Geo. V,
c. 58, s. 2;
S.A. Act,
1928, No.
1851, s. 5.

The regulations may require that additional particulars shall be furnished and registered in all or any of such cases.

Provided that where the business is carried on by an official receiver or a trustee in bankruptcy, or a receiver, manager, or other person appointed by any court to carry on the business, registration under this Part shall not be necessary.

6. (1) Every firm, individual, or corporation required under this Part to be registered shall furnish by sending by post or delivering to the Registrar-General a statement in writing in or to the effect of the prescribed form containing the following particulars:—

Statement as to certain particulars.
cf. 6 & 7
Geo. V, c. 58,
s. 3;
Viet. Act,
1928, No.
3648, s. 5;
S.A. Act,
1928, No.
1851, s. 6.

(a) the business name;
(b) the general nature of the business;
(c) the place or places of the business, and the particular address or addresses at which the business is carried on, indicating, where there is more than one place of business, the principal place of business;

(d) where the registration to be effected is that of a firm, the Christian name and surname, the usual residence and the other business occupation (if any) of every individual who is a partner

Business Names.

partner, and the corporate name and the registered office in New South Wales of every corporation which is a partner;

- 5 (e) where the registration to be effected is that of an individual, the Christian name and 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 office in New South Wales;
- 10 (g) if the business is commenced after the commencement of this Act, the date of commencement of the business.

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

(3) Where a business is carried on under two or more business names a separate statement shall be furnished in respect of each of those business names. Where more than one business name.

7. (1) The statement required for the purpose of registration must—

- 25 (a) in the case of an individual, be signed by him; and
- (b) in the case of a corporation, be signed by a director or the secretary thereof; and
- 30 (c) in the case of a firm, be signed either by all the individuals who are partners and by a director or the secretary of all corporations which are partners or by some individual who is a partner or a director or the secretary of some corporation which is a partner—

35 and in either of the last two cases mentioned in paragraph (c) must be verified by a statutory declaration made by the signatory:

Provided that—

- 40 (i) no such statutory declaration stating that any person other than the declarant is a partner, or omitting to state that any person other than

as

Statement to be signed by persons registering. cf. 6 & 7 Geo. V, c. 58, s. 4; Vict. Act, 1928, No. 3648, s. 6; S.A. Act, 1928, No. 1851, s. 8.

Business Names.

as aforesaid is a partner shall be evidence for or against any such other person in respect of his liability or non-liability as a partner; and

5 (ii) the Supreme Court or a judge thereof may, on application of any person alleged or claiming to be or not to be a partner, as the case may be, direct the rectification of the register directed to be kept in pursuance of section sixteen of this Act, and decide any question arising under this section; and

10 (iii) in the case of a corporation registered under the provisions of the Companies (Amendment) Act, 1906, as amended by the Companies (Amendment) Act, 1907, or registered or
15 deemed to be registered under the provisions of any Act replacing such Act, the statement must be signed for and on behalf of such corporation by its attorney or agent authorised to file the declaration required under any such Act or the
20 regulations thereunder.

(2) The prescribed fee shall be paid to the Registrar-General on furnishing any statement or statutory declaration under this Part.

25 8. (1) The particulars required to be furnished under this Part shall be furnished before the firm, individual, or corporation commences business or the business in respect of which registration is required, as the case may be.

Time for registration, cf. 6 & 7 Geo. V, c. 58. s. 5; Viet. Act, 1928, No. 3648, s. 7; S.A. Act, 1928, No. 1851, s. 9.

(2) If such firm, individual, or corporation carries
30 on business without such registration being effected, or if such business has been carried on before the commencement of this Act, and—

(a) the firm-name of such firm, individual, or corporation has not been registered under the
35 Registration of Firms Act, 1902; or

(b) registration has not been effected under this Part within thirty days of such commencement, the firm, individual, or corporation required to register as provided in this Part shall, without affecting any
40 liability imposed under this Part, be under a continuing obligation

Business Names.

obligation so to register, and notwithstanding anything to the contrary in section fifty-six of the Justices Act, 1902, may be proceeded against in respect of any default accordingly.

- 5** 9. The business name under which any firm, individual, or corporation is registered under this Part shall be used in all matters connected with or relating to the business carried on by such firm, individual, or corporation and shall be painted or affixed on the outside of every office or place in which the business is carried on in a conspicuous position in letters easily legible.
- Business name always to be used.
cf. Viet. Act, 1928, No. 3648, s. 8;
S.A. Act, 1928, No. 1851, s. 10.

Where the business name of an individual registered under this Part does not include his surname there shall also be painted or affixed as aforesaid his surname together with his Christian name.

- 15** Where the business name of a firm registered under this Part does not include the surname of one of the individuals composing the firm there shall also be painted or affixed as aforesaid the surnames together with the Christian names of all individual members of the firm and the corporate name of any corporation which is a member of the firm.

- 25** Where the business name of a firm composed of corporations does not include the corporate name of one of the members there shall also be painted or affixed as aforesaid the corporate names of all the members.

- 10.** Whenever a change is made or occurs in any of the particulars in respect of which any firm, individual, or corporation is registered, or deemed to be registered, such firm, individual, or corporation shall within fourteen days after such change or within such longer period as the Registrar-General on application being made in any particular case, whether before or after the expiration of such fourteen days allows, furnish by sending by post or delivering to the Registrar-General a statement in writing in the prescribed form specifying the nature and date of the change signed in like manner and verified in like circumstances as the statement required on registration.
- Statement as to changes in particulars.
cf. 6 & 7 Geo. V, c. 58, s. 6;
Viet. Act, 1928, No. 3648, s. 9;
S.A. Act, 1928, No. 1851, s. 11.

Business Names.

11. (1) If any firm, individual, or corporation registered or deemed to be registered under this Part ceases to carry on business or abandons the use of the business name under which he or it is registered or
5 deemed to be registered 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 legal personal representative or of the corporation or its successor (as
10 the case may be) within one month 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-General notice in the prescribed form that the firm or individual or corporation has ceased to carry on business
15 or (as the case may be) that the business name has been abandoned.

Removal of names from the register.
cf. 6 & 7
Geo. V, c. 58, s. 13;
Vict. Act, 1928, No. 3648, s. 10;
S.A. Act, 1928, No. 1851, s. 21.

Such notice shall be signed in like manner and verified in like circumstances as the statement required on registration.

20 (2) On receipt of such notice the Registrar-General may cancel the registration of the firm or individual or corporation.

(3) Where the Registrar-General has reasonable cause to believe that any firm, individual, or corporation
25 registered or deemed to be registered is not carrying on business under the business name under which he or it is registered or deemed to be registered he may send to the firm, individual, or corporation by registered post a notice addressed to the firm, individual or corporation
30 at the address, or where there is more than one place of business, the address of the principal place of business, appearing in the registration thereof enquiring whether such firm, individual or corporation is still carrying on business under such business name and notifying that,
35 unless an answer is received to such notice within one month from the date thereof the registration of the firm, individual, or corporation may be cancelled.

cf. S.A. Act, 1928, No. 1851, s. 22.

(4) If the Registrar-General either receives an answer from the firm, individual, or corporation to the
40 effect that the firm, individual, or corporation is not

so

Business Names.

so carrying on business or does not within one month after sending the notice receive an answer he may cancel the registration of the firm, individual, or corporation. The Registrar-General may on any grounds which he
5 deems sufficient, revoke or annul any such cancellation and thereupon the firm, individual, or corporation shall be deemed to have continued to be registered as if the registration had not been so cancelled.

(5) The Registrar-General may cancel the registration of—
10

- (a) any corporation registered or deemed to be registered under this Part the name of which has been struck off any register of companies kept under the Companies Acts for the time
15 being in force; or
- (b) any firm, individual, or corporation convicted of making default without reasonable excuse in sending or delivering any statement required by this Act; or
- 20 (c) any firm the partners or any partner of which are or is or of any individual who is, or any corporation the directors or any director of which are or is convicted of an offence against this Act; or
- 25 (d) any firm or corporation which is dissolved or deemed to be dissolved.

(6) Where the registration of any firm, individual, or corporation is cancelled under subsection four of this section, any member of the firm, or the individual
30 or corporation may apply to the Supreme Court in its equitable jurisdiction, and the court may, if it is satisfied that the firm, individual, or corporation was carrying on business under the firm-name, and that it is just and equitable so to do, order that the registration of the firm,
35 individual, or corporation be restored, and thereupon the firm, individual, or corporation shall be deemed to have continued to be registered as if the registration had not been so cancelled.

The court may, upon making any such order, impose
40 such terms as to the court seems fit.

Business Names.

12. (1) If without reasonable excuse any firm, individual, or corporation by this Part required to furnish a statement of particulars, or of any change in particulars, or a notice that it or he has ceased to carry on business or has abandoned a business name makes default in so doing in the manner and/or within the time prescribed by this Part—

Penalty for default.
cf. 6 & 7
Geo. V, c. 58,
s. 7;
Vict. Act,
1928, No.
3648, s. 11;
S.A. Act,
1928, No.
1851, s. 15.

(a) every partner in the firm, or the individual or corporation so in default shall be liable to a penalty of not more than five pounds for every day during which the default continues; and

(b) the court shall order a statement or a corrected statement, as the case may be, of the required particulars or change in the particulars or a notice that the firm, individual, or corporation has ceased to carry on business or has abandoned the business name to be furnished to the Registrar-General within such time as is specified in the order.

(2) The expression "default" within the meaning of sections eleven, twelve, and thirteen of this Act shall include the furnishing of a statement of particulars, or of any change in particulars, incorrect to the knowledge of the person signing it in some material particular.

13. (1) Where any firm, individual, or corporation by this Act required to furnish a statement of particulars or of any change in particulars makes default in so doing, 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, individual, or corporation in the business name the court in which the proceedings are taken shall order the firm, individual or corporation in default to furnish to the Registrar-General 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.

Persons in default bringing action.
cf. Act
No. 100,
1902, s. 11;
S.A. Act,
1928, No.
1851, s. 16.

(2) The power by this section given to the court may be exercised in the case of the Supreme Court by a judge in chambers, or in the case of a District Court by a judge thereof in chambers, or in the case of a court of petty

Business Names.

petty sessions by a stipendiary or police magistrate in chambers, or by two or more justices sitting in petty sessions.

(3) If any firm, individual, or corporation
5 required to be registered as provided in this Part shall fail to register accordingly, all proceedings in any court of competent jurisdiction may be taken and prosecuted against such firm, individual, or corporation in the name under which such firm, individual, or corporation
10 is carrying on business, and such name shall, for the purposes of such proceedings, be a sufficient designation of such firm, individual, or corporation in all courts, summonses, complaints, and other legal documents and instruments.

(4) Nothing in this section shall be construed to
15 exempt any firm, individual, or corporation from compliance with any provision of this Part.

14. If any statement or notice required to be
furnished under this Part contains any matter which is
20 false in any material particular to the knowledge of any person signing it, that person shall be liable on summary conviction to a penalty of not more than fifty pounds, or to imprisonment for a term of not more than twelve months, and any person knowingly authorising
25 or permitting the commission of the offence shall be liable on summary conviction to the like punishment.

15. (1) The Registrar-General may—

(a) require any person to furnish to the Registrar-General such particulars as appear necessary
30 to him for the purposes of ascertaining whether or not such person or the firm of which he is a partner should be registered under this Part or an alteration made in the registered particulars; and
35 (b) 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.

(2) If any person, secretary, or officer when so
40 required fails to furnish such particulars as it is in his power to give, or furnishes particulars which are false
in

Penalty for
false state-
ment.

cf. 6 & 7
Geo. V, c. 58,
s. 9; Vict.
Act, 1928, No.
3648, s. 13;
S.A. Act, 1928,
No. 1851, s. 24.

Duty to
furnish par-
ticulars.

cf. 6 & 7
Geo. V, c. 58,
s. 9;
Vict. Act,
1928, No.
3648, s. 14;
S.A. Act,
1928, No.
1851, s. 13.

Business Names.

in any material particular, he shall be liable on summary conviction to imprisonment for a term of not more than three months or to a penalty of not more than twenty pounds or to both such imprisonment and penalty.

- 5 (3) If from any information so furnished it appears to the Registrar-General that any firm, individual, or corporation ought to be registered under this Part, or an alteration ought to be made in the registered particulars, the Registrar-General may require the firm,
10 individual, or corporation to furnish to the Registrar-General the required particulars within such time as he allows, but where any default under this Part has been discovered from the information acquired under this section no proceedings under this Part shall be taken
15 against any person in respect of such default prior to the expiration of the time within which the firm, individual, or corporation is required under this section to furnish particulars to the Registrar-General.

16. (1) The Registrar-General shall keep a register
20 and index of the business names of all firms, individuals, and corporations registered under this Act, and of all statements furnished in reference thereto.

Register and index.
cf. Vict. Act, 1928, No. 3648, ss. 15, 16; S.A. Act, 1928, No. 1251, ss. 17, 18.

- (2) On receiving any statement furnished pursuant to section six of this Act the Registrar-General
25 shall cause the business name of the firm, individual, or corporation on whose behalf the statement was furnished to be entered in the register; and upon such entry being made the firm, individual, or corporation shall be deemed to be registered.

When firm, individual or corporation deemed to be registered.

- 30 (3) The Registrar-General shall upon registration send by post or deliver a certificate thereof to the firm, individual, or corporation registering.

The certificate shall be in or to the effect of the form prescribed.

- 35 (4) A certificate of the registration of the firm, individual, or corporation shall be kept exhibited in a conspicuous position at the principal place of business of such firm, individual, or corporation, and, if not kept so exhibited, every partner in the firm, or the individual
40 or corporation (as the case may be) shall be liable on summary conviction to a penalty of not more than twenty pounds.

Business Names.

17. (1) Any person on payment of the prescribed fee may make a search in the register and index kept in pursuance of this Act or may inspect or make extracts from or a copy of the statements furnished in pursuance of this Act or filed in pursuance of any corresponding previous enactment.

Inspection of statements.
cf. 6 & 7 Geo.V, c. 58, s. 16 ;
Vict. Act, 1928, No. 3648, s. 17 ;
S.A. Act, 1928, No. 1851, s. 19.

(2) Any person on payment of the prescribed fee may require a certificate of the registration or non-registration under a particular business name of any firm, individual, or corporation to be furnished or a copy of or extract from any statement furnished in pursuance of this Act to be certified by the Registrar-General.

Certificate of registration, etc.

(3) The register referred to in section sixteen or a certificate of registration, or a copy of or extract from any statement furnished in pursuance of this Act purporting to be signed and certified by the Registrar-General, shall in all courts, and before all persons having authority to hear, receive, and examine evidence, be admitted as prima facie evidence of the matter contained therein and of the fact and date of registration as shown thereon.

Evidence of registration.

A certificate purporting to be signed by the Registrar-General, that a firm, individual, or corporation was not, on any date or during any period, registered under the business name specified in the certificate, shall likewise be admitted as prima facie evidence, according to its tenor, that the firm, individual, or corporation was not so registered.

18. (1) The Registrar-General may, on such evidence as to him appears sufficient, correct errors in any register, index or certificate.

Powers of the Registrar-General.

Provided that in the correction of any such error he shall not erase or render illegible the original words and shall affix the date upon which such correction was made with his initials.

Every registration so corrected shall have the like validity and effect as if such error had not been made.

(2) The Registrar-General may, where the registration of any firm, individual, or corporation is cancelled, by notice under his hand, require the members of any such

Business Names.

such firm, or such individual or corporation as the case may be, to deliver up the certificate of registration to be cancelled.

Any person who neglects or fails to deliver up any such
5 certificate to the Registrar-General within the period specified in the notice shall be liable on summary conviction to a penalty not exceeding ten pounds.

19. Where any offence against this Act committed by a corporation is proved to have been committed with the
10 consent or approval of, or to have been facilitated by any neglect on the part of, any director, manager, secretary, or other officer of the corporation, he, as well as the corporation, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished
15 accordingly.

Offences
committed
by corpora-
tions.

20. Service at the address or where there is more than one place of business, at the address of the principal place of business shown in the statement furnished in pursuance of this Act or filed in pursuance of any corresponding
20 previous enactment as the address or the address of the principal place of business, as the case may be, at which any firm, individual, or corporation registered under this Part is carrying on business of any communication or notice of any writ, declaration, summons, plaint,
25 order, or other document, proceeding, or process whatsoever in any action, suit, proceeding, or matter, either by leaving the same at such office or by sending the same by registered post postage prepaid addressed to such firm, individual, or corporation at such address shall be
30 deemed to be service upon any partner of the firm or upon the individual or corporation, as the case may be.

Service of
summons.

Business Names.

PART III.

USE OF CERTAIN WORDS IN THE NAMES, ETC., OF
FIRMS, ETC.

21. Notwithstanding anything in any Act no firm,
 5 individual, or corporation required to register under
 Part II of this Act shall be so registered under a business
 name which includes the word "Royal" or the word
 "King" or the word "Queen" or the word "Crown"
 or the word "Empire" or the word "Imperial" or the
 10 word "Commonwealth" or any word signifying Royal
 or Government support or patronage, or any word or
 matter used in such manner as would imply or be likely
 to convey the impression that such firm, individual, or
 corporation is or will be wholly or partly authorised or
 15 supported by or connected with His Majesty's Dominions
 unless consent has been given to the use of such
 business name by the Governor; or which includes the
 words "State," "Australia," or "Australasia," or the
 name of any State if in the opinion of the Registrar-
 20 General the same is calculated to mislead:

Certain
words not
to be used
in firm-
name.
cf. Viet. Act,
1928, No.
3648, s. 21.

- Provided that nothing in this section shall prevent
 the continuance of the use by any firm, individual, or
 corporation or his or its successor in interest of the word
 "Commonwealth" in any name, style, title, or designa-
 25 tion under which he or it was registered or traded or
 carried on business at the date of the commencement of
 this Act.

22. No person or firm not incorporated shall assume
 or use or continue to assume or use the word "saving"
 30 or "savings" or the words "savings bank" or "sav-
 ings institution" or "savings department" or "savings
 section" as part of the designation or title or as a
 description of the business or of any department, section,
 or other part of the business of such person or firm.

Words
"saving,"
"savings,"
etc., not to
be used.
cf. *Ibid.*
s. 22.

23. (1) No person or firm not incorporated shall
 assume or use or continue to assume or use the title of
 "bank," "banker," "banking company," "banking
 house," "banking association," "banking institution,"
 "trust," "trustee," "guarantee," or "fidelity," or
 35 words

Word
"banking,"
etc., not to
be used.
cf. *Ibid.*
s. 23.

Business Names.

words of like import, in any way whatever in connection with the trade or business designation or title of such person or firm.

(2) No person or firm shall assume or use or
5 continue to assume or use any business name of which the final word is the word " limited " or any combination of letters being or capable of being understood to be an abbreviation of the word " limited ":

Provided that this subsection shall not apply where
10 any such final word is, and is used in the business name as part of the corporate name of a corporation which is one of the partners carrying on business under such business name.

(3) Every person and every member of any
15 firm guilty of committing, causing, directing, or authorising a breach of either this section or of section twenty-two of this Act shall be guilty of an offence, and shall be liable on summary conviction to a penalty of not more than ten pounds, and in the case of a continuing
20 offence to a penalty of not more than ten pounds for every day such breach continues.

24. (1) No person or firm not incorporated shall use,
nor shall any firm, individual, or corporation required to
register under Part II of this Act be so registered
25 under—

Persons or firms
not to be
registered under
certain business
or other names.
cf. Vict. Act,
1928, No.
3648, ss. 24, 25.

(a) a business name identical with the business
name of a firm, individual, or corporation
already registered under Part II of this Act or
identical with a firm-name registered under the
30 Registration of Firms Act, 1902, at the commencement of this Act, or so nearly resembling
any such name as to be calculated to deceive,
except where the firm, individual, or corporation
already so registered or the firm or person
35 whose firm-name is so registered (as the case
may be) is about to cease carrying on business,
and signifies its or his consent in such manner
as the Registrar-General requires; or

Registered
business
names.

Business Names.

(b) a name identical with that by which—

(i) a company in existence is already registered or deemed to be registered under the Companies Acts for the time being in force; or

Names of
companies,
etc.

(ii) a society in existence is already registered or deemed to be registered under the Co-operation Act or the Friendly Societies Acts for the time being in force,

Names of
societies,
etc.

or so nearly resembling any such name as to be calculated to deceive, or containing any words or combination of letters which are or is identical with the words or initial letters of the name by which a company or society in existence is already registered or deemed to be registered as aforesaid, or any words so nearly resembling the words or any of the words of any such name as to be calculated to deceive, except where the company or society in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar-General requires:

Provided that a company so consenting shall add to its name the words "in liquidation" within brackets, and the said words shall be deemed to be part of the name of the said company; or

(c) a name identical with the name of any company or society formed or incorporated outside New South Wales which carries on business within New South Wales and which has registered in the office of the Registrar-General in the manner specified in section seven of the Companies (Amendment) Act, 1906, or any enactment replacing that section, or so nearly resembling that name as to be calculated to deceive except where the said company or society is about to cease carrying on business in New South Wales and signifies its consent in such manner as the Registrar-General requires; or

Names of
foreign
companies
or societies.

(d)

Business Names.

- (d) a business name which, in the opinion of the Registrar-General, is offensive or blasphemous or likely to mislead the public as to the identity of any firm, individual, or corporation required to register or as to the nature of its or his business; or
- (e) a name which indicates or implies that the business carried on or proposed to be carried on is connected with gambling, fortune-telling, astrology, marriage agency, or any unlawful occupation.
- (2) Where, in the opinion of the Registrar-General, owing to the nature of the business and the locality in which the same is carried on, the public are not likely to be misled, he may in his discretion register a firm, individual, or corporation, using a name identical with or similar to one already in use, **but shall not so register any firm, individual or corporation where such registration would result in two or more businesses being carried on in the same locality under the same name.**
25. Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a court of petty sessions holden before a stipendiary or police magistrate.
26. (1) Any firm, individual, or corporation who or which through inadvertence or otherwise is registered under any business name prohibited or containing any word or words or combination of letters prohibited by this Act or who or which has been so registered under the Registration of Firms Act, 1902—
- (a) shall on the request in writing of the Registrar-General change his or its business name; and
- (b) shall comply with the provisions of Part II of this Act relating to the change of particulars registered in respect of firms, individuals, or corporations, so far as such provisions are applicable.
- (2) The Registrar-General shall enter the new business name in the register in place of the former name and upon payment of the prescribed fees issue a certificate of registration altered to meet the circumstances of the case.

Misleading names.

Unacceptable names.

Recovery of penalties.

Power to change prohibited name, etc.
cf. Viet. Act, 1928, No. 3648, s. 26.

Duty of Registrar-General.

Business Names.

(3) If any such firm, individual, or corporation registered under any business name prohibited or containing any word or words or combination of letters prohibited as aforesaid neglects or refuses to take forthwith
 5 all necessary steps to change his or its business name after being required by the Registrar-General by notice in writing to change the same every such individual or corporation and every member of such firm shall be guilty of an offence and shall be liable on summary conviction
 10 to a penalty of not more than five pounds and in the case of a continuing offence to a further penalty of not more than five pounds for every day such offence continues.

Duty of firms, etc., to take necessary steps to change name in such cases.

(4) Nothing in this section shall affect any
 liability incurred by any firm, individual, or corporation
 15 under this or any other Act.

Saving.

~~26.~~ 27. (1) Regulations not inconsistent with this Act may be made under the Conveyancing Act, 1919-1932, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or
 20 convenient to be prescribed to carry this Act into effect, or to give effect to any power, function, duty, or authority under this Act, and without limiting the generality of the power conferred by this section the regulations may prescribe—

Regulations.

- 25 (a) the fees to be paid to the Registrar-General under this Act;
- (b) the forms to be used under this Act (and all such forms or forms to the like effect may be used for the purposes of this Act, and shall be
 30 sufficient in law);
- (c) the duties of the Registrar-General for the purposes of this Act;
- (d) generally the conduct and regulation of registration under this Act.

35 (2) Such regulations may prescribe penalties not exceeding twenty pounds for any breach thereof.

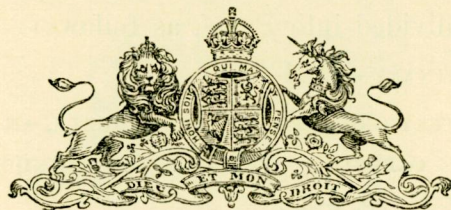
This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

W. R. McCOURT,
Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, 31 October, 1934.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

W. K. CHARLTON,
For the Clerk of the Parliaments.
Legislative Council Chamber,
Sydney, 13th December, 1934.

New South Wales.



ANNO VICESIMO QUINTO

GEORGII V REGIS.

Act No. , 1934.

An Act to provide for the registration of firms, individuals, and corporations carrying on business under business names, and as to the names, styles, titles, or designations under which businesses are carried on; to amend the Conveyancing Act, 1919-1932, and certain other Acts; to repeal the Registration of Firms Act, 1902; and for purposes connected therewith.

Business Names.

BE it enacted by the King's Most Excellent Majesty,
by and with the advice and consent of the Legis-
lative Council and Legislative Assembly of New South
Wales in Parliament assembled, and by the authority of
5 the same, as follows :—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the “ Business Names Short title.
Act, 1934.”

10 (2) This Act shall commence on a day to be Commence-
appointed by the Governor, and notified by proclamation ment.
published in the Gazette.

(3) This Act is divided into Parts, as follows :— Division into
Parts.

PART I.—PRELIMINARY—ss. 1-3.

15 PART II.—REGISTRATION OF FIRMS, INDIVIDUALS, AND
CORPORATIONS CARRYING ON BUSINESS UNDER
BUSINESS NAMES—ss. 4-20.

PART III.—USE OF CERTAIN WORDS IN THE NAMES,
ETC., OF FIRMS, ETC.—ss. 21-26.

20 (4) This Act shall be read and construed subject Construction.
to the Commonwealth of Australia Constitution Act,
and so as not to exceed the legislative power of the State,
to the intent that where any provision of this Act, or the
application thereof to any person or circumstances is
25 held invalid, the remainder of this Act, and the applica-
tion of such provision to other persons or circumstances
shall not be affected.

2. In this Act, unless the context or subject-matter Definitions.
otherwise requires,—

30 “ Business ” includes trade and profession. cf. 6 & 7
Geo. V, c. 58,
s. 22;
“ Business name ” means the name, style, title, or Vict. Act,
1928, No.
3648, s. 3.
designation under which any business is carried
on whether in partnership or otherwise, and
includes a firm-name registered under the
35 Registration of Firms Act, 1902.

“ Christian name ” includes any forename.

“ Firm ”

Business Names.

- “ Firm ” means an unincorporated body of two or more individuals or one or more individuals and one or more corporations or two or more corporations who or which have entered into partnership with one another.
- 5 “ Individual ” means a natural person and does not include a corporation.
- “ Initials ” includes any recognised abbreviation of a Christian name.
- 10 “ Part ” means Part of this Act.
- “ Prescribed ” means prescribed by the regulations.
- “ Registrar-General ” includes a Deputy Registrar-General.
- “ Regulations ” means regulations made under the Conveyancing Act, 1919-1932.

15 **3.** (1) The Registration of Firms Act, 1902, is hereby repealed. Repeal
of Act No.
100, 1902.

(2) Such repeal shall not affect any regulation or order made or any registration effected or any liability incurred or any matter or thing done under or by virtue of the said repealed Act before the commencement of this Act. Savings.

20

(3) Where the firm-name of any firm or person was registered under the Registration of Firms Act, 1902, and no entry of abandonment of the use of such firm-name had, before the commencement of this Act, been made by the Registrar-General, such firm or person shall be deemed to be registered under this Act, and for the purposes and within the meaning thereof such firm-name shall be deemed to be the business name of such firm or person.

25

30

(4) The provisions of this section shall not affect any saving in the Interpretation Act of 1897.

Business Names.

PART II.

REGISTRATION OF FIRMS, INDIVIDUALS, OR CORPORATIONS
CARRYING ON BUSINESS UNDER BUSINESS NAMES.

4. Subject to the provisions of this Part—

- 5 (a) every firm having a place of business in New
South Wales and carrying on business under a
business name which does not consist of—
- Firms, etc.,
to be
registered.
cf. 6 & 7
Geo. V, c. 58,
s. 1;
Vict. Act,
1928, No.
3648, s. 4;
S.A. Act,
1928, No.
1851, s. 4.
- 10 (i) the surnames of all partners who are
individuals (together with their Christian
name or names or the initials thereof);
and
- (ii) the corporate names of all partners (if
any) which are corporations—
without any addition;
- 15 (b) every individual having a place of business in
New South Wales and carrying on business
under a business name which does not consist
of his surname (together with his Christian
name or names or the initials thereof) without
20 any addition;
- (c) every corporation having a place of business in
New South Wales and carrying on business
under a business name which does not consist
of its corporate name without any addition,
- 25 shall, unless the firm-name of such firm, individual, or
corporation was registered under the Registration of
Firms Act, 1902, and no entry of abandonment of the
use of such firm-name had, before the commencement of
this Act, been made by the Registrar-General, be regis-
30 tered in the manner directed by this Part:
- 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
35 of itself render registration necessary; and
- When
registra-
tion not
necessary.
- (ii)

Business Names.

- (ii) where the business is carried on by an official receiver or a trustee in bankruptcy or a receiver, manager, or other person appointed by any court to carry on the business, 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.

5. Where a firm, individual, or corporation having a place of business within New South Wales carries on business wholly or mainly as attorney, nominee, or trustee of or for another firm, individual, or 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 Part.

Registration by nominee.
cf. 6 & 7
Geo. V,
c. 58, s. 2;
S.A. Act,
1928, No.
1851, s. 5.

The regulations may require that additional particulars shall be furnished and registered in all or any of such cases.

Provided that where the business is carried on by an official receiver or a trustee in bankruptcy, or a receiver, manager, or other person appointed by any court to carry on the business, registration under this Part shall not be necessary.

6. (1) Every firm, individual, or corporation required under this Part to be registered shall furnish by sending by post or delivering to the Registrar-General a statement in writing in or to the effect of the prescribed form containing the following particulars:—

Statement as to certain particulars.
cf. 6 & 7
Geo. V, c. 58,
s. 3;
Vict. Act,
1928, No.
3648, s. 5;
S.A. Act,
1928, No.
1851, s. 6.

- (a) the business name;
- (b) the general nature of the business;
- (c) the place or places of the business, and the particular address or addresses at which the business is carried on, indicating, where there is more than one place of business, the principal place of business;
- (d) where the registration to be effected is that of a firm, the Christian name and surname, the usual residence and the other business occupation (if any) of every individual who is a partner

Business Names.

partner, and the corporate name and the registered office in New South Wales of every corporation which is a partner;

5 (e) where the registration to be effected is that of an individual, the Christian name and 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 office in New South Wales;

10 (g) if the business is commenced after the commencement of this Act, the date of commencement of the business.

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

(3) Where a business is carried on under two or more business names a separate statement shall be furnished in respect of each of those business names. Where more than one business name.

7. (1) The statement required for the purpose of registration must— Statement to be signed by persons registering.

25 (a) in the case of an individual, be signed by him **or his duly constituted attorney**; and cf. 6 & 7 Geo. V, c. 58, s. 4;

(b) in the case of a corporation, be signed by a director or the secretary thereof; and Vict. Act, 1928, No. 3648, s. 6;

30 (c) in the case of a firm, be signed either by all the individuals who are partners **or by their duly constituted attorneys** and by a director or the secretary of all corporations which are partners or by some individual who is a partner **or his attorney** or a director or the secretary of some corporation which is a partner— S.A. Act, 1928, No. 1851, s. 8.

35 and in either of the last two cases mentioned in paragraph (c) must be verified by a statutory declaration made by the signatory:

Provided that—

40 (i) no such statutory declaration stating that any person other than the declarant is a partner,

or

Business Names.

- or omitting to state that any person other than as aforesaid is a partner shall be evidence for or against any such other person in respect of his liability or non-liability as a partner; and
- 5 (ii) the Supreme Court or a judge thereof may, on application of any person alleged or claiming to be or not to be a partner, as the case may be, direct the rectification of the register directed to be kept in pursuance of section
- 10 sixteen of this Act, and decide any question arising under this section; and
- (iii) in the case of a corporation registered under the provisions of the Companies (Amendment) Act, 1906, as amended by the Companies
- 15 (Amendment) Act, 1907, or registered or deemed to be registered under the provisions of any Act replacing such Act, the statement must be signed for and on behalf of such corporation by its attorney or agent authorised to file the
- 20 declaration required under any such Act or the regulations thereunder.

(2) The prescribed fee shall be paid to the Registrar-General on furnishing any statement or statutory declaration under this Part.

- 25 8. (1) The particulars required to be furnished under this Part shall be furnished before the firm, individual, or corporation commences business or the business in respect of which registration is required, as the case may be.

- 30 (2) If such firm, individual, or corporation carries on business without such registration being effected, or if such business has been carried on before the commencement of this Act, and—

- 35 (a) the firm-name of such firm, individual, or corporation has not been registered under the Registration of Firms Act, 1902; or

- (b) registration has not been effected under this Part within thirty days of such commencement, the firm, individual, or corporation required to register
- 40 as provided in this Part shall, without affecting any liability imposed under this Part, be under a continuing obligation

Time for
registration,
cf. 6 & 7
Geo. V, c. 58,
s. 5;
Vict. Act,
1928, No.
3648, s. 7;
S.A. Act,
1928, No.
1851, s. 2.

Business Names.

obligation so to register, and notwithstanding anything to the contrary in section fifty-six of the Justices Act, 1902, may be proceeded against in respect of any default accordingly.

- 5 9. The business name under which any firm, individual, or corporation is registered under this Part shall be used in all matters connected with or relating to the business carried on by such firm, individual, or corporation and shall be painted or affixed on the outside of
 10 every office or place in which the business is carried on in a conspicuous position in letters easily legible.

Business name always to be used.
 cf. Viet. Act, 1928, No. 3648, s. 8;
 S.A. Act, 1928, No. 1851, s. 10.

- Where the business name of an individual registered under this Part does not include his surname there shall also be painted or affixed as aforesaid his surname together with his Christian name **or initials of such Christian name.**

- Where the business name of a firm registered under this Part does not include the surname of one of the individuals composing the firm there shall also be painted
 20 or affixed as aforesaid the surnames together with the Christian names **or initials of such Christian names** of all individual members of the firm and the corporate name of any corporation which is a member of the firm.

- Where the business name of a firm composed of corporations does not include the corporate name of one of the members there shall also be painted or affixed as aforesaid the corporate names of all the members.

10. Whenever a change is made or occurs in any of the particulars in respect of which any firm, individual,
 30 or corporation is registered, or deemed to be registered, such firm, individual, or corporation shall within fourteen days after such change or within such longer period as the Registrar-General on application being made in any particular case, whether before or after the expiration of such fourteen days allows, furnish by sending by
 35 post or delivering to the Registrar-General a statement in writing in the prescribed form specifying the nature and date of the change signed in like manner and verified in like circumstances as the statement required on
 40 registration.

Statement as to changes in particulars.
 cf. 6 & 7 Geo. V, c. 58, s. 6;
 Viet. Act, 1928, No. 3648, s. 9;
 S.A. Act, 1928, No. 1851, s. 11.

Business Names.

- 11.** (1) If any firm, individual, or corporation registered or deemed to be registered under this Part ceases to carry on business or abandons the use of the business name under which he or it is registered or
5 deemed to be registered 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 legal personal representative or of the corporation or its successor (as
10 the case may be) within one month after the business has ceased to be carried on or the business name has been abandoned **or within such longer period as the Registrar-General, on application being made in any particular case, whether before or after the expiration of such month,**
15 **allows** to send by post or deliver to the Registrar-General notice in the prescribed form that the firm or individual or corporation has ceased to carry on business or (as the case may be) that the business name has been abandoned.
- 20 Such notice shall be signed in like manner and verified in like circumstances as the statement required on registration.
- (2) On receipt of such notice the Registrar-General may cancel the registration of the firm or indi-
25 vidual or corporation.
- (3) Where the Registrar-General has reasonable cause to believe that any firm, individual, or corporation registered or deemed to be registered is not carrying on business under the business name under which he or it
30 is registered or deemed to be registered he may send to the firm, individual, or corporation by registered post a notice addressed to the firm, individual or corporation at the address, or where there is more than one place of business, the address of the principal place of business,
35 appearing in the registration thereof enquiring whether such firm, individual or corporation is still carrying on business under such business name and notifying that, unless an answer is received to such notice within one month from the date thereof the registration of the firm,
40 individual, or corporation may be cancelled.
- (4) If the Registrar-General either receives an answer from the firm, individual, or corporation to the
effect

Removal of names from the register. cf. 6 & 7 Geo. V, c. 58, s. 13; Viet. Act, 1928, No. 3648, s. 10; S.A. Act, 1928, No. 1851, s. 21.

cf. S.A. Act, 1928, No. 1851, s. 22.

Business Names.

effect that the firm, individual, or corporation is not so carrying on business or does not within one month after sending the notice receive an answer he may cancel the registration of the firm, individual, or corporation.

5 The Registrar-General may on any grounds which he deems sufficient, revoke or annul any such cancellation and thereupon the firm, individual, or corporation shall be deemed to have continued to be registered as if the registration had not been so cancelled.

10 (5) The Registrar-General may cancel the registration of—

(a) any corporation registered or deemed to be registered under this Part the name of which has been struck off any register of companies kept under the Companies Acts for the time being in force; or

15 (b) any firm, individual, or corporation convicted of making default without reasonable excuse in sending or delivering any statement required by this Act; or

20 (c) any firm the partners or any partner of which are or is or of any individual who is, or any corporation the directors or any director of which are or is convicted of an offence against this Act; or

25 (d) any firm or corporation which is dissolved or deemed to be dissolved.

(6) Where the registration of any firm, individual, or corporation is cancelled under subsection four of this section, any member of the firm, or the individual or corporation may apply to the Supreme Court in its equitable jurisdiction, and the court may, if it is satisfied that the firm, individual, or corporation was carrying on business under the firm-name, and that it is just and equitable so to do, order that the registration of the firm, individual, or corporation be restored, and thereupon the firm, individual, or corporation shall be deemed to have continued to be registered as if the registration had not been so cancelled.

30 40 The court may, upon making any such order, impose such terms as to the court seems fit.

Business Names.

12. (1) If without reasonable excuse any firm, individual, or corporation by this Part required to furnish a statement of particulars, or of any change in particulars, or a notice that it or he has ceased to carry on business or has abandoned a business name makes default in so doing in the manner and/or within the time prescribed by this Part—

Penalty for default.

cf. 6 & 7
Geo. V, c. 58,
s. 7;
Vict. Act,
1928, No.
3648, s. 11;
S.A. Act,
1928, No.
1851, s. 15.

- (a) every partner in the firm, or the individual or corporation so in default shall be liable to a penalty of not more than five pounds for every day during which the default continues; and
- (b) the court **exercising jurisdiction to impose the penalty under paragraph (a) of subsection one of this section** shall order a statement or a corrected statement, as the case may be, of the required particulars or change in the particulars or a notice that the firm, individual, or corporation has ceased to carry on business or has abandoned the business name to be furnished to the Registrar-General within such time as is specified in the order.

(2) The expression "default" within the meaning of sections eleven, twelve, and thirteen of this Act shall include the furnishing of a statement of particulars, or of any change in particulars, incorrect to the knowledge of the person signing it in some material particular.

13. (1) Where any firm, individual, or corporation by this Act required to furnish a statement of particulars or of any change in particulars makes default in so doing, and during the default commences any action **or suit** in the business name or for a cause of action arising out of any dealing by such firm, individual, or corporation in the business name the court in which the proceedings are taken shall order the firm, individual or corporation in default to furnish to the Registrar-General the proper statement, and may stay all proceedings in the action **or suit** 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.

Persons in default bringing action.

cf. Act
No. 100,
1902, s. 11;
S.A. Act,
1928, No.
1851, s. 16.

(2) The power by this section given to the court may be exercised in the case of the Supreme Court by a judge

Business Names.

judge in chambers, or in the case of a District Court by a judge thereof in chambers, or in the case of a court of petty sessions by a stipendiary or police magistrate in chambers, or by two or more justices sitting in petty
5 sessions.

(3) If any firm, individual, or corporation required to be registered as provided in this Part shall fail to register accordingly, all proceedings in any court of competent jurisdiction may be taken and prosecuted
10 against such firm, individual, or corporation in the name under which such firm, individual, or corporation is carrying on business, and such name shall, for the purposes of such proceedings, be a sufficient designation of such firm, individual, or corporation in all courts,
15 summonses, complaints, and other legal documents and instruments.

Any judgment obtained or order made in such proceedings may be enforced against the firm or any member thereof or the individual or corporation.

(4) Nothing in this section shall be construed to exempt any firm, individual, or corporation from compliance with any provision of this Part.

14. If any statement or notice required to be furnished under this Part contains any matter which is
25 false in any material particular to the knowledge of any person signing it, that person shall be liable on summary conviction to a penalty of not more than fifty pounds, or to imprisonment for a term of not more than twelve months, and any person knowingly authorising
30 or permitting the commission of the offence shall be liable on summary conviction to the like punishment.

Penalty for false statement.
cf. 6 & 7 Geo. V., c. 58, s. 9; Viet. Act, 1928, No. 3648, s. 13; S.A. Act, 1928, No. 1851, s. 24.

15. (1) The Registrar-General may—

(a) require any person to furnish to the Registrar-General such particulars as appear necessary
35 to him for the purposes of ascertaining whether or not such person or the firm of which he is a partner should be registered under this Part or an alteration made in the registered particulars; and

Duty to furnish particulars.
cf. 6 & 7 Geo. V., c. 58, s. 9; Viet. Act, 1928, No. 3648, s. 14; S.A. Act, 1928, No. 1851, s. 13.

(b)

Business Names.

(b) 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.

5 (2) If any person, secretary, or officer when so required fails to furnish such particulars as it is in his power to give, or furnishes particulars which are false in any material particular, he shall be liable on summary conviction to imprisonment for a term of not more
10 than three months or to a penalty of not more than twenty pounds or to both such imprisonment and penalty.

(3) If from any information so furnished it appears to the Registrar-General that any firm, individual, or corporation ought to be registered under this
15 Part, or an alteration ought to be made in the registered particulars, the Registrar-General may require the firm, individual, or corporation to furnish to the Registrar-General the required particulars within such time as he allows, but where any default under this Part has been
20 discovered from the information acquired under this section no proceedings under this Part shall be taken against any person in respect of such default prior to the expiration of the time within which the firm, individual, or corporation is required under this section to furnish
25 particulars to the Registrar-General.

16. (1) The Registrar-General shall keep a register and index of the business names of all firms, individuals, and corporations registered under this Act, and of all statements furnished in reference thereto.

Register and index.
cf. Vict. Act, 1928, No. 3648, ss. 15, 16; S.A. Act, 1928, No. 1251, ss. 17, 18.

30 (2) On receiving any statement furnished pursuant to section six of this Act the Registrar-General shall cause the business name of the firm, individual, or corporation on whose behalf the statement was furnished to be entered in the register; and upon such entry being
35 made the firm, individual, or corporation shall be deemed to be registered.

When firm, individual or corporation deemed to be registered.

(3) The Registrar-General shall upon registration send by post or deliver a certificate thereof to the firm, individual, or corporation registering.

40 The certificate shall be in or to the effect of the form prescribed.

(4)

Business Names.

(4) A certificate of the registration of the firm, individual, or corporation shall be kept exhibited in a conspicuous position at the principal place of business of such firm, individual, or corporation, and, if not kept
 5 so exhibited, every partner in the firm, or the individual or corporation (as the case may be) shall be liable on summary conviction to a penalty of not more than twenty pounds.

17. (1) Any person on payment of the prescribed fee
 10 may make a search in the register and index kept in pursuance of this Act or may inspect or make extracts from or a copy of the statements furnished in pursuance of this Act or filed in pursuance of any corresponding previous enactment.

Inspection of statements.
 cf. 6 & 7 Geo.V, c. 58, s. 16;
 Vict. Act, 1928, No. 3648, s. 17;
 S.A. Act, 1923, No. 1851, s. 19.

15 (2) Any person on payment of the prescribed fee may require a certificate of the registration or non-registration under a particular business name of any firm, individual, or corporation to be furnished or a copy of or extract from any statement furnished in pursuance of this
 20 **Act or filed in pursuance of any corresponding previous enactment** to be certified by the Registrar-General.

Certificate of registration, etc.

(3) The register referred to in section sixteen or a certificate of registration, or a copy of or extract from any statement furnished in pursuance of this Act
 25 **or filed in pursuance of any corresponding previous enactment** purporting to be signed and certified by the Registrar-General, shall in all courts, and before all persons having authority to hear, receive, and examine evidence, be admitted as prima facie evidence of the matter contained
 30 therein and of the fact and date of registration as shown thereon.

Evidence of registration.

A certificate purporting to be signed by the Registrar-General, that a firm, individual, or corporation was not, on any date or during any period, registered under the
 35 business name specified in the certificate, shall likewise be admitted as prima facie evidence, according to its tenor, that the firm, individual, or corporation was not so registered.

18. (1) The Registrar-General may, on such evidence
 40 as to him appears sufficient, correct errors in any register, index or certificate:

Powers of the Registrar-General.

Provided

Business Names.

Provided that in the correction of any such error he shall not erase or render illegible the original words and shall affix the date upon which such correction was made with his initials.

5 Every registration so corrected shall have the like validity and effect as if such error had not been made.

(2) The Registrar-General may, where **an error in the register is corrected or** the registration of any firm, individual, or corporation is cancelled, by notice under
10 his hand, require the members of ~~any~~ such firm, or such individual or corporation as the case may be, to deliver up the certificate of registration to be ~~cancelled~~ **corrected or cancelled as the case may be.**

Any person who **without reasonable excuse** neglects or fails to deliver up any such certificate to the Registrar-
15 General within the period specified in the notice shall be liable on summary conviction to a penalty not exceeding ten pounds.

19. Where any offence against this Act committed by a corporation is proved to have been committed with the
20 consent or approval of, or to have been facilitated by any neglect on the part of, any director, manager, secretary, or other officer of the corporation, he, as well as the corporation, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished
25 accordingly.

Offences
committed
by corpora-
tions.

20. Service at the address or where there is more than one place of business, at the address of the principal place of business shown in the statement furnished in pursuance of this Act or filed in pursuance of any corresponding
30 previous enactment as the address or the address of the principal place of business, as the case may be, at which any firm, individual, or corporation registered under this Part is carrying on business of any communication or **of** notice of any writ, ~~declaration,~~
35 summons, plaint, **pleading**, order, or other document, proceeding, or process whatsoever in any action, suit, proceeding, or matter, either by leaving the same at such office or by sending the same by registered post postage prepaid addressed to such firm, individual, or corpora-
40 tion at such address shall be deemed to be service upon any partner of the firm or upon the individual or corporation, as the case may be.

Service of
summons.

Business Names.

PART III.

USE OF CERTAIN WORDS IN THE NAMES, ETC., OF
FIRMS, ETC.

- 21.** Notwithstanding anything in any Act no firm, Certain words not to be used in firm-name. cf. Viet. Act, 1928, No. 3648, s. 21.
 5 individual, or corporation required to register under Part II of this Act shall be so registered under a business name which includes the word "Royal" or the word "King" or the word "Queen" or the word "Crown" or the word "Empire" or the word "Imperial" or the
 10 word "Commonwealth" or any word signifying Royal or Government support or patronage, or any word or matter used in such manner as would imply or be likely to convey the impression that such firm, individual, or corporation is or will be wholly or partly authorised or
 15 supported by or connected with His Majesty's Dominions unless consent has been given to the use of such business name by the Governor; or which includes the words "State," "Australia," or "Australasia," or the name of any State if in the opinion of the Registrar-
 20 General the same is calculated to mislead:

Provided that nothing in this section shall prevent the continuance of the use by any firm, individual, or corporation or his or its successor in interest of the word "Commonwealth" in any name, style, title, or designa-
 25 tion under which he or it was registered or traded or carried on business at the date of the commencement of this Act.

- 22.** No person or firm not incorporated shall assume or use or continue to assume or use the word "saving" Words "saving," "savings," etc., not to be used. cf. Ibid. s. 22.
 30 or "savings" or the words "savings bank" or "savings institution" or "savings department" or "savings section" as part of the designation or title or as a description of the business or of any department, section, or other part of the business of such person or firm.

- 23.** (1) No person or firm not incorporated shall assume or use or continue to assume or use the title of "bank," "banker," "banking company," "banking house," "banking association," "banking institution," Word "banking," etc., not to be used. cf. Ibid. s. 23.
 35 "trust," "trustee," "guarantee," or "fidelity," or words

Business Names.

words of like import, in any way whatever in connection with the trade or business designation or title of such person or firm.

(2) No person or firm shall assume or use or
5 continue to assume or use any business name of which the final word is the word "limited" or any combination of letters being or capable of being understood to be an abbreviation of the word "limited":

Provided that this subsection shall not apply where
10 any such final word is, and is used in the business name as part of the corporate name of a corporation which is one of the partners carrying on business under such business name.

(3) Every person and every member of any
15 firm guilty of committing, causing, directing, or authorising a breach of either this section or of section twenty-two of this Act shall be guilty of an offence, and shall be liable on summary conviction to a penalty of not more than ten pounds, and in the case of a continuing
20 offence to a penalty of not more than ten pounds for every day such breach continues.

24. (1) No person or firm not incorporated shall use,
nor shall any firm, individual, or corporation required to
register under Part II of this Act be so registered
25 under—
Persons or firms not to be registered under certain business or other names.
cf. Vict. Act, 1928, No. 3648, ss. 24, 25.

(a) a business name identical with the business
name of a firm, individual, or corporation
already registered under Part II of this Act or
identical with a firm-name registered under the
Registration of Firms Act, 1902, at the com-
mencement of this Act, or so nearly resembling
any such name as to be calculated to deceive,
except where the firm, individual, or corporation
already so registered or the firm or person
whose firm-name is so registered (as the case
may be) is about to cease carrying on business,
and signifies its or his consent in such manner
as the Registrar-General requires; or
Registered business names.

4—B

(b)

Business Names.

(b) a name identical with that by which—

5 (i) a company in existence is already registered or deemed to be registered under the Companies Acts for the time being in force; or

Names of
companies,
etc.

(ii) a society in existence is already registered or deemed to be registered under the Co-operation Act or the Friendly Societies Acts for the time being in force,

Names of
societies,
etc.

10 or so nearly resembling any such name as to be calculated to deceive, or containing any words or combination of letters which are or is identical with the words or initial letters of the name by which a company or society in existence is
15 already registered or deemed to be registered as aforesaid, or any words so nearly resembling the words or any of the words of any such name as to be calculated to deceive, except where the company or society in existence is in the course
20 of being dissolved and signifies its consent in such manner as the Registrar-General requires:

25 Provided that a company so consenting shall add to its name the words "in liquidation" within brackets, and the said words shall be deemed to be part of the name of the said company; or

30 (c) a name identical with the name of any company or society formed or incorporated outside New South Wales which carries on business within New South Wales and which has registered in the office of the Registrar-General in the manner specified in section seven of the Companies (Amendment) Act, 1906, or any enactment replacing that section, or so nearly resembling
35 that name as to be calculated to deceive except where the said company or society is about to cease carrying on business in New South Wales and signifies its consent in such manner as the Registrar-General requires; or

Names of
foreign
companies
or societies.

(d)

Business Names.

- (d) a business name which, in the opinion of the Registrar-General, is offensive or blasphemous or likely to mislead the public as to the identity of any firm, individual, or corporation required to register or as to the nature of its or his business; or
- (e) a name which indicates or implies that the business carried on or proposed to be carried on is connected with gambling, fortune-telling, astrology, marriage agency, or any unlawful occupation.
- (2) Where, in the opinion of the Registrar-General, owing to the nature of the business and the locality in which the same is carried on, the public are not likely to be misled, he may in his discretion register a firm, individual, or corporation, using a name identical with or similar to one already in use.
- 25.** (1) Any firm, individual, or corporation who or which through inadvertence or otherwise is registered under any business name prohibited or containing any word or words or combination of letters prohibited by this Act or who or which has been so registered under the Registration of Firms Act, 1902—
- (a) shall on the request in writing of the Registrar-General change his or its business name; and
- (b) shall comply with the provisions of Part II of this Act relating to the change of particulars registered in respect of firms, individuals, or corporations, so far as such provisions are applicable.
- (2) The Registrar-General shall enter the new business name in the register in place of the former name and upon payment of the prescribed fees issue a certificate of registration altered to meet the circumstances of the case.
- (3) If any such firm, individual, or corporation registered under any business name prohibited or containing any word or words or combination of letters prohibited as aforesaid neglects or refuses to take forthwith all necessary steps to change his or its business name after

Misleading names.

Unacceptable names.

Power to change prohibited name, etc. cf. Vict. Act, 1928, No. 3648, s. 26.

Duty of Registrar-General.

Duty of firms, etc., to take necessary steps to change name in such cases.

Business Names.

after being required by the Registrar-General by notice in writing to change the same every such individual or corporation and every member of such firm shall be guilty of an offence and shall be liable on summary conviction
5 to a penalty of not more than five pounds and in the case of a continuing offence to a further penalty of not more than five pounds for every day such offence continues.

(4) Nothing in this section shall affect any Saving.
liability incurred by any firm, individual, or corporation
10 under this or any other Act.

26. (1) Regulations not inconsistent with this Act **Regulations.**
may be made under the Conveyancing Act, 1919-1932,
prescribing all matters which by this Act are required
or permitted to be prescribed or which are necessary or
15 convenient to be prescribed to carry this Act into effect,
or to give effect to any power, function, duty, or
authority under this Act, and without limiting the
generality of the power conferred by this section the
regulations may prescribe—

- 20 (a) the fees to be paid to the Registrar-General
under this Act;
(b) the forms to be used under this Act (and all
such forms or forms to the like effect may be
used for the purposes of this Act, and shall be
25 sufficient in law);
(c) the duties of the Registrar-General for the
purposes of this Act;
(d) generally the conduct and regulation of
registration under this Act.

30 (2) Such regulations may prescribe penalties not
exceeding twenty pounds for any breach thereof.

BUSINESS NAMES BILL.

SCHEDULE of the Amendments referred to in Message of 13th December, 1934.

- No. 1.—Page 6, clause 7, line 24. After “him” insert **“or his duly constituted attorney”**
- No. 2.—Page 6, clause 7, line 29. After “partners” insert **“or by their duly constituted attorneys”**
- No. 3.—Page 6, clause 7, line 33. After “partner” insert **“or his attorney”**
- No. 4.—Page 8, clause 9, line 15. After “name” insert **“or initial of such Christian name”**
- No. 5.—Page 8, clause 9, line 21. After “names” insert **“or initials of such Christian names”**
- No. 6.—Page 9, clause 11, line 12. After “abandoned” insert **“or within such longer period as the Registrar-General, on application being made in any particular case, whether before or after the expiration of such month, allows”**
- No. 7.—Page 11, clause 12, line 12. After “court” insert **“exercising jurisdiction to impose the penalty under paragraph (a) of subsection (1) of this section”**
- No. 8.—Page 11, clause 13, line 30. After “action” insert **“or suit”**
- No. 9.—Page 11, clause 13, line 36. After “action” insert **“or suit”**
- No. 10.—Page 12, clause 13. After line 16 insert **“Any judgment obtained or order made in such proceedings may be enforced against the firm or any member thereof or the individual or corporation.”**
- No. 11.—Page 14, clause 17, line 20. After “Act” insert **“or filed in pursuance of any corresponding previous enactment”**
- No. 12.—Page 14, clause 17, line 24. After “Act” insert **“or filed in pursuance of any corresponding previous enactment”**
- No. 13.—Page 15, clause 18, line 7. After “where” insert **“an error in the register is corrected or”**
- No. 14.—Page 15, clause 18, line 10. Omit “any”
- No. 15.—Page 15, clause 18, line 12. Omit “cancelled” insert **“corrected or cancelled as the case may be”**
- No. 16.—Page 15, clause 18, line 14. After “who” insert **“without reasonable excuse”**
- No. 17.—Page 15, clause 20, line 35. After “or” insert **“of”**
- No. 18.—Page 15, clause 20, line 35. Omit “declaration”
- No. 19.—Page 15, clause 20, line 36. After “plaint” insert **“pleading”**
- No. 20.—Page 19, clause 24, line 17. After “use” insert **“but shall not so register any firm, individual or corporation where such registration would result in two or more businesses being carried on in the same locality under the same name”**
- No. 21.—Page 19. After line 20 insert new clause:—
“25. Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a court of petty sessions holden before a stipendiary or police magistrate.”

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

W. R. McCOURT,
Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, 18 December, 1934.

New South Wales.



ANNO VICESIMO QUINTO
GEORGII V REGIS.

Act No. 50, 1934.

An Act to provide for the registration of firms, individuals, and corporations carrying on business under business names, and as to the names, styles, titles, or designations under which businesses are carried on; to amend the Conveyancing Ac. 1919-1932, and certain other Acts; to repeal the Registration of Firms Act, 1902; and for purposes connected therewith. [Assented to, 27th December, 1934.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

W. W. HEDGES.
Chairman of Committees of the Legislative Assembly.

Business Names.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title. 1. (1) This Act may be cited as the "Business Names Act, 1934."

**Commence-
ment.** (2) This Act shall commence on a day to be appointed by the Governor, and notified by proclamation published in the Gazette.

**Division into
Parts.** (3) This Act is divided into Parts, as follows:—

PART I.—PRELIMINARY—ss. 1-3.

PART II.—REGISTRATION OF FIRMS, INDIVIDUALS, AND CORPORATIONS CARRYING ON BUSINESS UNDER BUSINESS NAMES—ss. 4-20.

PART III.—USE OF CERTAIN WORDS IN THE NAMES, ETC., OF FIRMS, ETC.—ss. 21-27.

Construction. (4) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act, or the application thereof to any person or circumstances is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected.

Definitions. 2. In this Act, unless the context or subject-matter otherwise requires,—

cf. 6 & 7
Geo. V, c. 58,
s. 22;
Vict. Act,
1928, No.
3648, s. 3.

"Business" includes trade and profession.

"Business name" means the name, style, title, or designation under which any business is carried on whether in partnership or otherwise, and includes a firm-name registered under the Registration of Firms Act, 1902.

"Christian name" includes any forename.

"Firm"

Business Names.

“ Firm ” means an unincorporated body of two or more individuals or one or more individuals and one or more corporations or two or more corporations who or which have entered into partnership with one another.

“ Individual ” means a natural person and does not include a corporation.

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

“ Part ” means Part of this Act.

“ Prescribed ” means prescribed by the regulations.

“ Registrar-General ” includes a Deputy Registrar-General.

“ Regulations ” means regulations made under the Conveyancing Act, 1919-1932.

3. (1) The Registration of Firms Act, 1902, is hereby repealed. Repeal
of Act No.
100, 1902.

(2) Such repeal shall not affect any regulation or order made or any registration effected or any liability incurred or any matter or thing done under or by virtue of the said repealed Act before the commencement of this Act. Savings.

(3) Where the firm-name of any firm or person was registered under the Registration of Firms Act, 1902, and no entry of abandonment of the use of such firm-name had, before the commencement of this Act, been made by the Registrar-General, such firm or person shall be deemed to be registered under this Act, and for the purposes and within the meaning thereof such firm-name shall be deemed to be the business name of such firm or person.

(4) The provisions of this section shall not affect any saving in the Interpretation Act of 1897.

Business Names.

PART II.

REGISTRATION OF FIRMS, INDIVIDUALS, OR CORPORATIONS
CARRYING ON BUSINESS UNDER BUSINESS NAMES.

Firms, etc.,
to be
registered.
cf. 6 & 7
Geo. V, c. 58,
s. 1;
Vict. Act,
1928, No.
3648, s. 4;
S.A. Act,
1928, No.
1851, s. 4.

4. Subject to the provisions of this Part—

- (a) every firm having a place of business in New South Wales and carrying on business under a business name which does not consist of—
 - (i) the surnames of all partners who are individuals (together with their Christian name or 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 New South Wales and carrying on business under a business name which does not consist of his surname (together with his Christian name or names or the initials thereof) without any addition;
- (c) every corporation having a place of business in New South Wales and carrying on business under a business name which does not consist of its corporate name without any addition,

shall, unless the firm-name of such firm, individual, or corporation was registered under the Registration of Firms Act, 1902, and no entry of abandonment of the use of such firm-name had, before the commencement of this Act, been made by the Registrar-General, be registered in the manner directed by this Part:

Provided that—

When
registra-
tion not
necessary,

- (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)

Business Names.

- (ii) where the business is carried on by an official receiver or a trustee in bankruptcy or a receiver, manager, or other person appointed by any court to carry on the business, 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.

5. Where a firm, individual, or corporation having a place of business within New South Wales carries on business wholly or mainly as attorney, nominee, or trustee of or for another firm, individual, or 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 Part.

Registration
by nominee.
cf. 6 & 7
Geo. V,
c. 58, s. 2;
S.A. Act,
1928, No.
1851, s. 5.

The regulations may require that additional particulars shall be furnished and registered in all or any of such cases.

Provided that where the business is carried on by an official receiver or a trustee in bankruptcy, or a receiver, manager, or other person appointed by any court to carry on the business, registration under this Part shall not be necessary.

6. (1) Every firm, individual, or corporation required under this Part to be registered shall furnish by sending by post or delivering to the Registrar-General a statement in writing in or to the effect of the prescribed form containing the following particulars:—

Statement
as to certain
particulars.
cf. 6 & 7
Geo. V, c. 58,
s. 3;
Viet. Act,
1928, No.
3648, s. 5;
S.A. Act,
1928, No.
1851, s. 6.

- (a) the business name;
- (b) the general nature of the business;
- (c) the place or places of the business, and the particular address or addresses at which the business is carried on, indicating, where there is more than one place of business, the principal place of business;
- (d) where the registration to be effected is that of a firm, the Christian name and surname, the usual residence and the other business occupation (if any) of every individual who is a partner

Business Names.

partner, and the corporate name and the registered office in New South Wales of every corporation which is a partner;

- (c) where the registration to be effected is that of an individual, the Christian name and 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 office in New South Wales;
- (g) if the business is commenced after the commencement of this Act, the date of commencement of the business.

Minors.

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

Where more than one business name.

(3) Where a business is carried on under two or more business names a separate statement shall be furnished in respect of each of those business names.

Statement to be signed by persons registering.
cf. 6 & 7
Geo. V, c. 58,
s. 4;
Vict. Act,
1928, No.
3648, s. 6;
S.A. Act,
1928, No.
1851, s. 8.

7. (1) The statement required for the purpose of registration must—

- (a) in the case of an individual, be signed by him or his duly constituted attorney; and
- (b) in the case of a corporation, be signed by a director or the secretary thereof; and
- (c) in the case of a firm, be signed either by all the individuals who are partners or by their duly constituted attorneys and by a director or the secretary of all corporations which are partners or by some individual who is a partner or his attorney or a director or the secretary of some corporation which is a partner—

and in either of the last two cases mentioned in paragraph (c) must be verified by a statutory declaration made by the signatory:

Provided that—

- (i) no such statutory declaration stating that any person other than the declarant is a partner,

or

Business Names.

- or omitting to state that any person other than as aforesaid is a partner shall be evidence for or against any such other person in respect of his liability or non-liability as a partner; and
- (ii) the Supreme Court or a judge thereof may, on application of any person alleged or claiming to be or not to be a partner, as the case may be, direct the rectification of the register directed to be kept in pursuance of section sixteen of this Act, and decide any question arising under this section; and
 - (iii) in the case of a corporation registered under the provisions of the Companies (Amendment) Act, 1906, as amended by the Companies (Amendment) Act, 1907, or registered or deemed to be registered under the provisions of any Act replacing such Act, the statement must be signed for and on behalf of such corporation by its attorney or agent authorised to file the declaration required under any such Act or the regulations thereunder.

(2) The prescribed fee shall be paid to the Registrar-General on furnishing any statement or statutory declaration under this Part.

8. (1) The particulars required to be furnished under this Part shall be furnished before the firm, individual, or corporation commences business or the business in respect of which registration is required, as the case may be.

Time for registration.
cf. 6 & 7
Geo. V, c. 58,
s. 5;
Vict. Act,
1928, No.
3648, s. 7;
S.A. Act,
1928, No.
1851, s. 9.

(2) If such firm, individual, or corporation carries on business without such registration being effected, or if such business has been carried on before the commencement of this Act, and—

- (a) the firm-name of such firm, individual, or corporation has not been registered under the Registration of Firms Act, 1902; or
 - (b) registration has not been effected under this Part within thirty days of such commencement,
- the firm, individual, or corporation required to register as provided in this Part shall, without affecting any liability imposed under this Part, be under a continuing obligation

Business Names.

obligation so to register, and notwithstanding anything to the contrary in section fifty-six of the Justices Act, 1902, may be proceeded against in respect of any default accordingly.

Business
name always
to be used.
cf. Vict. Act
1928, No.
3648, s. 8;
S.A. Act,
1928, No.
1851, s. 10.

9. The business name under which any firm, individual, or corporation is registered under this Part shall be used in all matters connected with or relating to the business carried on by such firm, individual, or corporation and shall be painted or affixed on the outside of every office or place in which the business is carried on in a conspicuous position in letters easily legible.

Where the business name of an individual registered under this Part does not include his surname there shall also be painted or affixed as aforesaid his surname together with his Christian name or initial of such Christian name.

Where the business name of a firm registered under this Part does not include the surname of one of the individuals composing the firm there shall also be painted or affixed as aforesaid the surnames together with the Christian names or initials of such Christian names of all individual members of the firm and the corporate name of any corporation which is a member of the firm.

Where the business name of a firm composed of corporations does not include the corporate name of one of the members there shall also be painted or affixed as aforesaid the corporate names of all the members.

Statement
as to
changes in
particulars.
cf. 6 & 7
Geo. V, c. 58,
s. 6;
Vict. Act,
1928, No.
3648, s. 9;
S.A. Act,
1928, No.
1851, s. 11.

10. Whenever a change is made or occurs in any of the particulars in respect of which any firm, individual, or corporation is registered, or deemed to be registered, such firm, individual, or corporation shall within fourteen days after such change or within such longer period as the Registrar-General on application being made in any particular case, whether before or after the expiration of such fourteen days allows, furnish by sending by post or delivering to the Registrar-General a statement in writing in the prescribed form specifying the nature and date of the change signed in like manner and verified in like circumstances as the statement required on registration.

11.

Business Names.

11. (1) If any firm, individual, or corporation registered or deemed to be registered under this Part ceases to carry on business or abandons the use of the business name under which he or it is registered or deemed to be registered 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 legal personal representative or of the corporation or its successor (as the case may be) within one month after the business has ceased to be carried on or the business name has been abandoned or within such longer period as the Registrar-General, on application being made in any particular case, whether before or after the expiration of such month, allows to send by post or deliver to the Registrar-General notice in the prescribed form that the firm or individual or corporation has ceased to carry on business or (as the case may be) that the business name has been abandoned.

Removal of names from the register. cf. 6 & 7 Geo. V, c. 58, s. 13; Vict. Act, 1928, No. 3648, s. 10; S.A. Act, 1928, No. 1851, s. 21.

Such notice shall be signed in like manner and verified in like circumstances as the statement required on registration.

(2) On receipt of such notice the Registrar-General may cancel the registration of the firm or individual or corporation.

(3) Where the Registrar-General has reasonable cause to believe that any firm, individual, or corporation registered or deemed to be registered is not carrying on business under the business name under which he or it is registered or deemed to be registered he may send to the firm, individual, or corporation by registered post a notice addressed to the firm, individual or corporation at the address, or where there is more than one place of business, the address of the principal place of business, appearing in the registration thereof enquiring whether such firm, individual or corporation is still carrying on business under such business name and notifying that, unless an answer is received to such notice within one month from the date thereof the registration of the firm, individual, or corporation may be cancelled.

cf. S.A. Act, 1928, No. 1851, s. 22.

(4) If the Registrar-General either receives an answer from the firm, individual, or corporation to the effect

Business Names.

effect that the firm, individual, or corporation is not so carrying on business or does not within one month after sending the notice receive an answer he may cancel the registration of the firm, individual, or corporation. The Registrar-General may on any grounds which he deems sufficient, revoke or annul any such cancellation and thereupon the firm, individual, or corporation shall be deemed to have continued to be registered as if the registration had not been so cancelled.

(5) The Registrar-General may cancel the registration of—

- (a) any corporation registered or deemed to be registered under this Part the name of which has been struck off any register of companies kept under the Companies Acts for the time being in force; or
- (b) any firm, individual, or corporation convicted of making default without reasonable excuse in sending or delivering any statement required by this Act; or
- (c) any firm the partners or any partner of which are or is or of any individual who is, or any corporation the directors or any director of which are or is convicted of an offence against this Act; or
- (d) any firm or corporation which is dissolved or deemed to be dissolved.

(6) Where the registration of any firm, individual, or corporation is cancelled under subsection four of this section, any member of the firm, or the individual or corporation may apply to the Supreme Court in its equitable jurisdiction, and the court may, if it is satisfied that the firm, individual, or corporation was carrying on business under the firm-name, and that it is just and equitable so to do, order that the registration of the firm, individual, or corporation be restored, and thereupon the firm, individual, or corporation shall be deemed to have continued to be registered as if the registration had not been so cancelled.

The court may, upon making any such order, impose such terms as to the court seems fit.

Business Names.

12. (1) If without reasonable excuse any firm, individual, or corporation by this Part required to furnish a statement of particulars, or of any change in particulars, or a notice that it or he has ceased to carry on business or has abandoned a business name makes default in so doing in the manner and/or within the time prescribed by this Part—

Penalty for default.
cf. 6 & 7
Geo. V, c. 58,
s. 7;
Vict. Act,
1928, No.
3648, s. 11;
S.A. Act,
1928, No.
1851, s. 15.

- (a) every partner in the firm, or the individual or corporation so in default shall be liable to a penalty of not more than five pounds for every day during which the default continues; and
- (b) the court exercising jurisdiction to impose the penalty under paragraph (a) of subsection one of this section shall order a statement or a corrected statement, as the case may be, of the required particulars or change in the particulars or a notice that the firm, individual, or corporation has ceased to carry on business or has abandoned the business name to be furnished to the Registrar-General within such time as is specified in the order.

(2) The expression "default" within the meaning of sections eleven, twelve, and thirteen of this Act shall include the furnishing of a statement of particulars, or of any change in particulars, incorrect to the knowledge of the person signing it in some material particular.

13. (1) Where any firm, individual, or corporation by this Act required to furnish a statement of particulars or of any change in particulars makes default in so doing, and during the default commences any action or suit in the business name or for a cause of action arising out of any dealing by such firm, individual, or corporation in the business name the court in which the proceedings are taken shall order the firm, individual or corporation in default to furnish to the Registrar-General the proper statement, and may stay all proceedings in the action or suit 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.

Persons in default bringing action.
cf. Act
No. 100,
1902, s. 11;
S.A. Act,
1928, No.
1851, s. 16.

(2) The power by this section given to the court may be exercised in the case of the Supreme Court by a judge

Business Names.

judge in chambers, or in the case of a District Court by a judge thereof in chambers, or in the case of a court of petty sessions by a stipendiary or police magistrate in chambers, or by two or more justices sitting in petty sessions.

(3) If any firm, individual, or corporation required to be registered as provided in this Part shall fail to register accordingly, all proceedings in any court of competent jurisdiction may be taken and prosecuted against such firm, individual, or corporation in the name under which such firm, individual, or corporation is carrying on business, and such name shall, for the purposes of such proceedings, be a sufficient designation of such firm, individual, or corporation in all courts, summonses, complaints, and other legal documents and instruments.

Any judgment obtained or order made in such proceedings may be enforced against the firm or any member thereof or the individual or corporation.

(4) Nothing in this section shall be construed to exempt any firm, individual, or corporation from compliance with any provision of this Part.

Penalty for
false state-
ment.
cf. 6 & 7
Geo. V, c. 58,
s. 9; Vict.
Act, 1928, No.
3648, s. 13;
S.A. Act, 1925,
No. 1851, s. 24.

14. If any statement or notice required to be furnished under this Part contains any matter which is false in any material particular to the knowledge of any person signing it, that person shall be liable on summary conviction to a penalty of not more than fifty pounds, or to imprisonment for a term of not more than twelve months, and any person knowingly authorising or permitting the commission of the offence shall be liable on summary conviction to the like punishment.

Duty to
furnish par-
ticulars.
cf. 6 & 7
Geo. V, c. 58,
s. 9;
Vict. Act,
1928, No.
3648, s. 14;
S.A. Act,
1928, No.
1851, s. 13.

15. (1) The Registrar-General may—

- (a) require any person to furnish to the Registrar-General such particulars as appear necessary to him for the purposes of ascertaining whether or not such person or the firm of which he is a partner should be registered under this Part or an alteration made in the registered particulars; and

(b)

Business Names.

(b) 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.

(2) If any person, secretary, or officer when so required fails to furnish such particulars as it is in his power to give, or furnishes particulars which are false in any material particular, he shall be liable on summary conviction to imprisonment for a term of not more than three months or to a penalty of not more than twenty pounds or to both such imprisonment and penalty.

(3) If from any information so furnished it appears to the Registrar-General that any firm, individual, or corporation ought to be registered under this Part, or an alteration ought to be made in the registered particulars, the Registrar-General may require the firm, individual, or corporation to furnish to the Registrar-General the required particulars within such time as he allows, but where any default under this Part has been discovered from the information acquired under this section no proceedings under this Part shall be taken against any person in respect of such default prior to the expiration of the time within which the firm, individual, or corporation is required under this section to furnish particulars to the Registrar-General.

16. (1) The Registrar-General shall keep a register and index of the business names of all firms, individuals, and corporations registered under this Act, and of all statements furnished in reference thereto.

Register and
index.
cf. Vict. Act,
1928, No. 3648,
ss. 15, 16; S.A.
Act, 1928, No.
1251, ss. 17,
18.

(2) On receiving any statement furnished pursuant to section six of this Act the Registrar-General shall cause the business name of the firm, individual, or corporation on whose behalf the statement was furnished to be entered in the register; and upon such entry being made the firm, individual, or corporation shall be deemed to be registered.

When firm,
individual or
corporation
deemed to be
registered.

(3) The Registrar-General shall upon registration send by post or deliver a certificate thereof to the firm, individual, or corporation registering.

The certificate shall be in or to the effect of the form prescribed.

(4)

Business Names.

(4) A certificate of the registration of the firm, individual, or corporation shall be kept exhibited in a conspicuous position at the principal place of business of such firm, individual, or corporation, and, if not kept so exhibited, every partner in the firm, or the individual or corporation (as the case may be) shall be liable on summary conviction to a penalty of not more than twenty pounds.

Inspection of
statements.
cf. 6 & 7 Geo.V,
c. 58, s. 16;
Vict. Act, 1928,
No. 3648, s. 17;
S.A. Act, 1928,
No. 1851, s. 19.

17. (1) Any person on payment of the prescribed fee may make a search in the register and index kept in pursuance of this Act or may inspect or make extracts from or a copy of the statements furnished in pursuance of this Act or filed in pursuance of any corresponding previous enactment.

Certificate
of registra-
tion, etc.

(2) Any person on payment of the prescribed fee may require a certificate of the registration or non-registration under a particular business name of any firm, individual, or corporation to be furnished or a copy of or extract from any statement furnished in pursuance of this Act or filed in pursuance of any corresponding previous enactment to be certified by the Registrar-General.

Evidence
of registra-
tion.

(3) The register referred to in section sixteen or a certificate of registration, or a copy of or extract from any statement furnished in pursuance of this Act or filed in pursuance of any corresponding previous enactment purporting to be signed and certified by the Registrar-General, shall in all courts, and before all persons having authority to hear, receive, and examine evidence, be admitted as prima facie evidence of the matter contained therein and of the fact and date of registration as shown thereon.

A certificate purporting to be signed by the Registrar-General, that a firm, individual, or corporation was not, on any date or during any period, registered under the business name specified in the certificate, shall likewise be admitted as prima facie evidence, according to its tenor, that the firm, individual, or corporation was not so registered.

Powers
of the
Registrar-
General.

18. (1) The Registrar-General may, on such evidence as to him appears sufficient, correct errors in any register, index or certificate:

Provided

Business Names.

Provided that in the correction of any such error he shall not erase or render illegible the original words and shall affix the date upon which such correction was made with his initials.

Every registration so corrected shall have the like validity and effect as if such error had not been made.

(2) The Registrar-General may, where an error in the register is corrected or the registration of any firm, individual, or corporation is cancelled, by notice under his hand, require the members of such firm, or such individual or corporation as the case may be, to deliver up the certificate of registration to be corrected or cancelled, as the case may be.

Any person who without reasonable excuse neglects or fails to deliver up any such certificate to the Registrar-General within the period specified in the notice shall be liable on summary conviction to a penalty not exceeding ten pounds.

19. Where any offence against this Act committed by a corporation is proved to have been committed with the consent or approval of, or to have been facilitated by any neglect on the part of, any director, manager, secretary, or other officer of the corporation, he, as well as the corporation, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly.

Offences
committed
by corpora-
tions.

20. Service at the address or where there is more than one place of business, at the address of the principal place of business shown in the statement furnished in pursuance of this Act or filed in pursuance of any corresponding previous enactment as the address or the address of the principal place of business, as the case may be, at which any firm, individual, or corporation registered under this Part is carrying on business of any communication or of notice of any writ, summons, plaint, pleading, order, or other document, proceeding, or process whatsoever in any action, suit, proceeding, or matter, either by leaving the same at such office or by sending the same by registered post postage prepaid addressed to such firm, individual, or corporation at such address shall be deemed to be service upon any partner of the firm or upon the individual or corporation, as the case may be.

Service of
summons.

PART

Business Names.

PART III.

USE OF CERTAIN WORDS IN THE NAMES, ETC., OF
FIRMS, ETC.

Certain
words not
to be used
in firm-
name.

cf. Vict. Act,
1928, No.
3648, s. 21.

21. Notwithstanding anything in any Act no firm, individual, or corporation required to register under Part II of this Act shall be so registered under a business name which includes the word "Royal" or the word "King" or the word "Queen" or the word "Crown" or the word "Empire" or the word "Imperial" or the word "Commonwealth" or any word signifying Royal or Government support or patronage, or any word or matter used in such manner as would imply or be likely to convey the impression that such firm, individual, or corporation is or will be wholly or partly authorised or supported by or connected with His Majesty's Dominions unless consent has been given to the use of such business name by the Governor; or which includes the words "State," "Australia," or "Australasia," or the name of any State if in the opinion of the Registrar-General the same is calculated to mislead:

Provided that nothing in this section shall prevent the continuance of the use by any firm, individual, or corporation or his or its successor in interest of the word "Commonwealth" in any name, style, title, or designation under which he or it was registered or traded or carried on business at the date of the commencement of this Act.

Words
"saving,"
"savings,"
etc., not to
be used.
cf. *Ibid.*
s. 22.

22. No person or firm not incorporated shall assume or use or continue to assume or use the word "saving" or "savings" or the words "savings bank" or "savings institution" or "savings department" or "savings section" as part of the designation or title or as a description of the business or of any department, section, or other part of the business of such person or firm.

Word
"banking,"
etc., not to
be used.
cf. *Ibid.*
s. 23.

23. (1) No person or firm not incorporated shall assume or use or continue to assume or use the title of "bank," "banker," "banking company," "banking house," "banking association," "banking institution," "trust," "trustee," "guarantee," or "fidelity," or
words

Business Names.

words of like import, in any way whatever in connection with the trade or business designation or title of such person or firm.

(2) No person or firm shall assume or use or continue to assume or use any business name of which the final word is the word "limited" or any combination of letters being or capable of being understood to be an abbreviation of the word "limited":

Provided that this subsection shall not apply where any such final word is, and is used in the business name as part of the corporate name of a corporation which is one of the partners carrying on business under such business name.

(3) Every person and every member of any firm guilty of committing, causing, directing, or authorising a breach of either this section or of section twenty-two of this Act shall be guilty of an offence, and shall be liable on summary conviction to a penalty of not more than ten pounds, and in the case of a continuing offence to a penalty of not more than ten pounds for every day such breach continues.

24. (1) No person or firm not incorporated shall use, nor shall any firm, individual, or corporation required to register under Part II of this Act be so registered under—

Persons or firms not to be registered under certain business or other names.

cf. Vict. Act, 1928, No. 3648, ss. 24, 25.

- (a) a business name identical with the business name of a firm, individual, or corporation already registered under Part II of this Act or identical with a firm-name registered under the Registration of Firms Act, 1902, at the commencement of this Act, or so nearly resembling any such name as to be calculated to deceive, except where the firm, individual, or corporation already so registered or the firm or person whose firm-name is so registered (as the case may be) is about to cease carrying on business, and signifies its or his consent in such manner as the Registrar-General requires; or

Registered business names.

(b)

Business Names.

(b) a name identical with that by which—

Names of
companies,
etc.

(i) a company in existence is already registered or deemed to be registered under the Companies Acts for the time being in force; or

Names of
societies,
etc.

(ii) a society in existence is already registered or deemed to be registered under the Co-operation Act or the Friendly Societies Acts for the time being in force,

or so nearly resembling any such name as to be calculated to deceive, or containing any words or combination of letters which are or is identical with the words or initial letters of the name by which a company or society in existence is already registered or deemed to be registered as aforesaid, or any words so nearly resembling the words or any of the words of any such name as to be calculated to deceive, except where the company or society in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar-General requires:

Provided that a company so consenting shall add to its name the words "in liquidation" within brackets, and the said words shall be deemed to be part of the name of the said company; or

Names of
foreign
companies
or societies.

(c) a name identical with the name of any company or society formed or incorporated outside New South Wales which carries on business within New South Wales and which has registered in the office of the Registrar-General in the manner specified in section seven of the Companies (Amendment) Act, 1906, or any enactment replacing that section, or so nearly resembling that name as to be calculated to deceive except where the said company or society is about to cease carrying on business in New South Wales and signifies its consent in such manner as the Registrar-General requires; or

(d)

Business Names.

- (d) a business name which, in the opinion of the Registrar-General, is offensive or blasphemous or likely to mislead the public as to the identity of any firm, individual, or corporation required to register or as to the nature of its or his business; or Misleading names.
- (e) a name which indicates or implies that the business carried on or proposed to be carried on is connected with gambling, fortune-telling, astrology, marriage agency, or any unlawful occupation. Unacceptable names.

(2) Where, in the opinion of the Registrar-General, owing to the nature of the business and the locality in which the same is carried on, the public are not likely to be misled, he may in his discretion register a firm, individual, or corporation, using a name identical with or similar to one already in use, but shall not so register any firm, individual or corporation where such registration would result in two or more businesses being carried on in the same locality under the same name.

25. Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a court of petty sessions holden before a stipendiary or police magistrate. Recovery of penalties.

26. (1) Any firm, individual, or corporation who or which through inadvertence or otherwise is registered under any business name prohibited or containing any word or words or combination of letters prohibited by this Act or who or which has been so registered under the Registration of Firms Act, 1902— Power to change prohibited name, etc. cf. Viet. Act, 1928, No. 3648, s. 26.

- (a) shall on the request in writing of the Registrar-General change his or its business name; and
- (b) shall comply with the provisions of Part II of this Act relating to the change of particulars registered in respect of firms, individuals, or corporations, so far as such provisions are applicable.

(2) The Registrar-General shall enter the new business name in the register in place of the former name and upon payment of the prescribed fees issue a certificate of registration altered to meet the circumstances of the case. Duty of Registrar-General.

(3)

Business Names.

Duty of
firms, etc.,
to take
necessary
steps to
change
name in
such cases.

(3) If any such firm, individual, or corporation registered under any business name prohibited or containing any word or words or combination of letters prohibited as aforesaid neglects or refuses to take forthwith all necessary steps to change his or its business name after being required by the Registrar-General by notice in writing to change the same every such individual or corporation and every member of such firm shall be guilty of an offence and shall be liable on summary conviction to a penalty of not more than five pounds and in the case of a continuing offence to a further penalty of not more than five pounds for every day such offence continues.

Saving.

(4) Nothing in this section shall affect any liability incurred by any firm, individual, or corporation under this or any other Act.

Regulations.

27. (1) Regulations not inconsistent with this Act may be made under the Conveyancing Act, 1919-1932, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed to carry this Act into effect, or to give effect to any power, function, duty, or authority under this Act, and without limiting the generality of the power conferred by this section the regulations may prescribe—

- (a) the fees to be paid to the Registrar-General under this Act;
- (b) the forms to be used under this Act (and all such forms or forms to the like effect may be used for the purposes of this Act, and shall be sufficient in law);
- (c) the duties of the Registrar-General for the purposes of this Act;
- (d) generally the conduct and regulation of registration under this Act.

(2) Such regulations may prescribe penalties not exceeding twenty pounds for any breach thereof.

In the name and on behalf of His Majesty I assent to this Act.

PHILIP GAME,
Governor.

Government House,
Sydney, 27th December, 1934.