



Business Names Registration Regulations 2011¹

Select Legislative Instrument 2011 No. 214

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Business Names Registration Act 2011*.

Dated 23 November 2011

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

NICK SHERRY
Minister for Small Business

Contents

1	Name of Regulations	2
2	Commencement	2
3	Definitions	2
4	Carrying on a business under unregistered business name — offence does not apply	3
5	Not including business name in written communications — offence does not apply	4
6	Not displaying business name at places open to the public — offence does not apply	5
7	Details that may be included in Register	5
8	Details of notified successor that may be included in Register	6
9	Accessing Register by request	6
10	Publicly available information	7
11	Certain information to be made available to government bodies	8
12	Destruction or disposal of documents	8
13	Delegation of powers	9
14	Persons who may receive notice for entities that have ceased to exist	9

1 Name of Regulations

These Regulations are the *Business Names Registration Regulations 2011*.

2 Commencement

These Regulations commence on the commencement of Part 2 of the *Business Names Registration Act 2011*.

3 Definitions

In these Regulations:

Act means the *Business Names Registration Act 2011*.

alternative contact details means contact details that:

- (a) are provided by an entity to which a business name is, or is to be, registered; and
- (b) are not required by the Act or these Regulations; and
- (c) are provided for use by ASIC or a body mentioned in section 62 of the Act.

Register means the Business Names Register established and maintained under subsection 22 (1) of the Act.

Note Other words used in these Regulations have the meaning given by section 3 of the Act, for example:

- ABN
- ASIC
- business name
- entity
- notified successor.

4 Carrying on a business under unregistered business name — offence does not apply

- (1) For paragraph 18 (2) (h) of the Act, a circumstance in which the offence in subsection 18 (1) of the Act does not apply is that an entity is carrying on a business under the domain name form of a business name that:
 - (a) is registered to the entity; and
 - (b) the entity is not prevented from using as a domain name.

Example for paragraph (a)

Carrying on a business under ‘fredsfish.com.au’ if the business name registered to an entity is ‘Fred’s Fish’.

Example for paragraph (b)

If the business name registered to an entity is ‘Fred’s Fish’, it does not automatically follow that the entity has access to all forms of ‘Fred’s Fish’ as domain names. The entity may have the domain name ‘fredsfish.com.au’ while a different entity may have the domain name ‘fredsfish.org’, which is a domain name that the first entity would be prevented from using.

- (2) For paragraph 18 (2) (h) of the Act, a circumstance in which the offence in subsection 18 (1) of the Act does not apply is that an entity is carrying on a business under a business name resulting from excluding one or more host names or domain extensions of a business name that is:
- (a) a domain name; and
 - (b) registered to the entity.

Examples

- 1 Carrying on a business under the name 'Fred's Fish' or 'fredsfish.com' if the business name registered to the entity is 'fredsfish.com.au'.
- 2 'www' is a host name.
- 3 'net', 'org' and 'com' are domain extensions.

5 Not including business name in written communications — offence does not apply

- (1) For paragraph 19 (4) (i) of the Act, a circumstance in which the offence in subsection 19 (1) of the Act does not apply is the inclusion by an entity of a domain name form of a business name registered to the entity, in a business document connected with carrying on the business under the name.
- (2) For paragraph 19 (4) (i) of the Act, a circumstance in which the offence in subsection 19 (1) of the Act does not apply is the inclusion by an entity of a business name resulting from excluding one or more host names or domain extensions of a business name that is:
- (a) a domain name; and
 - (b) registered to the entity;
- in a business document connected with carrying on the business under the name.

Examples

- 1 'www' is a host name.
- 2 'net', 'org' and 'com' are domain extensions.

6 Not displaying business name at places open to the public — offence does not apply

For paragraph 20 (2) (i) of the Act, a circumstance in which the offence in subsection 20 (1) of the Act does not apply is the prominent display by an entity, at every place open to the public at which the entity carries on the business, of either of the following:

- (a) a domain name form of a business name registered to the entity;
- (b) a business name resulting from excluding one or more host names or domain extensions of a business name that is:
 - (i) a domain name; and
 - (ii) registered to the entity.

Examples

- 1 'www' is a host name.
- 2 'net', 'org' and 'com' are domain extensions.

7 Details that may be included in Register

- (1) For subsection 33 (7) of the Act, the following details are prescribed:
 - (a) contact details of an entity;
 - (b) any alternative contact details provided by an entity;
 - (c) the home address of an entity that is an individual;
 - (d) if a home address is provided as the principal place of business in Australia of an entity that is an individual — that the address is a home address;
 - (e) the date and place of birth of an entity that is an individual;
 - (f) whether a business name is currently registered to an entity;
 - (g) whether the registration of a business name to an entity has been cancelled;
 - (h) whether an application has been lodged for review of a decision to cancel the registration of a business name to an entity;

- (i) a record of the day when a detail mentioned in subsection 33 (1) of the Act or in this subregulation was included in the Register.
- (2) A reference in subregulation (1) to an entity is a reference to an entity that has or has had a business name registered to the entity.

Note Subsection 33 (7) of the Act provides that the Register may include prescribed details. Other details to be included in the Register are set out in subsection 33 (1) of the Act and in regulations 4 and 5 of the *Business Names Registration (Transitional and Consequential Provisions) Regulations 2011*.

8 Details of notified successor that may be included in Register

For subsection 40 (4) of the Act, the following details are prescribed:

- (a) the contact details of the notified successor;
- (b) any alternative contact details provided by the notified successor;
- (c) the way in which the notified successor is expected to inherit assets used by a deceased person in carrying on a business under the business name;
- (d) the relationship of the notified successor to the deceased person;
- (e) the date and place of birth of the notified successor if the notified successor is an entity that is an individual;
- (f) the notified successor's ABN, if any.

Note Subsection 40 (4) of the Act provides that ASIC may enter the name of an entity as a notified successor in relation to a business name, and other prescribed details, if the entity lodges a notice with ASIC in accordance with subsections 40 (1) and (2) of the Act.

9 Accessing Register by request

For subsection 60 (5) of the Act, the following details are to be excised from a copy of an entry in the Register before it is given to any person:

- (a) the date and place of birth of:
 - (i) an entity that is an individual; or

- (ii) any other person, if those details were provided in accordance with subsection 23 (6) of the Act;
- (b) any alternative contact details provided by an entity;
- (c) the home address of an entity that is an individual;
- (d) if a home address is provided as the principal place of business in Australia of an entity that is an individual — all of the address other than the suburb and the State or Territory in which the entity lives;
- (e) if the entry identifies a notified successor that ASIC believes is not itself an entity — the details for the notified successor mentioned in paragraphs 8 (c), (d) and (e).

Note Details that ASIC must not disclose under subsection 60 (6) of the Act must also be excised from the copy of the entry — see paragraph 60 (4) (b) of the Act. Also, personal information on the Register that was previously suppressed under State or Territory registration laws cannot be disclosed in a copy of an entry — see item 26 of Schedule 1 to the *Business Names Registration (Transitional and Consequential Provisions) Act 2011*.

10 Publicly available information

- (1) For section 61 of the Act, the following details about a particular business name or entity are prescribed as details that ASIC must make publicly available on the internet or otherwise free of charge:
 - (a) the business name;
 - (b) the entity's name or, if more than one entity jointly registers a name, the entities to which a business name is registered;
 - (c) the entity's ABN, if any;
 - (d) the address of the entity's principal place of business in Australia;
 - (e) an address in Australia for service of documents;
 - (f) whether the business name is currently registered and the date its registration is due for renewal;
 - (g) whether the business name is currently registered or has been cancelled;
 - (h) whether an application has been lodged for review of a decision to cancel the registration of the business name to the entity;

- (i) State or Territory of registration, and State or Territory registration number;
- (j) date of registration;
- (k) names of debtor representative and notified successor;
- (l) any word or expression nominated by ASIC in accordance with item 18 of Schedule 1 to the *Business Names Registration (Transitional and Consequential Provisions) Act 2011*.

(2) However, if:

- (a) the entity is an individual; and
- (b) the address mentioned in paragraph (1) (d) is the entity's home address;

ASIC must only make publicly available the suburb and the State or Territory in which the entity lives.

11 Certain information to be made available to government bodies

For section 62 of the Act, the details recorded in the Register which ASIC must make available to:

- (a) a government body; or
- (b) an intelligence or security agency;

in accordance with that section are all details recorded in the Register.

Examples

- 1 An entity's alternative contact details.
- 2 An individual's date of birth.
- 3 An individual's place of birth.
- 4 The home address of an entity that is an individual.

12 Destruction or disposal of documents

For subparagraph 74 (b) (i) of the Act, the period during which a document must be in ASIC's possession is 7 years.

13 Delegation of powers

For subsection 80 (1) of the Act, the Minister's functions and powers under subsection 28 (2) of the Act are prescribed.

14 Persons who may receive notice for entities that have ceased to exist

- (1) For section 89 of the Act, a person or class of persons mentioned in column 3 of an item in the table is prescribed in relation to the matter mentioned in column 2 of the item.

Item	Matter	Class of persons
1	For notices to be taken to have been given to an entity that was a body corporate that has been deregistered and was being wound up immediately before its deregistration	Liquidators appointed to wind up the body corporate
2	For notices to be taken to have been given to an entity that was a body corporate that has been deregistered and was not being wound up immediately before deregistration	Persons who were directors of the body corporate immediately before its deregistration
3	For notices to be taken to have been given to an entity that was a partnership	A person nominated in accordance with section 82 of the Act as the principal contact of the partnership If no person has been nominated in accordance with section 82 of the Act, a person with the address in Australia for service of documents to the entity that was entered on the Register as required by paragraph 33 (1) (d) of the Act

Regulation 14

Item	Matter	Class of persons
4	For notices to be taken to have been given to an entity that was an unincorporated association or body	<p>A person nominated in accordance with section 84 of the Act as the principal contact of the association</p> <p>If no person has been nominated in accordance with section 84 of the Act, a person with the address in Australia for service of documents to the entity that was entered on the Register as required by paragraph 33 (1) (d) of the Act</p>
5	For notices to be taken to have been given to an entity that was a trust	<p>A person nominated in accordance with section 86 of the Act as the principal contact of the trust</p> <p>If no person has been nominated in accordance with section 86 of the Act, a person with the address in Australia for service of documents, to the entity, that was entered on the Register as required by paragraph 33 (1) (d) of the Act</p>

(2) In this regulation:

deregistered has the meaning given by section 9 of the *Corporations Act 2001*.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.