

EXPLANATORY STATEMENT

SELECT LEGISLATIVE INSTRUMENT 2012 No. 88

Issued by authority of the Parliamentary Secretary to the Treasurer

Business Names Registration Act 2011

Business Names Registration Amendment Regulation 2012 (No. 1)

Section 90 of the *Business Names Registration Act 2011* (the Registration Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Registration Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Registration Act.

The Registration Act forms part of the National Business Names Registration legislative package (legislative package) which also includes the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* (the Transitional Act) and the *Business Names Registration (Fees) Act 2011* (the Fees Act). A number of other legislative instruments will also form part of the legislative package.

This legislative package establishes a National Business Names Register (the National Register) to be operated by the Australian Securities and Investments Commission (ASIC), and is a key regulatory reform initiative of the Council of Australian Governments. The National Register will replace the business names registers currently operated by each State and Territory. The main purpose of business name registration is to protect consumers, by allowing them to identify the entity(s) behind a business (trading) name.

The *Business Names Registration Regulations 2011* (the Principal Regulations) support the Registration Act in setting out the rules for determining which names are available to businesses. The Principal Regulations apply to the regulation of business names and to related matters, including the establishment of a national registration system for business names.

The Principal Regulations contain details of: exceptions to the offences contained in the Registration Act; information that can be included in the National Register relating to entities which have business names registered to them; types of personal information that is to be removed from extracts provided to the public; and information that is publicly available.

The *Business Names Registration Amendment Regulation 2012 (No. 1)* (the Amendment Regulation) makes a number of minor and technical changes to the Principal Regulations, most significantly to ensure the protection from release of personal information in searches of the National Register, and to permit the delegation of some ministerial functions under the Registration Act.

Details of the Amendment Regulation are set out in the Attachment.

The Amendment Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Amendment Regulation commences on 28 May 2012, at the same time as the commencement of Part 2 of the Registration Act.

Authority: Section 90 of the *Business Names Registration Act 2011*

DETAILS OF THE *BUSINESS NAMES REGISTRATION AMENDMENT REGULATION 2012 (NO. 1)*

Section 1 – Name of Regulation

This section provides that the name of the Regulation is the *Business Names Registration Amendment Regulation 2012 (No. 1)*.

Section 2 – Commencement

This section provides for the Amendment Regulation to commence on 28 May 2012, at the same time as the commencement of Part 2 of the *Business Names Registration Act 2011* (the Registration Act).

Section 3 – Amendment of *Business Names Registration Regulations 2011*

This section provides that the *Business Names Registration Regulations 2011* (the Principal Regulations) are amended as set out in Schedule 1 of the Amendment Regulation.

Schedule 1 – Amendments

Item [1] - Paragraph 9(e)

Subsection 60(1) of the Registration Act provides that a person can lodge an application with ASIC for copies of entries on the Register relating to a particular business name or entity.

Subsection 60(5) provides that the regulations may prescribe that certain information be excised from any copy of an entry that is provided to a person, or a person in a prescribed class.

The Registration Act requires that personal information such as a person's date of birth and place of birth be included in an application for registration of a business name.

Regulation 9 of the Principal Regulations lists information that must be excised from a copy of an entry on the Register before it is released publicly.

A notified successor is someone who informs ASIC that they believe that they will inherit the registration of a business name. ASIC is required to register details of the notified successor on the Register.

This regulation currently provides that when a notified successor on the Register is not an entity (as defined in the Registration Act), ASIC must also remove the information contained in paragraphs 8(c), 8(d) and 8(e). Given the broad definition of entity in the Registration Act (see section 5 of the Registration Act), it is not possible that a notified successor not be an entity.

As all notified successors will be entities, item 1 provides that the information contained in paragraphs 8(c), 8(d) and 8(e) will be removed from all copies of the extracts of the Register.

If the entry identifies a notified successor, the details of the notified successor related to the way they would inherit assets, their relationship to the deceased and their place and date of birth (see paragraphs 8(c), (d), and (e)) will also be excised.

Item [2] - Subregulation 10(2)

This item makes a drafting change to remove the word “however” from subregulation 10.

Item [3] - After subregulation 10(2)

Section 60 permits ASIC to make publicly available for a fee information contained on the Register.

Section 61 of the Registration Act provides that ASIC must make available to the public and free of charge, a limited amount of information that is prescribed in the regulations.

Under subsection 60(6), if a person makes an application to ASIC to not disclose information relating to a business name registered to the person or information relating to the person, ASIC is able to not disclose that information for searches made under section 60. Currently, ASIC does not have the ability to withhold disclosure of such information for searches under section 61.

Item 3 provides that any information that ASIC decides not to disclose under subsection 60(6) for paid searches under section 60 must also be not disclosed for free searches requested under section 61 of the Registration Act.

Item [4] - Regulation 13

The Registration Act provides the Minister with a number of functions and permits the Minister to delegate these functions to an SES employee of ASIC.

Subsection 27(2) of the Registration Act allows the Minister to determine in writing that a word or expression that is otherwise considered undesirable is available to an entity.

Subsection 28(2) of the Registration Act allows the Minister to determine in writing that a word or expression that is otherwise restricted is available to an entity.

The Principal Regulations provide that the Minister’s functions under subsection 27(2) are prescribed such that the Minister can delegate these functions.

Item 4 provides that in addition to subsection 27(2), the Minister’s functions under subsection 28(2) are prescribed such that the Minister can delegate these functions.

Item [5] - After Regulation 14

This item inserts a new section 15 after regulation 14.

Included in the National Business Names Register will be registers of business names that have been notified by the States and Territories to ASIC. Schedule 1 of the Registration Act contains the list of notified State and Territory Registers. Subsection 6(2) of the Registration Act permits additional registers to be added to Schedule 1. The new section 15 adds the register of limited partnerships established under the *Partnership Act 1891* (Qld) to Schedule 1.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

BUSINESS NAMES REGISTRATION AMENDMENT REGULATION 2012(No. 1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Business Names Registration Amendment Regulation 2012* contains minor and technical amendments to the *Business Names Registration Regulations 2011* relating to: information available from searches of the business names register established by the *Business Names Registration Act 2011*; the protection of personal information; the delegation of ministerial functions to ASIC and an addition of a notified State register.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms, with the exception of the right to privacy and reputation. The Legislative Instrument ensures the protection from disclosure of personal confidential information which the person has not authorised the Australian Securities and Investments Commission to publicly release. This strengthens the right to privacy and reputation.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Parliamentary Secretary to the Treasurer