

EXPLANATORY STATEMENT

Select Legislative Instrument No. 41, 2014

Issued by authority of the Treasurer

A New Tax System (Australian Business Number) Act 1999

*A New Tax System (Australian Business Number) Amendment
(Display of Trading Names) Regulation 2014*

Section 31 of the *A New Tax System (Australian Business Number) Act 1999* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act establishes the Australian Business Register (ABR) and provides a Commonwealth-based system for issuing businesses with unique identifying numbers (the Australian Business Number or ABN), so that they can identify themselves reliably in all their dealings with the Australian Government, and for all other Commonwealth purposes (including for the purposes of taxation laws).

Subsection 26(3) of the Act specifies the details of an entity included on the ABR that the Australian Business Registrar (the Registrar) may publicly display on the ABR, including any details prescribed in the regulations for the purposes of section 26 of the Act (as provided for in paragraph 26(3)(k) of the Act).

Regulation 8 of the *A New Tax System (Australian Business Number) Regulations 1999* (the Principal Regulations) prescribes the details for the purposes of paragraph 26(3)(k) of the Act. These details include providing that the Registrar may, until 30 June 2014, display trading names that had appeared on the ABR prior to the commencement of the *Business Names Registration (Transitional and Consequential Provisions) Act 2011*.

The purpose of the Regulation is to amend the Principal Regulations to provide that unregistered business names (known as trading names) that were on the ABR before 28 May 2012 can continue to be displayed on the ABR until 31 October 2018.

Although the Act provides for businesses to register on the ABR in order to obtain a unique Australia-wide business *number*, the registration of business *names* has historically been the responsibility of the States and Territories. Given the different business name registration requirements and systems across the States and Territories, the ABR has historically allowed entities to include any trading names on their ABR entry, irrespective of whether those names were registered under a State or Territory-based scheme or not.

As part of the Council of Australia Government's reforms outlined in the National Partnership to Deliver a Seamless National Economy, on 28 May 2012 responsibility for business names registration was transferred to the Commonwealth with the launch

of the Australian Securities and Investments Commission's (ASIC's) national Business Names Register. ASIC's Business Names Register is intended to be the primary source of publicly available information regarding registered business names and business name holders in Australia. As a result, it is intended that the ABR will at some point cease to display trading names.

Following the introduction of the new national business names registration regime, a one year transition period allowed trading names to continue to be displayed on the ABR until 28 May 2013. Many businesses use the ABR to verify the identity of business entities with which they conduct business. However, a large number of businesses have not yet registered their business names on the national Business Names Register during this transitional period. The *A New Tax System (Australian Business Number) Amendment Regulation 2012 (No. 1)* extended this transition period to 30 June 2014.

The extension of the transition period to 30 June 2014 was not sufficient to allow businesses to register their trading names as business names on ASIC's Business Names Register. If the ABR ceased to display these unregistered names from 30 June 2014, this could have significant adverse impacts on business. This Regulation therefore extends the transitional period until 31 October 2018, thereby allowing unregistered trading names which are currently displayed on the ABR to continue to be displayed and hence be used by businesses for identity verification purposes.

The amendment to the principal Regulations specifies that the Registrar can make available on the public register until 31 October 2018 a name used for business purposes which appeared on the ABR prior to 28 May 2012.

Two weeks of public consultation has been conducted on the draft Regulation, as the amendments are of a minor nature. Treasury received two responses before the 11 March 2014 deadline supporting the extension of the transition period to 2018.

Details of the Regulation are included in [Attachment](#).

The *A New Tax System (Australian Business Number) Act 1999* does not specify any conditions that need to be satisfied before the power to make the Regulation is exercised.

The Regulation commences on the day after it is registered.

Details of the *A New Tax System (Australian Business Number) Amendment (Display of Trading Names) Regulation 2014*

Section 1 — Name of Regulation

This section specifies that the name of the Regulation is the *A New Tax System (Australian Business Number) Amendment (Display of Trading Names) Regulation 2014* (the Regulation).

Section 2 — Commencement

This section provides for the Regulation to commence the day after registration.

Section 3 — Authority

This section states that the Regulation is made under the *A New Tax System (Australian Business Number) Act 1999*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Amendments

Schedule 1

Schedule 1 would amend Regulation 8 of the *A New Tax System (Australian Business Number) Regulations 1999* to prescribe that the Registrar may, until 31 October 2018, display a name used for business purposes which was on the Australian Business Register (ABR) prior to the commencement of Part 2 of Schedule 2 of the *Business Names Registration (Transitional and Consequential Provisions) Act 2011*. This encompasses the concept of trading names that currently appear on the ABR.

Statement of Compatibility with Human Rights

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

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 Legislative Instrument allows unregistered business names displayed on the ABR up to 28 May 2013 to continue to be easily displayed on the ABR until 31 October 2018.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

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