Business Names Registration (Availability of Names) Determination 20151

*Business Names Registration Act 2011*

I, BRUCE BILLSON, Acting Assistant Treasurer, make the following determination under sections 26 and 27 and subsection 28 (1) of the *Business Names Registration Act 2011.*

Dated: 14 July 2015

BRUCE BILLSON

Acting Assistant Treasurer

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Part 1 Preliminary

1 Name of determination

 This determination is the *Business Names Registration (Availability of Names) Determination 2015*.

2 Commencement

 This determination commences the business day after it is registered.

3 Definitions

 In this determination, unless the contrary intention appears:

***Act*** means the *Business Names Registration Act 2011*.

***APRA*** means the Australian Prudential Regulation Authority.

***character*** means a letter, number or other written symbol.

***company name*** means a name that is reserved or registered under the *Corporations Act 2001* for another body.

*Note*Other words used in this determination have the meaning given by section 3 of the Act. For example:

* ASIC
* available
* business name
* entity.

4 Determining if business name is available to an entity

 (1) For section 26 of the Act, the rules for determining whether a business name is identical or nearly identical to another name are set out in Part 2.

 (2) For subsection 27 (1) of the Act, the kinds of business name that are undesirable for the purposes of the Act are set out in Part 3.

 (3) For subsection 28 (1) of the Act, a word or expression set out in Part 4 is restricted.

Part 2 Rules for determining whether business names are identical or nearly identical to other names

Division 1 Rules for determining whether business names are identical or nearly identical to names other than company names

5A Determining if business names are identical or nearly identical

 A business name is identical or nearly identical to another name (other than a company name) if, and only if:

 (a) after comparing the business name with the other name by:

 (i) disregarding the matters set out in subsection 5(1); and

 (ii) applying subsection 6(1);

 the names are the same; or

 (b) subsection 6(2) applies.

5 Matters to be disregarded

 (1) The following matters are to be disregarded:

 (a) the use of the definite or indefinite article unless it is the whole name;

 (b) the use of ‘Association’, ‘Co-operative’, ‘Incorporated’, ‘Limited’, ‘Ltd’, ‘No Liability’, ‘NL’, ‘Proprietary’ or ‘Pty’ in one or both names;

 (c) whether a word is in the plural or singular number in one or both names;

 (d) the size of characters, and the type and case of letters, any accents, spaces between characters and punctuation marks, used in one or both names;

 (e) the order of words in the names;

 (f) whether one or both names includes a host name such as ‘www’ or a domain extension such as ‘net’, ‘org’ or ‘com’.

 (2) For paragraph (1) (e), each of the following is to be treated as a word:

 (a) a character separated by spaces;

 (b) a group of characters separated by spaces;

 (c) an abbreviation;

 (d) an acronym.

Examples for paragraph (b)

1   XYZ123 is a word.

2   XYZ 123 is 2 words.

6 Matters to be considered

 (1) A word or expression in an item in Schedule 1 is to be taken to be the same as each other word or expression in the item.

 (2) A business name is identical or nearly identical to another name if, despite the characters used in the name, it may be pronounced the same as the other name.

Examples

1   ‘Creative@Work’ is the same as ‘Kre8tive at Work’.

2   ‘100% Cats’ is the same as ‘100 percent Kats’.

3   ‘Dollar Shop’ is the same as ‘$ Shop’.

 (3) For subsection (1), each of the following is to be treated as a word:

 (a) a character separated by spaces;

 (b) a group of characters separated by spaces;

 (c) an abbreviation.

Division 2 Rules for determining whether business names are identical or nearly identical to company names

7 Determining if business names are identical or nearly identical to company names

 A business name is identical or nearly identical to a company name if, and only if, the names are the same after comparing the business name with the company name by applying the rules in Part 1 of Schedule 6 to the *Corporations Regulations 2001* (Rules for ascertaining whether names are identical) as if they had been made for subparagraph 25 (a) (ii) of the Act.

*Note*   Part 1 of Schedule 6 to the *Corporations Regulations 2001* sets out matters to be disregarded in comparing one name with another for the purposes of paragraph 147 (1) (a) or (b) or 601DC (1) (a) or (b) of the *Corporations Act 2001*.

Part 3 Kinds of name that are undesirable

8 Characteristics to be considered

 (1) A business name is undesirable if the name has one or more of the characteristics in the table.

|  |  |
| --- | --- |
| Item | Characteristic |
| 1 | In the opinion of ASIC, it is likely to be offensive to: |
|  |  (a) members of the public; or (b) members of any section of the public |
| 2 | In the context in which it is proposed to be used, it suggests a connection with any of the following that does not exist: |
|  |  (a) the Crown; (b) the Commonwealth Government; (c) the Government of a State or Territory; |
|  |  (d) a municipal or other local authority; (e) a department, authority or instrumentality of the Commonwealth Government; (f) a department, authority or instrumentality of the Government of a State or Territory;  |
|  |  (g) the government of a foreign country; (h) a member of the Royal Family; (i) the receipt of Royal patronage;  |
|  |  (j) a charitable organisation; (k) an ex-service personnel organisation or ex-service personnel generally; (l) Sir Donald Bradman; |
|  |  (m) Mary MacKillop; (n) the United Nations |
| 3 | In the context in which it is proposed to be used, it suggests that the members of an organisation are totally or partially incapacitated and those members are not so affected |

 (2) However, if:

 (a) a business name includes the word ‘Commonwealth’ or ‘Federal’; and

 (b) ASIC is satisfied that the word is used in a geographical context;

the business name is not undesirable because of the use of the word.

Example

Commonwealth Avenue Pizza Parlour would not be an undesirable business name as Commonwealth Avenue is a geographical location.

Part 4 Restricted words and expressions

9 Restricted words and expressions—Part 1 of Schedule 2

 (1) A word or expression mentioned in an item in Part 1 of Schedule 2 is a restricted word or expression in relation to entities and businesses unless the Minister has given written consent to the use of the word or expression.

 (2) A word or expression that has the same or a similar meaning to a word or expression mentioned in an item in Part 1 of Schedule 2 is a restricted word or expression in relation to entities and businesses unless the Minister has given written consent to the use of the word or expression.

 (3) An abbreviation of a restricted word or expression is a restricted word or expression.

*Note*Other Commonwealth, State or Territory legislation may limit trading in that jurisdiction under names containing specified words or expressions. However, such a word or expression is not restricted under this determination unless it appears in Schedule 2.

 (4) A word or expression in item 113, 117, 123, 135, 141, 142 or 143 of Schedule 2 is not a restricted word or expression if, because of the Act under which it is incorporated or registered, it must be included in a business name held by:

 (a) a registrable Australian body;

 (b) a registered Australian body;

 (c) a company;

 (d) a registered foreign company; or

 (e) a foreign company.

10 Restricted words and expressions—Parts 2 and 3 of Schedule 2

 (1) A word or expression mentioned in an item in Part 2 of Schedule 2 is a restricted word or expression in relation to entities and businesses unless the Minister mentioned in the item has given written consent to the use of the word or expression.

 (2) A word or expression that has the same or a similar meaning to a word or expression mentioned in an item in Part 2 of Schedule 2 is a restricted word or expression in relation to entities and businesses unless the Minister mentioned in the item has given written consent to the use of the word or expression.

 (3) A word or expression mentioned in an item in Part 3 of Schedule 2 is a restricted word or expression in relation to entities and businesses unless the public authority or agency mentioned in the item has given written consent to the use of the word or expression.

 (4) A word or expression (whether or not in English) that has the same or a similar meaning to a word or expression mentioned in an item in Part 3 of Schedule 2 is a restricted word or expression in relation to entities and businesses unless the public authority or agency mentioned in the item has given written consent to the use of the word or expression.

 (5) Subsections (1) to (4) also apply to:

 (a) a group of characters; and

 (b) characters, words and expressions that are not in English; and

 (c) characters, words and expressions used:

 (i) as part of another word or expression; or

 (ii) in combination with other words or characters.

 (6) However:

 (a) a word or expression mentioned in Part 3 of Schedule 2 is not a restricted word or expression if ASIC is satisfied that it is used in a geographical context; and

 (b) the letters ADI are not a restricted word if they are used as part of another word.

Example

The letters ***adi*** appear in the word ***traditional***. This section does not apply to use of the word ***traditional***.

 (7) A written consent does not need to refer specifically to the use of the word or expression in the name, or in business names generally.

Schedule 1 Words and expressions taken to be the same

(subsection 6 (1))

| Item | Word or expression |
| --- | --- |
| 101 | accom, accommodation, holiday accommodation |
| 102 | holiday apartments, holiday units |
| 103 | b & b, bed and breakfast, |
| 104 | hotel, inn  |
| 105 | motel, motor inn  |
| 106 | airlines, air services, aviation, aviation services |
| 107 | aquatic centre, aquatics, swimming pool, pool  |
| 108 | art, art gallery, artworks, fine art, gallery, art centre, art service, art solution |
| 109 | cakes, cake shop, cupcakes |
| 110 | pastries, patisserie |
| 111 | bakehouse, bakery, bakers |
| 112 | bread, hot bread, hot bread shop |
| 113 | beauty, beauty boutique, beauty clinic, beauty salon, beauty studio, beauty therapy, beauty services, beauty centre |
| 114 | nails, nailz |
| 115 | body care, skincare, skin therapy |
| 116 | spray tan, spray tanning, tanning |
| 117 | bicycles, bikes, cycles |
| 118 | build, builders, buildings, building services, construct, constructions, construction services, fabrications, developments |
| 119 | homes, quality homes, houses |
| 120 | carpenters, carpentry, carpentry services, carpentry solution |
| 121 | joiner, joinery |
| 122 | bricklayers, bricklaying, bricklaying services, blocklaying |
| 123 | additions, extensions |
| 124 | home improvements, home renovations, renovate, renovations, renovators |
| 125 | buses, bus service, coaches, coach service |
| 126 | dog grooming, dog wash, grooming, pet grooming |
| 127 | caterers, catering, catering services |
| 128 | ceramics, ceramic tiling, tiles, tiling, tiling services, tiling solution |
| 129 | charcoal chicken, chicken |
| 130 | child care, child care centre, children's centre, childrens centre, day care, family day care, long day care centre, day care centre |
| 131 | kindergarten, kindy, pre-school, preschool |
| 132 | domestic cleaning, domestic cleaning services, home cleaning, home cleaning services |
| 133 | carpet cleaners, carpet cleaning |
| 134 | apparel, clothes, clothing, wear |
| 135 | alterations, clothing alterations, dressmaking |
| 136 | boutique, couture, creations, fashion, fashion boutique, fashions |
| 137 | barista, coffee, espresso |
| 138 | paints, paint supplies |
| 139 | perfumes, scents |
| 140 | artisans, crafts, handcrafts |
| 141 | blinds, curtains |
| 142 | academy of dance, dance academy, dance centre, dance studio, school of dance, dance, dance school |
| 143 | master painters, painters, painting, painting contractors, painting service, painting solutions |
| 144 | painters and decorators, painting and decorating, painting and decorating services |
| 145 | doors, door services |
| 146 | garage doors, roller doors |
| 147 | earthmoving, excavations, earthworks |
| 148 | bobcat and tipper hire, bobcat hire, bobcats, diggers, earthmovers, mini diggers, tipper hire |
| 149 | cafe, cafe bar, caffe, kafe |
| 150 | diner, dining |
| 151 | eatery, eats |
| 152 | restaurant, ristorante |
| 153 | fast food, food, food bar, food service |
| 154 | snack bar, snacks |
| 155 | takeaway, take away food |
| 156 | pizza, pizza bar, pizzeria |
| 157 | seafood, seafood restaurant |
| 158 | sandwich bar, sandwiches |
| 159 | coffee bar, coffee house, coffee lounge, coffee shop, espresso bar |
| 160 | elec, electrical, electrical service, electricians, electrics, electrix, electronic services, electronic, electrical solutions |
| 161 | exhaust, exhaust centre, mufflers |
| 162 | credit, finance, lending, loan centre, loan office, loans, money, financial, finance solutions |
| 163 | firearms, guns |
| 164 | fitness centre, gym |
| 165 | exercise, fit, fitness, workout |
| 166 | mats, rugs, carpet |
| 167 | blooms, flora, florist, flowers, flower shop, floral |
| 168 | food market, food store |
| 169 | fresh produce, produce |
| 170 | funeral directors, funerals, funeral services |
| 171 | &, and |
| 172 | fine furniture, furniture |
| 173 | garden care, garden design, gardener, gardening, garden maintenance, garden services, garden solutions, garden, gardening service, garden centre |
| 174 | tree lopping, tree lopping service |
| 175 | yard maintenance, yard services |
| 176 | landscape design, landscapes, landscape services, landscaping, landscaping services |
| 177 | glass, glass and glazing, glass service, glazing |
| 178 | leadlight, stained glass |
| 179 | grocer, grocery, grocery store, supermarket |
| 180 | milk bar, mini mart, mixed business |
| 181 | cuts, cutz, hair, hair boutique, hair cut, hair design, hairdresser, hairdressing, hairdressing salon, hair fashions, hair salon, hair studio, hair stylist, salon |
| 182 | @, at |
| 183 | caps, hats |
| 184 | audio, hi fi |
| 185 | assurance, insurance, insure, insurance services, insurance solutions |
| 186 | fashion jewellery, fine jewellery, gems, jewellers, jewellery, jewelry, jewels |
| 187 | %, percent |
| 188 | coin laundry, laundrette, laundromat, laundry, laundry service |
| 189 | lawyers, legal, legal services, solicitors, law |
| 190 | limolimousines, limousine service |
| 191 | bottle shop, cellars, liquor, liquor store |
| 192 | cruisers, marine, yacht, marine service |
| 193 | boat hire, boating, charters, fishing charters |
| 194 | butcher, butchery |
| 195 | fresh meats, meat market, meats, meat supply, quality meats |
| 196 | automotive, automotive service centre, automotive services, auto service, auto service centre |
| 197 | automotive repairs, auto repairs, car repairs, motor repairs |
| 198 | mechanic, mechanical, mechanical repairs, mechanical services, mechanics |
| 199 | clinic, health care, medical centre, medical practice, medical services, medicine, medicine centre, practice, surgery, health, medical, medical clinic, medicine clinic |
| 200 | nurses, nursing |
| 201 | automobiles, autos, auto sales, cars, car sales, motor group, motors, vehicle |
| 202 | moto, motorcycles |
| 203 | lawn care, lawnmowing, lawn mowing service, lawns, mow, mowing, mowing service |
| 204 | music, music centre, music school |
| 205 | natural therapies, natural therapy centre, remedial therapy, therapeutics, therapies, therapy centre, therapy, therapy clinic |
| 206 | massage centre, massage therapy, remedial massage, sports massage, therapeutic massage, massage |
| 207 | naturopath, naturopathic clinic, naturopathy |
| 208 | news, newsagency, newsagent |
| 209 | eyewear, optical, optical services, specs, eye, eye clinic |
| 210 | optometrists, optometry |
| 211 | auto body repairs, body repairs, body shop, body works, crash repairs, dent removal, motor body repairs, panel beating, panels, panel works, smash repairs, detailing |
| 212 | concrete pumping, concreting, crete, formwork, concrete, crete service, concrete services, concreting services, crete solution |
| 213 | brick paving, pave, paving |
| 214 | pest control, pest control services, pest management, pest management service, pest |
| 215 | fuel, petrol, petroleum, diesel |
| 216 | pets, pet shop |
| 217 | chemist, dispensary, drug store, pharmacy |
| 218 | photo, photographer, photographics, photography |
| 219 | pics, pix, shots, snaps |
| 220 | plumbers, plumbing, plumbing contractors, plumbing services, plumbing solutions |
| 221 | drainage, drainage services, drain cleaning, draining |
| 222 | gasfitter, gasfitting, gas services |
| 223 | guttering, gutters |
| 224 | pub, tavern |
| 225 | bar, lounge, saloon |
| 226 | real estate, real estate group, real estate services, realty  |
| 227 | property group, property investment, property |
| 228 | roofing, roofing services, roof repairs, roof restorations, roofing solution |
| 229 | movers, relocations, removalists, removals, moving |
| 230 | footwear, shoes |
| 231 | bedding, mattress, bed |
| 232 | deli, delicatessen |
| 233 | candy, confectionery, lollies, lolly shop, sweets |
| 234 | cabs, taxi, taxi service |
| 235 | fone, phones  |
| 236 | mobile phone, mobiles |
| 237 | tobacco, tobacconist |
| 238 | holidays, travels, trips, travel service, travel centre |
| 239 | touring, tours |
| 240 | grass, turf |
| 241 | film productions, films, pictures |
| 242 | demolition, wreckers |
| 243 | Australian, Australia, Aussie, Aus, Aust |
| 244 | co, company, coy |
| 245 | corp, corporation |
| 246 | =, equals |
| 247 | no, number |
| 248 | conveyancer, conveyancing, settlements, conveyancing services |
| 249 | towing, towing services |
| 250 | driving, drive, driving school, driving academy |
| 251 | dental, denture, dental centre, denture clinic, dental surgery, dental clinic |
| 252 | decorating, decorators, decorating services |
| 253 | physio, physiotherapy, physiotherapy centre |
| 254 | accountants, accounting, accounting services |
| 255 | chiropractic centre, chiropractic clinic |
| 256 | cooling, refrigeration, air conditioning, refrigeration services, air conditioning services |
| 257 | antiques, collectables |
| 258 | architects, architecture, drafting, drafting services |
| 259 | cleaners, cleaning, cleaning services, cleaning solutions |
| 260 | consultancy, consulting, consultants, consultancy services |
| 261 | contracting, contractor, contracting services |
| 262 | design, designer, design services |
| 263 | institute, academy, school, college |
| 264 | services, solutions |
| 265 | engineering, engineers, engineering services |
| 266 | wealth, investment, investment services, wealth solutions |
| 267 | tax, taxation, taxation services, tax services |
| 268 | distribution, distributors, distribution centre |
| 269 | wellbeing, wellness, wellness centre |
| 270 | computer, computing, computer services, computer solutions, computing services |
| 271 | technology, technology services |
| 272 | plaster, plastering, plastering services |
| 273 | podiatry, podiatry clinic |
| 274 | print, printing, printing services |
| 275 | recruitment, employment, employment services, recruitment services |
| 276 | farm, farming, farm services |
| 277 | security, protection, security services, security solutions, protection services |
| 278 | trade, trader, trading |
| 279 | education, educational, education centre, education services, educational services |
| 280 | veterinary clinic, veterinary centre |
| 281 | wholesale, wholesalers |
| 282 | Victorian, Victoria, VIC |
| 283 | Tasmanian, Tasmania, TAS |
| 284 | New South Wales, NSW |
| 285 | Queensland, QLD |
| 286 | South Australian, South Australia, SA |
| 287 | Western Australian, Western Australia, WA |
| 288 | Northern Territory, NT |
| 289 | Australian Capital Territory, ACT |
| 290 | 1, one |
| 291 | 2, two |
| 292 | 3, three |
| 293 | 4, four |
| 294 | 5, five |
| 295 | 6, six |
| 296 | 7, seven |
| 297 | 8, eight |
| 298 | 9, nine |
| 299 | 10, ten |

Schedule 2 Restricted words and expressions

(sections 9 and 10)

Part 1 Restricted words and expressions

| Item | Restricted word or expression |
| --- | --- |
| 101 | Aboriginal Corporation |
| 102 | Aboriginal Council |
| 103 | Advance Australia |
| 104 | ambulance |
| 105 | Australian Made |
| 106 | Chamber of Commerce |
| 107 | Chamber of Industry |
| 108 | Chamber of Manufacturers |
| 109 | charitable |
| 110 | charity |
| 111 | chartered |
| 112 | consumer |
| 113 | co‑operative |
| 114 | executor |
| 115 | fiduciary |
| 116 | fire brigade |
| 117 | friendly society (otherwise than in relation to the conduct of a financial business) |
| 118 | futures exchange |
| 119 | GST |
| 120 | G.S.T. |
| 121 | guarantee |
| 122 | ICPO (International Criminal Police Organisation) |
| 123 | incorporated |
| 124 | Interpol |
| 125 | Lest We Forget |
| 126 | Made in Australia |
| 127 | Order of the Eastern Star |
| 128 | police |
| 129 | policing |
| 130 | proprietor |
| 131 | R.S.L. |
| 132 | RSL |
| 133 | securities exchange |
| 134 | securities market |
| 135 | Starr-Bowkett |
| 136 | stock exchange |
| 137 | Torres Strait Islander Corporation |
| 138 | trading as |
| 139 | trust |
| 140 | trustee |
| 141 | proprietary |
| 142 | limited |
| 143 | no liability |
|  |  |

Part 2 Restricted words and expressions unless Ministerial consent given

| Item | Word or expression | Minister |
| --- | --- | --- |
| 201 | Anzac | Minister for Veterans’ Affairs |
| 202 | Geneva Cross, Red Crescent, Red Cross, Red Crystal, Red Lion and Sun | Minister for Defence |
| 203 | United Nations | Minister for Foreign Affairs |
| 204 | University | Minister for Tertiary Education, Skills, Jobs and Workplace Relations |

Part 3 Restricted words and expressions unless other consent given

| Item | Word or expression | Public authority or agency |
| --- | --- | --- |
| 301 | ADI | APRA |
| 302 | authorised deposit‑taking institution | APRA |
| 303 | bank | APRA |
| 304 | banker | APRA |
| 305 | banking | APRA |
| 306 | building society | APRA |
| 307 | credit society | APRA |
| 308 | credit union | APRA |
| 309 | friendly society (in relation to the conduct of a financial business) | APRA |

**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003.* See www.comlaw.gov.au.