



**GUIDELINES FOR MINISTERIAL CONSENT TO BODY CORPORATE
NAMES UNDER *THE CORPORATIONS ACT 2001***

The Treasury

January 2008

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1. BACKGROUND

INTRODUCTION

Purpose of the guidelines

These guidelines set out the procedures to be followed and the criteria to be applied in considering applications for the Commonwealth Minister's consent to body corporate names that are otherwise not available for reservation or registration under the *Corporations Act 2001* (the Corporations Act). Bodies corporate in this context include companies, foreign companies and registrable Australian bodies. Consent is granted under subsection 147(2) or 601DC(2) for purposes of Parts 2B and 5B of the Corporations Act.

Responsible Commonwealth Ministers

The Commonwealth Ministers who have responsibility for the administration of the Corporations Act are the Commonwealth Treasurer, the Minister for Competition Policy and Consumer Law and Assistant Treasurer, and the Minister for Superannuation and Corporate Law.

Ministerial Consent

A name that would not otherwise be available is available if the Commonwealth Minister has consented to the name being available under subsections 147(2) and 601DC(2) of the Corporations Act. The Minister's consent may be given subject to conditions (Corporations Act, subsections 147(3) and 601DC(3)). If a condition for the granting of ministerial consent has been breached, the Australian Securities and Investments Commission may direct the relevant body to change its name under section 158 or 601DJ.

Delegation of Minister's powers and Direction to the Delegate

The Minister's powers under subsections 147(2) and 601DC(2) have been delegated to certain senior officers of the Australian Securities and Investments Commission (Corporations Act, subsection 1345A(1A)). The Minister's delegate is required to have regard to any written guidelines issued by the Minister that are in force (Corporations Act, subsection 1345A(2)). The Guidelines contained in this document are guidelines that have been issued by the Minister.

The overall policy consideration in considering applications

The overall policy consideration in considering applications under subsection 147(2) or 601DC(2) to the use of body corporate names is whether the proposed name would be likely to mislead persons dealing with the body about the nature of the body's activities.

The following Guidelines outline the policy criteria that will normally be applied in considering applications for consent to proposed body corporate names including specific words or phrases.

However, each application is to be considered on its merits, having regard to the individual circumstances involved.

Review of decisions

Under subsection 1317B(1) of the Corporations Act, decisions made under subsections 147(2) and 601DC(2) of the Corporations Act are reviewable by the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975*.

CORPORATIONS ACT AND CORPORATIONS REGULATIONS

The effect of subsections 147(1) and 601DC(1) of the Corporations Act is that a name will not be available to a body corporate if:

- (a) it is identical to an existing name which has already been reserved or registered under the Corporations Act for another body; or
- (b) it is identical to a name that is included in the national business names register in respect of another individual or body corporate (the national business names register contains names registered under State and Territory business names legislation); or
- (c) the name is unacceptable for registration under the Corporations Regulations.

Under Parts 2B.6 and 5B.3 of the Corporations Act and Regulations 2B.6.01 and 5B.3.01 and Schedule 6 of the Corporations Regulations (a consolidated text of which is set out at Attachment A), a name is unacceptable for registration if:

- (a) in the opinion of the Australian Securities and Investments Commission, it is undesirable or likely to be offensive to members of the public, or to any section of the public; or
- (b) subject to the terms of other legislation dealing with registration or incorporation, such as Associations Incorporation legislation and Co-operative Societies legislation, it contains a word or phrase specified in an item in Part 3 of Schedule 6 (for examples 'Chamber of Commerce', 'Consumer', 'Co-operative', 'Incorporated' and 'Trust'), an abbreviation of that word or phrase, or a word or phrase or an abbreviation having a similar meaning; or
- (c) it includes the word 'Commonwealth' or 'Federal', except where the word is included in a geographical context; or
- (d) it suggests a connection with the Crown, Government or with a Government authority or instrumentality if that connection does not exist; or
- (e) it suggests a connection with a member of the Royal Family or the receipt of Royal patronage if that connection does not exist; or

- (f) it suggests a connection with an ex-servicemen's organisation if that connection does not exist;
- (g) it suggests that the members of an organisation are totally or partially incapacitated if those members are not so affected; or
- (h) it suggests a connection with Sir Donald Bradman if that connection does not exist.

Under subregulations 2B.6.02(4) and 5B.3.02(4), an application for a name that contains a word or phrase specified in column 2 of an item in Part 4 of Schedule 6, must have with it the consent of the particular Minister specified in Part 4. Examples are 'ANZAC', and 'Red Cross'

Under subregulations 2B.6.02(5) and 5B.3.02(5), an application for a name that contains a word or phrase specified in column 2 of an item in Part 5 of Schedule 6 (such as 'building society', 'bank' or 'friendly society' (in relation to the conduct of a financial business)) must have with it the consent of the public authority, instrumentality or agency specified in Part 5.

PROCEDURES FOR MAKING AN APPLICATION FOR CONSENT

An application for the reservation or registration of a name or the change of name of a body corporate should be lodged together with the prescribed fee at any Business Centre of the Australian Securities and Investments Commission or at its Information Processing Centre at Traralgon in Victoria.

Where a proposed name contains a word or phrase that is not available in the absence of the Commonwealth Minister's consent, an application to reserve or register the name should also be made in the first instance to the Australian Securities and Investments Commission, together with the prescribed fee. Under section 1355 of the Corporations Act, the Australian Securities and Investments Commission may refuse to deal with an application until the prescribed fee is paid.

In relation to:

1. letters, a word or expression specified in column 2 of an item in Part 4 of Schedule 6 of the Corporations Regulations, such as 'ANZAC' 'Red Cross' or 'University', the consent of the relevant Commonwealth portfolio Minister specified in that Part must be obtained; and
2. letters, a word or expression specified in column 2 of an item in Part 5 of Schedule 6 of the Corporations Regulations, such as 'bank', 'credit union' and 'friendly society' in relation to the conduct of a financial business, the consent of the relevant regulatory authority must be obtained. The relevant regulatory authority, the Australian Prudential Regulation Authority, may be contacted by telephone on 02 9210 3000. Its postal address is GPO Box 9836, SYDNEY NSW 2001 and street address is 400 George Street, SYDNEY NSW 2000.

Other Procedures

Other procedures in relation to:

- (a) proposed companies;
- (d) foreign companies; and
- (e) registrable Australian bodies;

are set out at Attachment B.

2. WORDS SUGGESTING A CONNECTION WITH GOVERNMENT

GUIDELINES FOR THE USE OF THE WORDS 'COMMONWEALTH' AND 'FEDERAL' IN BODY CORPORATE NAMES

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations. Rule 6203(c) provides that for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if the name includes the word 'Commonwealth' or 'Federal'.

However, rule 6205 provides that rule 6203(c) does not apply where the Australian Securities and Investments Commission is satisfied that the word is used in a geographical context.

Criteria for the Assessment of Applications

Consent will normally be granted to the use of the words 'Commonwealth' or 'Federal' in a body corporate name in the following circumstances:

- (a) where the name as a whole indicates clearly that the body is not connected with the Commonwealth Government;
- (b) where the applicant is a business enterprise owned by the Commonwealth Government;
- (c) where the applicant is a business enterprise that is a wholly-owned subsidiary within an existing Australian group that is already using comparable company names, provided that:
 - (i) the group was using the name in Australia prior to the proclamation of the Companies Act 1981; and
 - (ii) the proposed name varies from an existing group name only by the addition or substitution of a geographical or functional description; or
- (d) where the applicant is a non-profit organisation that is connected with or receives support from the Commonwealth Government.

Use of the words 'Commonwealth' and 'Federal' in other names

There is a long-standing arrangement for the relevant State or Territory Minister to consult with the Commonwealth Minister about an application under State and Territory business names legislation or associations incorporation legislation to use the word 'Commonwealth' or 'Federal' in a business or association name. In considering such applications, the Commonwealth Minister will have regard to the guidelines set out at Attachment C.

**GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF THE WORDS
'ABORIGINAL CORPORATION', 'ABORIGINAL COUNCIL' OR 'TORRES STRAIT
ISLANDER CORPORATION'**

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rule 6203(b) provides that a name is unacceptable for registration if the name contains:

- a word or phrase specified in an item in Schedule 6 of the Regulations,
- an abbreviation of that word or phrase, or
- a word or phrase or an abbreviation having the same or a similar meaning.

Items 6301, 6302 and 6320 in Part 3 of Schedule 6 respectively specify the words 'Aboriginal Corporation', 'Aboriginal Council' and 'Torres Strait Islander Corporation'.

Aboriginal and Torres Strait Islander Councils and Corporations are established or registered under Commonwealth or State legislation such as:

- ***Corporations (Aboriginal and Torres Strait Islander) Act 2006***; and
- ***Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-Management) Act 1978*** (Commonwealth).

General Criteria for the Assessment of Applications

Consent will normally be granted to the use of the words 'Aboriginal Corporation', 'Aboriginal Council' or 'Torres Strait Islander Corporation' in a body corporate name where evidence is provided of the establishment, or proposed establishment, of the body corporate under legislation, or in accordance with Ministerial authorisation.

Consultative Procedures

Where the applicant proposes to use the words 'Aboriginal Corporation', 'Aboriginal Council' or 'Torres Strait Islander Corporation', or to use phrases with a similar meaning including 'Aboriginal and Torres Strait Islander Corporation', 'Torres Strait Islander and Aboriginal Corporation' and 'Indigenous Corporation', the Australian Securities and Investments Commission will seek advice from the Registrar of Aboriginal and Torres Strait Islander Corporations, or other relevant regulatory authority as appropriate.

GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF WORDS SUGGESTING A CONNECTION WITH THE CROWN, CERTAIN GOVERNMENTS, A MUNICIPAL OR OTHER LOCAL AUTHORITY OR WITH A COMMONWEALTH, STATE OR TERRITORY DEPARTMENT, AUTHORITY OR INSTRUMENTALITY

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rule 6203(d) provides that for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if the name in the context in which it is proposed to be used, suggests a connection with:

- (a) the Crown; or
- (b) the Commonwealth Government; or
- (c) the Government of a State or Territory; or
- (d) a municipal or other local authority; or
- (e) the Government of another part of the Queen's dominions, possessions or territories; or
- (f) a department, authority or instrumentality of the Commonwealth Government; or
- (g) a department, authority or instrumentality of the Government of a State or Territory; or
- (h) the government of a foreign country;

if that connection does not exist.

Criteria for the Assessment of Applications

Consent will normally be granted to use names suggesting a connection with government if the applicant establishes that there is an appropriate connection with, or support from, government. For example, this evidence could be provided where:

- (a) the connection with government is apparent from the text of the applicant's constituent documents; or
- (b) a Government Minister is able to appoint persons as members or directors of the body corporate; or
- (c) the body corporate's name has been approved by a relevant Government Department or authority or municipal body; or
- (d) a particular Government is the controlling shareholder of the body corporate.

However, where a proposed body corporate name suggests a connection with government that does not exist, an application for consent to the use of the proposed name will need to demonstrate that there is no real likelihood that members of the public will be misled into believing that there is such a connection.

GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF THE WORDS 'POLICE' AND 'POLICING'

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 to the Regulations.

Rule 6203(b) of Part 2 provides that a name is unacceptable for registration if the name contains a word or phrase specified in an item in Part 3 of Schedule 6 to the Regulations, an abbreviation of that word or phrase, or a word or phrase or an abbreviation having the same or a similar meaning. Items 6316A and 6316B in Part 3 of Schedule 6 respectively specify the words 'police' and 'policing'.

Criteria for the Assessment of Applications

Consent will normally be granted to use of the word 'police' or 'policing', or words having a similar meaning, where:

- (a) the name as a whole indicates clearly that the body is not connected with any police force; or
- (b) the applicant is a business enterprise owned or operated by a State, Territory or Commonwealth Government; or
- (c) the proposed body corporate name suggests a connection with one or more police forces, and the relevant police forces, and also the Commonwealth Attorney-General's Department, have been consulted.

Consultative procedure

Where an applicant purports to rely upon paragraph (c) of the criteria, by stating that it has a connection with one or more police forces, or where the use of the name could suggest such a connection, the Australian Securities and Investments Commission will consult with the relevant State, Territory or Commonwealth police force, or police forces, and with the Commonwealth Attorney-General's Department.

The Minister's delegate is not obliged to accept the advice provided by any State, Territory or Commonwealth police force.

In order to avoid delays in processing applications, the police force or police forces, from which comments are sought, and the Commonwealth Attorney-General's Department, will be requested to provide any comments within 14 days.

Any comments received within that timeframe will be taken into account by the Minister's delegate.

3. WORDS SUGGESTING ROYAL PATRONAGE ETC.

GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF THE WORD 'CHARTERED'

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rule 6203(b) provides that a name is unacceptable for registration if the name contains a word or phrase specified in an item in Schedule 6 of the Regulations, an abbreviation of that word or phrase, or a word or phrase or an abbreviation having the same or a similar meaning. Item 6306 in Part 3 of Schedule 6 specifies the word 'Chartered'.

The intention of this rule is to prevent bodies corporate giving the misleading impression that they have been created under Royal Charter.

Criteria for the Assessment of Applications

Consent will normally be granted to the use of the word 'Chartered' in a body corporate name where:

- (a) no misleading impression is given about the creation of the body corporate by Royal Charter; or
- (b) the body corporate is very closely connected with a body corporate that has been incorporated by Royal Charter.

GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF WORDS SUGGESTING A CONNECTION WITH A MEMBER OF THE ROYAL FAMILY OR THE RECEIPT OF ROYAL PATRONAGE.

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rules 6203(e)(i) and (ii) respectively provide that for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if the name in the context in which it is proposed to be used, suggests a connection with a member of the Royal Family or the receipt of Royal patronage, if that connection does not exist.

Criteria for the Assessment of Applications

Such a connection would, for example, be taken to exist if:

- (a) the relevant member of the Royal Family has endorsed a name that suggests a connection with that person;
- (b) the body corporate has in fact received Royal patronage, or is very closely connected with another body that has received Royal patronage; or
- (c) the Queen has approved the use of the body corporate's seal.

Where a proposed body corporate name suggests a connection with Royalty that does not exist, an applicant for consent to the use of the proposed name will need to demonstrate that there is no real likelihood that members of the public will be misled into believing that there is such a connection.

GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF THE WORDS 'SIR DONALD BRADMAN'***Regulation***

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rule 6203(e)(iv) provides that for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if the name suggests a connection with Sir Donald Bradman if that connection does not exist.

Criteria for the Assessment of Applications

Where a proposed body corporate name suggests a connection with connection with Sir Donald Bradman that does not exist, an applicant for consent to the use of the proposed name would need to demonstrate that there is no real likelihood that members of the public would be misled into believing that there is such a connection.

4. WORDS GOVERNED BY SPECIAL PURPOSE LEGISLATION

GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF THE WORDS 'STARR BOWKETT'

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rule 6203(b) provides that a name is unacceptable for registration if the name contains a word or phrase specified in an item in Part 3 of Schedule 6 of the Regulations, an abbreviation of that word or phrase, or a word or phrase or an abbreviation having the same or a similar meaning.

Item 6318 in Part 3 of Schedule 6 specifies the words 'Starr Bowkett'. (Rule 6204(a) expressly permits these words to be used where they must be included in the name of a registrable Australian body or a registered Australian body because of the law under which it is incorporated or registered.)

Starr Bowkett societies are an old form of building society. Their objects are to make loans on the security of real estate, for the purpose of assisting shareholders to buy or to build homes. Loans are granted to shareholders that win a ballot involving the drawing of lots. The building society continues until all the shareholders have received loans. They are regulated under State and Territory legislation

The intention of this regulation is to avoid the situation where a body corporate breaches the State and Territory Legislation by conducting business using a name made available under the Corporations Act.

Criteria for the Assessment of Applications

Consent will normally be granted to the use in body corporate names of the words 'Starr Bowkett' or words having a similar meaning, if:

- (a) the body corporate is permitted under State and Territory legislation to use those words in carrying on business;
- (b) the body corporate is related to another body corporate that is required or permitted to use similar words in its name.

The applicant for the incorporation of a new body corporate seeking to use the words 'Starr Bowkett' in its name is required to provide evidence that the relevant regulatory authorities in the jurisdictions where the applicant proposes to operate have consented to the use of these words in the applicant's proposed name.

GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF THE WORD 'CO-OPERATIVE'

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rule 6203(b) provides that a name is unacceptable for registration if the name contains a word or phrase specified in an item in Schedule 6 of the Regulations, an abbreviation of that word or phrase, or a word or phrase or an abbreviation having the same or a similar meaning. Item 6309 in Part 3 of Schedule 6 specifies the word 'Co-operative'. (Rule 6204(a) expressly permits this word to be used where it must be included in the name of a registrable Australian body or a registered Australian body because of the law under which it is incorporated or registered.)

Criteria for the Assessment of Applications

Consent will normally be granted to the use of the word 'Co-operative' or the abbreviation 'Co-op' in a body corporate name, notwithstanding that the body corporate is not expressly required to use these words in its name if:

- (a) the word 'Co-operative' or the abbreviation 'Co-op' is permitted to be included in the name because of the State or Territory co-operative societies legislation under which the body is incorporated or registered; or
- (b) the body corporate is related to another body corporate that is required or permitted to use 'Co-operative' or 'Co-op' in its name; or
- (c) the context in which the word 'Co-operative' or the abbreviation 'Co-op' is used in the name is not likely to mislead members of the public into believing that the body corporate is registered under co-operative societies legislation (e.g. the co-operative research centres established by joint venture agreements between the Commonwealth and industry).

It should be noted that some State and Territory co-operative societies legislation restricts the use of the word 'Co-operative' in a body corporate name. The applicant for the incorporation of a new co-operative society or any body corporate related to such a co-operative society that proposes to use the word 'Co-operative' in its name will need to provide evidence that the relevant registering authorities in the jurisdictions where the applicant proposes to operate have consented to the use of the word 'Co-operative' in the proposed body corporate name.

Any other body corporate seeking to use the word 'Co-operative' in its name, such as co-operative research centres, need not provide such evidence. However it will need to obtain, from the relevant registering authorities in the jurisdictions in which it proposes to operate, exemptions from the operation of the co-operative societies legislation. These exemptions should be sought subsequent to obtaining the Commonwealth Minister's consent to use the word 'Co-operative' in its name.

GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF THE WORDS 'FRIENDLY SOCIETY'

The following guidelines in respect of the words 'friendly society' apply to a body corporate seeking to use those words in its name but which does not carry on or propose to carry on a financial business. A 'financial business' is defined under subregulation 1.0.02(1) of the Corporations Regulations to mean a business that consists of, or includes the provision of financial services or relates, wholly or partly, to the provision of financial services.

A body corporate that carries on or proposes to carry on a financial business and wishes to use the words 'friendly society' in its name is required to seek the consent of the Australian Prudential Regulation Authority under the *Life Insurance Act 1995*.

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rule 6203(b) provides that a name is unacceptable for registration if the name contains a word or phrase specified in an item in Schedule 6 of the Regulations, an abbreviation of that word or phrase, or a word or phrase or an abbreviation having the same or a similar meaning.

Item 6312 in Part 3 of Schedule 6 specifies the words 'Friendly Society' (other than in relation to the conduct of a financial business). (Rule 6204(a) expressly permits these words to be used where they must be included in the name of a registrable Australian body or a registered Australian body because of the law under which it is incorporated or registered.)

The formation and activities of friendly societies are regulated by State and Territory legislation. A friendly society is a society which, by voluntary subscriptions, provides for:

- (a) the relief or maintenance of its members and their families in sickness or old age; and
- (b) the relief or maintenance of widows and orphan children of deceased members for funeral benefits etc.

This regulation is intended to avoid the situation where a body corporate breaches relevant Commonwealth, State or Territory legislation governing friendly societies by conducting business using a name made available under the Corporations Act.

Criteria for the Assessment of Applications

Consent will normally be granted to the use of the words 'Friendly Society' in a body corporate name, notwithstanding that the body corporate is not required to use the name under State or Territory law if:

- (a) the words are permitted to be included in the name because of the Commonwealth, State or Territory legislation under which the body corporate is incorporated or registered; or
- (b) the body corporate is related to another body corporate that is required or permitted to use similar words in its name.

The applicant for the incorporation of a new friendly society or any other body corporate seeking to use the words 'Friendly Society' will need to provide evidence that the relevant regulatory authorities in the jurisdictions where the applicant proposes to operate have consented to the use of the words in the applicant's proposed body corporate name.

5. WORDS SUGGESTING A CONNECTION WITH SPECIAL PURPOSE ORGANISATIONS

GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF WORDS SUGGESTING A CONNECTION WITH AN EX-SERVICEMEN'S ORGANISATION IF THAT CONNECTION DOES NOT EXIST

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rule 6203(e)(iii) provides that for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if the name suggests a connection with an ex-servicemen's organisation if that connection does not exist.

Criteria for the Assessment of Applications

Where a proposed body corporate name suggests a connection with an ex-serviceman's organisation that does not exist, an applicant for consent to the use of the proposed name would need to demonstrate that there is no real likelihood that members of the public would be misled into believing that there is such a connection.

GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF THE ABBREVIATION 'R.S.L.' OR 'RSL'

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rule 6203(b) provides that a name is unacceptable for registration if the name contains a word or phrase specified in an item in Schedule 6 of the Regulations, an abbreviation of that word or phrase, or a word or phrase or an abbreviation having the same or a similar meaning. Items 6317 and 6317A in Part 3 of Schedule 6 specify the abbreviations 'R.S.L.' and 'RSL'.

Criteria for the Assessment of Applications

Consent will normally be granted to the use of the abbreviation R.S.L. or RSL where there is a valid connection with the Returned and Services League. The validity of the connection may be clear on the face of the application, or apparent from the text of the applicant's constituent documents.

Where appropriate, the Australian Securities and Investments Commission will consult with the Commonwealth Department responsible for Veterans Affairs.

If it is clear from the context in which the abbreviation R.S.L. or RSL is used (e.g. 'R.S.L. Jones and Associate Pty Ltd') that there is no connection with the Returned and Services League, consent will normally be granted.

If, however, a proposed body corporate name suggests a possible connection with the Returned and Services League that does not exist, an applicant for consent to the use of the name will need to demonstrate that there is no real likelihood that members of the public will be misled into believing that there is such a connection.

GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF WORDS WHICH SUGGEST THAT AN ORGANISATION IS ONE OF TOTALLY OR PARTIALLY INCAPACITATED WAR VETERANS IF THIS IS NOT THE CASE

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rule 6203(f) provides that for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it suggests that the members of an organisation are totally or partially incapacitated if those members are not so affected.

The meaning of totally or partially incapacitated in this context is not the same as disabled. The rationale behind the rule is the protection of the name of Totally or Partially Incapacitated War Veterans Associations (TPI Associations).

Criteria for the Assessment of Applications

Where a proposed body corporate name suggests that the organisation is an organisation of Totally or Partially Incapacitated War Veterans and this is not the case, an applicant for consent to the use of the proposed name would need to demonstrate that there is no real likelihood that members of the public would be misled into believing into believing that the body corporate is such an organisation.

6. OTHER WORDS SPECIFIED IN PART 3, SCHEDULE 6

GUIDELINES FOR THE USE OF THE WORDS 'CHAMBER OF COMMERCE' OR 'CHAMBER OF MANUFACTURES' IN BODY CORPORATE NAMES

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rule 6203(b) provides that a name is unacceptable for registration if the name contains a word or phrase specified in an item in Schedule 6 of the Regulations, an abbreviation of that word or phrase, or a word or phrase or an abbreviation having the same or a similar meaning. Items 6304 and 6305 in Part 3 of Schedule 6 respectively specify the words 'Chamber of Commerce' and 'Chamber of Manufactures'

Criteria for the Assessment of Applications

Consent will normally be granted to the use of the words 'Chamber of Commerce' or 'Chamber of Manufactures' in body corporate names where the following criteria are satisfied:

- (a) the applicant is a 'genuine' Chamber of Commerce or Chamber of Manufactures in the sense that one of its primary objects is to promote trade and commerce in the region that it proposes to cover, (the proposed constitution of the applicant will be an important factor in applying this criterion); and
- (b) the applicant's constitution or charter precludes the payment of a dividend or any other pecuniary benefit to the applicant's members (i.e. the applicant has a non-profit objective).

An application will not be rejected simply because an existing body corporate has broadly similar objectives. The key issue is whether the proposed name would be misleading as to the nature of the business activities to be conducted by the applicant.

The proposed or actual membership of the applicant and the extent to which the membership is engaged, or has strong commercial interests, in trade and commerce are factors that will be taken into account in considering the ability of the applicant to carry out its object of promoting trade and commerce.

Consultative procedures

Where the applicant operates, or proposes to operate, as a regional or suburban Chamber, the Australian Securities and Investments Commission will consult with

the most relevant State or Territory Chamber of Commerce or Chamber of Manufactures.

Where the applicant operates, or proposes to operate, as a State or Territorial Chamber or as an international or 'bilateral' Chamber, the Australian Securities and Investments Commission will consult with the Australian Chamber of Commerce and Industry (ACCI).

The Minister's delegate is not obliged to accept the advice given by the chamber of commerce.

In the case of an international/bilateral application, the Australian Securities and Investments Commission will also consult with the Department of Foreign Affairs and Trade (DFAT). DFAT will assess whether it would be undesirable for consent to be granted to the application. They will have regard to any adverse commercial, economic or legal impact upon Australia that would be likely to result if consent were to be granted.

In order to avoid any undue delays in processing applications, the organisation from which comments are sought is requested to provide any comments, which it may have within 14 days.

Any comments received within that time frame will be taken into account. The Australian Securities and Investments Commission will keep ACCI informed about the processing of all 'Chamber of Commerce' and 'Chamber of Manufactures' name applications.

GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF THE WORD 'CONSUMER'

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rule 6203(b) provides that a name is unacceptable for registration if the name contains a word or phrase specified in an item in Schedule 6 of the Regulations, an abbreviation of that word or phrase, or a word or phrase or an abbreviation having the same or a similar meaning. Item 6308 in Part 3 of Schedule 6 specifies the word 'Consumer'.

Criteria for the Assessment of Applications

Consent will normally be granted to the use of the word 'Consumer' in a body corporate name if:

- (a) the body corporate is formed, or is to be formed, for a purpose of representing, protecting, promoting or benefiting consumer interests. The purpose or purposes of the body corporate should be apparent from the terms of the body corporate's proposed or existing constituent documents; or

- (b) the use of the word ‘Consumer’ in the name of the body corporate accurately reflects the purpose for which the body is to be formed and is not likely to mislead members of the public into believing that the body is associated with any Government, consumer association or public interest body.

**GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF THE WORD
‘EXECUTOR’**

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rule 6203(b) provides that a name is unacceptable for registration if the name contains a word or phrase specified in an item in Schedule 6 of the Regulations, an abbreviation of that word or phrase, or a word or phrase or an abbreviation having the same or a similar meaning. Item 6311 in Part 3 of Schedule 6 specifies the word ‘Executor’.

Criteria for the Assessment of Applications

Consent will normally be granted to the use in a body corporate name of the word ‘Executor’, or a word having a similar meaning, where:

- (a) the applicant is authorised by State or Territory trustee legislation to act as an executor or administrator of estates; or
- (b) the applicant is a foreign company under the Corporations Act and authorised by legislation of its place of incorporation to act as an executor or administrator of estates; or
- (c) the applicant is a foreign company under the Corporations Act and its name is so well known in its place of origin that it would be inequitable to refuse it registration.

**GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF THE WORD
‘GUARANTEE’**

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Corporations Act.

Rule 6203(b) provides that a name is unacceptable for registration if the name contains a word or phrase specified in an item in Schedule 6 of the Regulations, an abbreviation of that word or phrase, or a word or phrase or an abbreviation having

the same or a similar meaning. Item 6313 in Part 3 of Schedule 6 specifies the word 'Guarantee'.

Criteria for the Assessment of Applications

Consent will normally be granted to the use in a body corporate name of the word 'Guarantee', or a word having a similar meaning, where:

- (a) the name conveys the sense of a guarantee of one body by another, and such guarantee does in fact exist; or
- (b) the name conveys an accurate impression about the nature of a product or service that the company offers.

GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF THE WORD 'INCORPORATED'

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rule 6203(b) provides that a name is unacceptable for registration if the name contains a word or phrase specified in an item in Schedule 6 of the Regulations, an abbreviation of that word or phrase, or a word or phrase or an abbreviation having the same or a similar meaning. Item 6314 in Part 3 of Schedule 6 specifies the word 'Incorporated'. Rule 6204(b) expressly permits the use of the word 'Incorporated' if it must be included in the name of:

- (a) a registrable Australian body; or
- (b) a registered Australian body; or
- (c) a registered foreign company; or
- (d) a foreign company;

because of the law under which it is incorporated or registered.

The Associations Incorporation acts of the States and Territories provide that an incorporated association shall have at the end of its name the word 'Incorporated' or the abbreviation 'Inc.'. Similarly, companies incorporated under US State companies legislation will have 'Inc.' at the end of their names.

Criteria for the Assessment of Applications

Consent will normally be granted to the use of the word 'Incorporated' in a body corporate name, notwithstanding that the body corporate is not required to use the name under State or Territory law, or the law of a foreign jurisdiction, if:

- (a) the words are permitted to be included in the name because of the legislation under which the body corporate is incorporated or registered; or

- (b) the body corporate is related to another body corporate that is required or permitted to use those words in its name.

An applicant seeking to use the word 'Incorporated' will need to provide evidence that the relevant regulatory authorities in the jurisdictions where the applicant proposes to operate have consented to the use of the word in the applicant's proposed body corporate name.

GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF THE WORDS 'MADE IN AUSTRALIA'

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rule 6203(b) provides that a name is unacceptable for registration if the name contains a word or phrase specified in an item in Schedule 6 of the Regulations, an abbreviation of that word or phrase, or a word or phrase or an abbreviation having the same or a similar meaning. Item 6316 in Part 3 of Schedule 6 specifies the words 'Made in Australia'.

Criteria for the Assessment of Applications

Applicants for the use of a proposed name including the words 'Made in Australia' would need to demonstrate that:

- (a) the body corporate has a connection with an official Government program encouraging the purchase of Australian made goods and services; or
- (b) the proposed name would not be likely to mislead people into believing into believing that there is such a connection.

All requests to use the expression 'Australian Made' or 'Made in Australia' are to be referred to the Department with policy responsibility for origin labelling, and for the Australian Made campaign, for comment.

GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF THE WORDS 'STOCK EXCHANGE'

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rule 6203(b) provides that a name is unacceptable for registration if the name contains a word or phrase specified in an item in Schedule 6 of the Regulations, an

abbreviation of that word or phrase, or a word or phrase or an abbreviation having the same or a similar meaning.

Item 6319 in Part 3 of Schedule 6 specifies the words ‘Stock Exchange’. Under section 791A of the Corporations Act, a person may only operate a stock exchange in this jurisdiction if they have a market licence that authorises the person to operate the stock exchange, or if the stock exchange is exempt from the operation of Part 7.2 of the Corporations Act.

The Minister may grant a market licence under sections 795B, 795D or 795E of the Corporations Act. In addition, the Minister may grant a market licence under section 1413 in relation to markets operating before FSR commencement.

Under subsection 791C(1) of the Corporations Act, the Minister may exempt from the operation of Part 7.2 of the Corporations Act a particular stock exchange.

Criteria for the Assessment of Applications

Consent will normally be granted to the use of the words ‘Stock Exchange’ in a body corporate name where the applicant provides evidence that the Commonwealth Minister has granted a market license in relation to the stock exchange or exempted the stock exchange from the operation of Part 7.2 of the Corporations Act.

Also, if it is clear from the context in which the words ‘Stock Exchange’ are used in a body corporate name that there is no suggestion that the body corporate is or will be acting as a stock exchange, then consent will normally be granted. An example of this would be ‘Stock Exchange Hotel’ or ‘Stock Exchange Newsagency’.

GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF THE WORD ‘TRUST’ OR ‘TRUSTEE’

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rule 6203(b) provides that a name is unacceptable for registration if the name contains a word or phrase specified in an item in Schedule 6 of the Regulations, an abbreviation of that word or phrase, or a word or phrase or an abbreviation having the same or a similar meaning. Items 6321 and 6322 in Part 3 of Schedule 6 respectively specify the words ‘Trust’ and ‘Trustee’.

Criteria for the Assessment of Applications

Consent will normally be granted to the use of the word ‘Trust’ or ‘Trustee’, or words having a similar meaning, where:

- (a) the applicant is authorised by State or Territory trustee legislation to act as an executor or administrator of estates; or

- (b) the applicant is authorised by special purpose legislation to perform trustee functions (e.g. the Uniting Church in Australia (Australian Capital Territory) Property Trust, a body corporate established under the Uniting Church in Australia Ordinance 1977); or
- (c) the applicant is an administrator of a public or charitable trust i.e. a trust for the advancement of education, religion, the relief of poverty or other purposes beneficial to the community; or
- (d) the applicant is a trustee of a trust. This will need to be demonstrated by reference to trust deeds and other documentation; or
- (e) the applicant is a foreign company and its name is so well known in its place of origin (whether generally or within a particular industry) that it would be inequitable to refuse it registration.

This policy is based on the need to avoid any possibility of members of the public being misled about the nature of an applicant body.

GUIDELINES FOR THE USE IN BODY CORPORATE NAMES OF THE ABBREVIATIONS 'G.S.T.' OR 'GST'

Regulation

Subregulations 2B.6.01(2) and 5B.3.01(2) respectively of the Corporations Regulations provide that, for paragraphs 147(1)(c) and 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if it is unacceptable under the rules set out in Part 2 of Schedule 6 of the Regulations.

Rule 6203(b) provides that a name is unacceptable for registration if the name contains a word or phrase specified in an item in Schedule 6 of the Regulations, an abbreviation of that word or phrase, or a word or phrase or an abbreviation having the same or a similar meaning. Items 6312A and 6312B in Part 3 of Schedule 6 specify the abbreviations 'G.S.T.' and 'GST'.

Criteria for the Assessment of Applications

Consent will normally be granted to the use of the abbreviations 'G.S.T.' or 'GST' or words having a similar meaning, where:

- (a) the body corporate has a connection with an official Government program dealing with the Goods and Services Tax; or
- (b) the proposed name would not be likely to mislead people into believing into believing that there is such a connection; or
- (c) the abbreviation 'GST' in the name describes accurately the applicants business that is the giving of advice on the Goods and Services Tax.

In all cases those seeking to use such an abbreviation are to consult the area of the Commonwealth Treasury with policy responsibility for revenue issues.

7. IDENTICAL NAMES

IDENTICAL BODY CORPORATE NAMES

The general rule under the Corporations Act is that identical names cannot be registered. Subsections 147(2) and 601DC(2) give the Minister discretion to vary this general rule. However this discretion is used only in exceptional cases.

Rules 6101(a)-(e) in Part 1 of Schedule 6 of the Corporations Regulations have clearly provided that in comparing one name with another for paragraph 147(1)(a) of the Corporations Act:

- the use of the definite or indefinite article;
- the use of 'proprietary', 'Pty Ltd', 'Limited', 'Ltd', 'No Liability' or 'NL' in one or both names 'Corporation' or the abbreviation 'Corp';
- the pluralisation of a word or words in one or both names;
- the type size and case of letters the size of numbers or other characters and any accents spaces between letters numbers or characters or punctuation marks used in one or both names;

are to be disregarded.

There are three valid exceptions to the rule that identical names should not be registered. These are:

- where two identical company names were registered by mistake and some years elapsed before the mistake came to light, by which time both companies had generated large amounts of goodwill in the names;
- where two companies in different states were registered under the same name prior to the commencement of the current scheme; and
- situations where the applicant can show that the name has been 'squatted on' by a person who has a history of reserving company names for no genuine purposes of his own. This history can be established through ASIC records, complaints to ASIC and Treasury records.

In such cases, both names may be available. While each case is treated on the merits, identical names are unlikely to be permitted in other circumstances.

BODY CORPORATE NAMES IDENTICAL TO EXISTING BUSINESS NAMES.

The Minister has no ability to consent to a body corporate name identical to a registered business name held by another person or body corporate.

ATTACHMENT A: EXTRACTS FROM THE CORPORATIONS REGULATIONS

PART 1.0 — MISCELLANEOUS

Interpretation

1.0.02(1) In these Regulations:
'financial business' means a business that:

- (a) consists of, or includes, the provision of financial services; or
- (b) relates wholly or partly to the provision of financial services.

'friendly society' has the meaning given in section 16C of the Life Insurance Act 1995.

PART 2B.6 — NAMES

Availability of names (Corporations Act, section 147)

2B.6.01(1) For paragraphs 147(1)(a) and (b) of the Corporations Act, the rules for ascertaining whether a name is identical with another name are the rules set out in Part 1 of Schedule 6.

2B.6.01(2) For paragraph 147(1)(c) of the Corporations Act, a name is unacceptable for registration under the regulations if it is unacceptable under the rules set out in Part 2 of Schedule 6.

Consents required for use of certain letters, words or expressions

2B.6.02(1) This regulation applies to a name if:

- (a) the name:
 - (i) is the subject of an application for registration of a name under section 117 of the Corporations Act; or
 - (ii) is the subject of an application for reservation of a name under section 152 of that Act; or
 - (iii) for an application for a change of a name under section 157 of the Act — is the name to which the previous name is to be changed; and
- (b) the name is, uses or includes:
 - (i) letters, or a word or expression, specified in column 2 of an item in Part 4 or 5 of Schedule 6; or
 - (ii) other letters, or another word or expression (whether or not in English), that is of like import to the letters, word or expression specified in the item.

2B.6.02(2) In paragraph (1)(b), a reference to letters, a word or an expression being used includes a reference to the letters, word or expression being used:

- (a) as part of another word or expression; or
- (b) in combination with other words or letters, or other symbols.

2B.2.02(3) However, this regulation does not apply to use of the letters ADI as part of another word.

Example:

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

2B.2.02(4) If an item in Part 4 of Schedule 6 applies in relation to the name, the application must be accompanied by the written consent of the Minister who is specified in the item.

2B.2.02(5) If an item in Part 5 of Schedule 6 applies in relation to the name, the application must be accompanied by the written consent of the public authority, instrumentality or agency that is specified in the item.

PART 5B.3 —NAMES OF REGISTRABLE AUSTRALIAN BODIES AND FOREIGN COMPANIES

Availability of names (Corporations Act, section 601DC)

5B.3.01(1) For paragraphs 601DC(1)(a) and (b) of the Corporations Act, the rules for ascertaining whether a name is identical with another name are the rules set out in Part 1 of Schedule 6.

5B.3.01(2) For paragraph 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration under the regulations if the name is unacceptable under the rules set out in Part 2 of Schedule 6.

Consents required for use of certain letters, words or expressions

5B.3.02(1) This regulation applies to a name if:

- (a) the name:
 - (i) is the subject of an application for registration of a name under section 601BC, 601CB or 601CE of the Corporations Act; or
 - (ii) is the subject of an application for reservation of a name under section 601DA of that Act;
 - (iii) for a notice of change of name under section 601DH of the Act - is the name to which the previous name is to be changed; and
- (b) the name is, uses or includes:

- (i) letters, or a word or expression, specified in column 2 of an item in Part 4 or 5 of Schedule 6; or
- (ii) other letters, or another word or expression (whether or not in English), that is of like import to the letters, word or expression specified in the item.

5B.3.02(2) In paragraph (1)(b), a reference to letters, a word or an expression being used includes a reference to the letters, word or expression being used:

- (a) as part of another word or expression; or
- (b) in combination with other words or letters, or other symbols.

5B.3.02(3) However, this regulation does not apply to use of the letters ADI as part of another word.

Example:

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

5B.3.02(4) If an item in Part 4 of Schedule 6 applies in relation to the name, the application or notice must be accompanied by the written consent of the Minister who is specified in the item.

5B.3.02(5) If an item in Part 5 of Schedule 6 applies in relation to the name, the application or notice must be accompanied by the written consent of the public authority, instrumentality or agency that is specified in the item.

SCHEDULE 6 REGULATION 2B.6.01, 2B.6.02, 5B.3.01 AND 5B.3.02 AVAILABILITY OF NAMES

PART 1 — RULES FOR ASCERTAINING WHETHER NAMES ARE IDENTICAL

6101. In comparing one name with another for paragraph 147(1)(a) or (b) or 601DC(1)(a) or (b) of the Corporations Act, the following matters are to be disregarded:

- (a) the use of the definite or indefinite article as the first word in one or both of those names;
- (b) the use of 'Proprietary', 'Pty', 'Limited', 'Ltd', 'No Liability' or 'NL' in one or both of the names;
- (c) whether a word is in the plural or singular number in one or both names;
- (d) the type, size and case of letters, the size of any numbers or other characters, and any accents, spaces between letters, numbers or characters, and punctuation marks, used in one or both names;
- (e) the fact that one name contains a word or expression in column 2 of the following table and the other name contains an alternative for that word or expression in column 3:

Column 1 Item	Column 2 Word or Expression	Column 3 Alternative
1	Australian	Aust
2	Company	Co <i>or</i> Coy
3	Co	Company <i>or</i> Coy
4	Coy	Company <i>or</i> Co
5	Number	No
6	and	&
7	Incorporated	Inc
8	Corporation	Corp
9	Australian Company Number	ACN

PART 2 — NAMES UNACCEPTABLE FOR REGISTRATION

6203. For paragraph 147(1)(c) or 601DC(1)(c) of the Corporations Act, a name is unacceptable for registration if the name:

- (a) in the opinion of ASIC, is undesirable, or likely to be offensive to:
 - (i) members of the public; or
 - (ii) members of any section of the public; or
- (b) subject to rule 6204:
 - (i) contains a word or phrase specified in an item in Part 3 or an abbreviation of that word or phrase; or
 - (ii) a word or phrase or an abbreviation having the same or a similar meaning; or
- (c) subject to rule 6205, includes the word ‘Commonwealth’ or ‘Federal’; or
- (d) in the context in which it is proposed to be used, suggests a connection with:
 - (i) the Crown; or
 - (ii) the Commonwealth Government; or
 - (iii) the Government of a State or Territory; or
 - (iv) a municipal or other local authority; or
 - (v) the Government of any other part of the Queen’s dominions, possessions or territories; or

- (vi) a department, authority or instrumentality of the Commonwealth Government; or
- (vii) a department, authority or instrumentality of the Government of a State or Territory; or
- (viii) the government of a foreign country;

if that connection does not exist; or

- (e) in the context in which it is proposed to be used, suggests a connection with:
 - (i) a member of the Royal Family; or
 - (ii) the receipt of Royal patronage; or
 - (iii) an ex-servicemen's organisation; or
 - (iv) Sir Donald Bradman;

if that connection does not exist; or

- (f) in the context in which it is proposed to be used, suggests that the members of an organisation are totally or partially incapacitated if those members are not so affected.

6204. Paragraph 6203(b) does not apply to:

- (a) item 6309, 6312 or 6318 of Part 3 if a word in any of those items must be included in the name of:
 - (i) a registrable Australian body; or
 - (ii) a registered Australian body;

because of the Act under which it is incorporated or registered; and

- (b) item 6314 of Part 3 if the word must be included in the name of:
 - (i) a registrable Australian body; or
 - (ii) a registered Australian body; or
 - (iii) a registered foreign company; or
 - (iv) a foreign company;

because of the Act under which it is incorporated or registered.

PART 3 — RESTRICTED WORDS AND PHRASES

Column 1 Item	Column 2 Word or phrase
6301	Aboriginal Corporation
6302	Aboriginal Council
6304	Chamber of Commerce
6305	Chamber of Manufactures
6306	Chartered
6307	[Repealed]
6308	Consumer
6309	Co-operative
6310	[Repealed]
6311	Executor
6312	Friendly Society (other than in relation to the conduct of a financial business)
6312A	G.S.T.
6312B	GST
6313	Guarantee
6314	Incorporated
6315	[Repealed]
6316	Made in Australia
6316A	police
6316B	policing
6317	R.S.L.
6317A	RSL
6318	Starr Bowkett
6319	Stock Exchange
6320	Torres Strait Islander Corporation
6321	Trust
6322	Trustee
6323	[Repealed]

PART 4 — CONSENT REQUIRED TO USE RESTRICTED WORDS AND PHRASES

Item	Word or phrase	Minister
6401	Anzac	Minister for Veterans' Affairs
6402	(Omitted)	
6403	Geneva Cross, Red Crescent, Red Cross, Red Lion and Sun	Minister for Defence
6404	(omitted by Statutory Rules 1998 No. 239, regulation 6.1 (effective 22 July 1998))	
6405	United Nations	Minister for Foreign Affairs
6406	University	Minister for Education Training and Youth Affairs

**PART 5 — CONSENT REQUIRED TO USE NAMES RELATING TO
FINANCIAL INSTITUTIONS**

Item	Word or expression	Public authority, instrumentality or agency
6501	ADI	APRA
6502	authorised deposit-taking institution	APRA
6503	bank	APRA
6504	banker	APRA
6505	banking	APRA
6506	building society	APRA
6507	credit society	APRA
6508	credit union	APRA
6509	friendly society (in relation to the conduct of a financial business)	APRA

ATTACHMENT B ADDITIONAL PROCEDURES

This Attachment outlines additional procedures applicable to:

- (a) words specified in Part 4 of Schedule 6 of the Corporations Regulations (such as ‘Anzac’, ‘and ‘Red Cross’);
- (b) words specified in Part 5 of Schedule 6 of the Corporations Regulations (such as ‘building society’, ‘bank’ and ‘friendly society’);
- (c) proposed companies;
- (d) foreign companies; and
- (e) registrable Australian bodies.

Words specified in Part 4 of Schedule 6

Where an application is made to reserve a name that contains a word or phrase specified in item 2 in Part 4 of Schedule 6 of the Corporations Regulations (such as ‘Anzac’, or ‘Red Cross’) the application must be accompanied by the written consent of the relevant Minister specified in that Schedule. (The text of Part 4 of Schedule 6 is at Attachment A.)

Words specified in Part 5 of Schedule 6

Where an application is made to reserve a name that contains letters, a word or expression specified in item 2 in Part 5 of Schedule 6 of the Corporations Regulations (such as ‘building society’, ‘bank’ or ‘friendly society’ in relation to the conduct of a financial business) the application must be accompanied by the written consent of the public authority, or instrumentality or agency of the Crown specified in that Schedule. (The text of Part 5 of Schedule 6 is at Attachment A.)

Proposed companies

Persons wishing to incorporate a new company are required to lodge an application in the prescribed form with the Australian Securities and Investments Commission for the registration of the company (Corporations Act, section 117). Except where the company’s name on registration is to be its registration number, a proposed company cannot be registered by a particular name unless the name under which it is to be registered is available under sections 147 of the Corporations Act (Corporations Act, section 148).

Foreign companies

A foreign company is not permitted to carry on business in a State, in the ACT or the Northern Territory unless it is registered, or has applied to the Australian Securities and Investments Commission to be registered, under Part 5B.2 of the Corporations Act and the application has not been dealt with (Corporations Act, section 601CD). A foreign company must not use a name in any Australian jurisdiction unless it is registered under that name under the Corporations Act or the name is registered in

respect of the foreign company under the law of an Australian jurisdiction relating to business names (Corporations Act, section 601DD).

'Foreign Company' is defined in section 9 of the Corporations Act to mean:

- (a) a body corporate that is incorporated in an external Territory, or outside Australia and the external Territories, and is not:
 - (i) a corporation sole; or
 - (ii) an exempt public authority; or
- (b) an unincorporated body that:
 - (i) is formed in an external Territory or outside Australia and the external Territories; and
 - (ii) under the law of its place of formation, may sue or be sued, or may hold property in the name of its secretary or of an officer of the body duly appointed for that purpose; and
 - (iii) does not have its head office or principal place of business in Australia.

Registrable Australian bodies

Examples of registrable Australian bodies are incorporated associations and co-operative societies. Any existing or proposed registrable Australian bodies which intend to carry on business in a State or Territory other than their State or Territory of formation must register with the Australian Securities and Investments Commission under Part 5B.2, of the Corporations Act.

An existing or proposed registrable Australian body must not use a name in any Australian jurisdiction unless it is registered under that name under the Corporations Act or the name is registered in respect of the body under the law of an Australian jurisdiction relating to business names.

'Registrable Australian body' is defined in section 9 of the Corporations Act to mean:

- (a) a body corporate, not being:
 - (i) a company; or
 - (ii) an exempt public authority; or
 - (iv) a corporation sole; or
- (b) an unincorporated body that, under the law of its place of formation:
 - (i) may sue or be sued; or
 - (ii) may hold property;
 - in the name of its secretary or of an officer of the body duly appointed for that purpose;

but does not include a foreign company.

ATTACHMENT C: GUIDELINES FOR THE ASSESSMENT OF APPLICATIONS FOR CONSENT TO THE USE OF THE WORDS 'COMMONWEALTH' OR 'FEDERAL' IN BUSINESS OR ASSOCIATION NAMES

There is a long-standing arrangement for the States and Territories to consult with the Commonwealth about applications under State and Territory business names legislation or associations incorporation legislation to use the word 'Commonwealth' or 'Federal' in a business or association name.

Consent will normally be granted to the use of the word 'Commonwealth' or 'Federal' in business or association names:

- (a) where the name as a whole indicates clearly that the body is not connected with the Commonwealth Government;**
- (b) where the applicant is a Commonwealth Government business enterprise;**
- (c) here the applicant is a business enterprise that is a wholly-owned subsidiary within an existing Australian group that is already using comparable business an/or company names, provided that:**
 - (i) the group was using the name in Australia prior to the proclamation of the Companies Act 1981; and**
 - (ii) the proposed name varies from an existing group name only by the addition or substitution of a geographical or functional description;**
- (d) where a new business name is being registered to continue, for goodwill purposes, the name of an existing company which is in the process of being wound up as part of a group restructuring;**
- (e) where the applicant is a non-profit organisation which is connected with or receives support from the Commonwealth Government; or**
- (f) where the word is used in a geographical context.**

