



**GUIDELINES FOR MINISTERIAL CONSENT TO BUSINESS
NAMES UNDER THE *BUSINESS NAMES REGISTRATION ACT 2011***

July 2015

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1. BACKGROUND

INTRODUCTION

Purpose of the guidelines

The Australian Securities and Investments Commission (**ASIC**) must not register a business name under the *Business Names Registration Act 2011* (**Registration Act**), if the name is of a kind that is undesirable or the name includes a restricted word or expression.

The kinds of names that are undesirable and restricted words and expressions are provided in the *Business Names Registration (Availability of Names) Determination 2012* (**Names Determination**).

The Minister may consent to the use of a business name that would otherwise not be available to a business as it would be considered undesirable (under section 27(2) of the Registration Act).

This power has been delegated to certain senior ASIC officers (**Authorised ASIC Officers**).

The Minister may also consent to the use of words or expressions in a business name that are otherwise restricted (under section 9(1) and 9(2) of the Names Determination).

Authorised ASIC Officers have been authorised by the Minister to perform the power to give consent under section 9(1) and 9(2) of the Names Determination.

These Ministerial guidelines (**Guidelines**) set out the procedures to be followed and the criteria to be applied in considering applications for consent:

- (a) under section 27(2) of the Registration Act, to use an otherwise undesirable business name; and
- (b) under section 9(1) and 9(2) of the Names Determination, to the use in a business name of words or expressions that are otherwise restricted words or expressions.

Ministerial Guidelines for use by ASIC officers

The Authorised ASIC Officer will have regard to these Guidelines in considering applications for consent.

Review of decisions

A decision made by an Authorised ASIC Officer in relation to applications for Ministerial consent to the use of otherwise undesirable names (sections 27(2) of the Registration Act), is reviewable by the Minister and the Minister's decision is

reviewable by the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975*.

Decisions made by an Authorised ASIC Officer in relation to applications for consent to the use of words or expressions that are otherwise restricted (section 9(1) and (2) of the Names Determination) are not reviewable under the Registration Act.

Procedure for making an application to ASIC for consent

In relation to:

(a) a business name that is considered undesirable under Part 3 of the Names Determination; or

(b) a business name that includes a restricted word or expression specified in Part 1 of Schedule 2 of the Names Determination,

the Authorised ASIC Officer may determine the application.

A letter of application, together with documentation to support the relevant criteria as detailed in these Guidelines, should be emailed to BN.Reviews@asic.gov.au or sent to:

Business Name Ministerial Determination Applications
ASIC
PO Box 4000
Gippsland Mail Centre VIC 3841

ASIC must not register a business name under the Registration Act, if the name includes a restricted word or expression specified in Part 2 or Part 3 of Schedule 2 in the Names Determination.

Under section 10 of the Names Determination, the relevant Commonwealth Minister or Public Authority may consent to the use in a business name of words or expressions that are otherwise restricted words or expressions specified in Part 2 or Part 3 of the Names Determination

Part 2 of Schedule 2

In relation to a name that includes a restricted word or expression specified in Part 2 of Schedule 2 of the Names Determination, the consent of the relevant Commonwealth portfolio Minister specified in that Part must be obtained (you may contact ASIC at BN.Reviews@asic.gov.au for guidance on contacts for relevant Minister's).

When you have obtained written consent from the relevant Minister, you will be required to email a copy to ASIC at BN.Reviews@asic.gov.au, or send to:

Business Name Ministerial Determination Applications
ASIC
PO Box 4000

Gippsland Mail Centre VIC 3841

BN.reviews@asic.gov.au

Part 3 of Schedule 2

In relation to a name that includes a restricted word or expression specified in Part 3 of Schedule 2 of the Names Determination, the consent of the Australian Prudential Regulation Authority (APRA) must be obtained.

You will need to provide to APRA reasons why consent to use the restricted word or expression is appropriate in your circumstances, and any supporting documentation. Please refer to www.apra.gov.au.

If you wish to continue with your application for the proposed business name, once consent from APRA is obtained, please email the consent to BN.Reviews@asic.gov.au or send to:

Business Name Ministerial Determination Applications

ASIC

PO Box 4000

Gippsland Mail Centre VIC 3841

BN.reviews@asic.gov.au

Lodging an application for registration inclusive of consent

If an application for registration of a business name is lodged with ASIC without the relevant supporting documentation (including any consents), ASIC may refuse the application.

2. UNDESIRABLE BUSINESS NAMES

A business name is considered to be undesirable if the name has one or more of the characteristics appearing in the table in Part 3 of the Names Determination.

The Minister can consent to the use of a business name that would otherwise be undesirable. The Minister has delegated the power to consent to the ASIC Authorised Officers.

Names Suggesting a Connection That Does Not Exist

Part 3 of the Names Determination provides that a business name is undesirable if, in the opinion of ASIC, it is likely to be offensive to members of the public or members of any section of the public, or if, in the context in which it is proposed to be used, the business name suggests a connection with any of the following (as listed in (a) to (n) below) and that suggested connection 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 Nationsⁱ.

If ASIC is satisfied that the suggested connection does exist, the business name will not be considered undesirable and an application for Ministerial consent is not required.

'Commonwealth' or 'Federal'

Despite the above, a business name which includes the word 'Commonwealth' or 'Federal' is not considered undesirable if ASIC considers that it is used in a geographical context e.g. Federal Avenue Plaza.

ⁱ United Nations' is also a restricted expression appearing in Part 2 of Schedule 2 of the Names Determination, requiring consent from the Minister for Foreign Affairs before the expression can be used as part of a business name.

If ASIC is not satisfied that the use of either 'Commonwealth' or 'Federal' is in a geographical context, the applicant may apply for Ministerial consent to use the name.

Specific Name Restrictions in Other Legislation

Other Commonwealth legislation also prohibits the use of words that suggests a connection with certain business without the consent of the Commonwealth portfolio Minister, for example, the *Defence (Prohibited Words and Letters) Regulations 1957*.

Generally, there is no requirement under the Registration Act and the Names Determination to consider specific name restrictions in other Commonwealth legislation. However, where a proposed business name includes a word restricted by other Commonwealth legislation the name may be considered undesirable under the Names Determination if it suggests a connection with government that does not exist. If so, the applicant may apply for Ministerial consent to use the name.

GUIDELINES FOR BUSINESS NAMES SUGGESTING A CONNECTION TO GOVERNMENT

A business name is considered undesirable if it suggests a connection with government (i.e. any of the bodies or people listed at (a) to (i) and (n) above), unless the connection does exist or, if the word 'Commonwealth' or 'Federal' is included in the business name, the word is only used in a geographical context.

A connection with government would normally be demonstrated by written evidence from the relevant Government or department, authority or instrumentality of the relevant Government or other person or organisation detailing the connection. A Ministerial determination is not required if the connection has been demonstrated.

Criteria for the Assessment of Applications

Consent will normally be granted for such applications if:

- (a) the applicant establishes there is support or approval from the relevant government or body to use the name; or
- (b) the applicant is a non-profit organisation that has support or approval from the Commonwealth Government.

However, where a proposed business name:

- (a) suggests a connection with government that does not exist; and
- (b) there is no support or approval from the relevant government or body;

the applicant 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 BUSINESS NAMES SUGGESTING A CONNECTION TO A MEMBER OF THE ROYAL FAMILY OR RECEIPT OF ROYAL PATRONAGE

The references to the Royal Family are references to the British Monarchy.

A business name which in the context it is proposed to be used suggests a connection with a member of the Royal Family or receipt of Royal patronage, and that connection does not exist, is considered to be undesirable and, therefore, unavailable to be registered to an entity.

Criteria for the Assessment of Applications

A connection could be considered to exist if:

- (a) the relevant member of the Royal Family has endorsed a name that suggests a connection with that person; or
- (b) the business has in fact received Royal patronage, or the operators of the business are also involved with another body that has received Royal patronage.

Ministerial consent is not required if the connection has been demonstrated.

If the connection has not been demonstrated, consent will normally only be granted for such applications if the applicant has demonstrated that there is no real likelihood that members of the public would be misled into believing that there is a connection with a member of the Royal Family or receipt of Royal patronage.

GUIDELINES FOR BUSINESS NAMES SUGGESTING A CONNECTION WITH SIR DONALD BRADMAN OR MARY MACKILLOP

A business name which in the context it is proposed to be used suggests a connection with Sir Donald Bradman or Mary MacKillop, and that connection does not exist, is considered to be undesirable.

Criteria for the Assessment of Applications

A connection could be considered to exist if the application has received the support or approval from a relevant institution or organisation, for example, the Bradman Foundation or the Sisters of Saint Joseph of the Sacred Heart.

A Ministerial consent is not required if the connection has been demonstrated.

If the connection has not been demonstrated consent will normally only be granted for such applications if the applicant has demonstrated there is no real likelihood that members of the public would be misled into believing that there is a connection with Sir Donald Bradman or Mary MacKillop.

GUIDELINES FOR BUSINESS NAMES SUGGESTING A CONNECTION WITH A CHARITABLE ORGANISATION

Any business name which in the context it is proposed to be used suggests a connection with a charitable organisation and that connection does not exist is considered to be undesirable. Ministerial consent is not required if the business name does not contain the words 'charitable' or 'charity' and a connection with a charitable organisation has been demonstratedⁱⁱ.

Criteria for the Assessment of Applications

If a connection with a 'charitable organisation' has not been demonstrated, consent will normally be granted for such applications if:

- (a) the name does not contain the words 'charitable' or 'charity'; and
- (b) the applicant has demonstrated that there is no real likelihood that members of the public would be misled into believing that there is a connection with a charitable organisation.

GUIDELINES FOR BUSINESS NAMES SUGGESTING A CONNECTION TO AN EX-SERVICE PERSONNEL ORGANISATION OR EX-SERVICE PERSONNEL GENERALLY

Any business name which in the context it is proposed to be used suggests a connection with an ex-service personnel organisation or ex-service personnel generally and that connection does not exist, is considered to be undesirable.

'R.S.L.', 'RSL', 'Lest We Forget' and 'Anzac' are also restricted words appearing in Part 1 of Schedule 2 of the Names Determination (refer to *Part 3 Restricted Words and Expressions* in these Guidelines).

A Ministerial determination is not required if the name does not contain the words 'R.S.L.', 'RSL', 'Lest We Forget' or 'Anzac' and a connection has been demonstrated.

Criteria for the Assessment of Applications

If a connection to an ex-service personnel organisation or ex-service personnel generally has not been demonstrated, consent will normally be granted for such applications if:

- (a) the name does not contain the words 'R.S.L.', 'RSL', 'Lest We Forget' or 'Anzac'; and
- (b) the applicant has demonstrated that there is no real likelihood that members of the public would be misled into believing that there is a connection with an ex-service personnel organisation or ex-service personnel generally.

ⁱⁱ 'Charitable' and 'charity' are also restricted words appearing in Part 1 of Schedule 2 of the Names Determination (refer to *Part 3 Restricted Words and Expressions* in these Guidelines).

GUIDELINES FOR BUSINESS NAMES SUGGESTING THAT MEMBERS OF AN ORGANISATION ARE TOTALLY OR PARTIALLY INCAPACITATED AND THOSE MEMBERS ARE NOT SO AFFECTED

Any business name which suggests members of an organisation are totally or partially incapacitated and those members are not so affected is considered to be undesirable.

Criteria for the Assessment of Applications

The applicant will need to demonstrate that it provides a service to its members or other members of the community who are totally or partially incapacitated by demonstrating:

- (a) support or approval to use the name from a Totally or Partially Incapacitated War Veterans Association (TPI Association); or
- (b) the business is part of, or has received support or approval to use the name from, a relevant organisation that provides support or service for totally or partially incapacitated persons.

A Ministerial determination is not required if the members of the organisation are totally or partially incapacitated.

If a connection to an organisation of Totally or Partially Incapacitated War Veterans or other organisation representing incapacitated members is not demonstrated, consent will normally be granted for such applications if the applicant has demonstrated that there is no real likelihood that members of the public would be misled into believing that the members of the organisation are totally or partially incapacitated.

3. RESTRICTED WORDS AND EXPRESSIONS

Part 1 of Schedule 2 of the Names Determination lists restricted words and expressions that are, subject to exceptions provided for in section 9 of the Names Determination, unable to be used in a business name registered to an entity under the Registration Act.

This restriction extends to words or expressions that have the same or similar meaning to words or expressions in Part 1 of Schedule 2.

The Minister may consent to the use of words or expressions that are otherwise restricted.

Authorised ASIC Officers are authorised to consent to the use of words or expressions that are otherwise restricted under sections 9(1) and 9(2) of the Names Determination.

In exercising this authorisation, ASIC may consult relevant Commonwealth, State or Local Government agencies or authorities. ASIC is not bound to accept any views or recommendation made by an agency or authority, unless expressly specified in these Guidelines.

Restricted words or expression as part of a group of characters

If a business name is identified as including a restricted word as part of a group of characters and:

- (a) that group of characters is a word in itself, then it **is not** considered to contain a restricted word;
- (b) that group of characters is not a word (for example - contained in the Macquarie dictionary), and **any** pronunciation of the business name would result in the restricted word being pronounced, then it **is** considered to contain a restricted word.

An example which would **not** require Ministerial consent is the business name 'Angst'. 'GST' is part of the word 'angst'.

An example which would require Ministerial consent is the business name 'Chocolateinc'. 'Inc' is included in a group of characters. One pronunciation of the business name could be 'Chocolate Inc', therefore consent will be required for the use of 'Inc'.

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE EXPRESSIONS 'ABORIGINAL CORPORATION', 'ABORIGINAL COUNCIL' OR 'TORRES STRAIT ISLANDER CORPORATION'

'Aboriginal Corporation', 'Aboriginal Council' and 'Torres Strait Islander Corporation' are restricted expressions under Part 1 of Schedule 2 of the Names Determination.

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

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

The Office of the Registrar of Indigenous Corporations (ORIC) requires that entities registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* include the words 'Aboriginal Corporation' in the name.

Applications for registration of business names including 'Aboriginal Corporation', 'Aboriginal Council' and 'Torres Strait Islander Corporation' are to be referred to the ORIC.

Criteria for the Assessment of Applications

Consent to the use of these expressions in a business name will not be given unless the applicant demonstrates to ASIC that the entity is registered under the relevant Commonwealth or State legislation such as:

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

When considering an application for consent to use the expressions 'Aboriginal Corporation', 'Aboriginal Council' or 'Torres Strait Islander Corporation' in a business name, ASIC may consult with ORIC.

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE EXPRESSIONS 'ADVANCE AUSTRALIA', 'MADE IN AUSTRALIA' OR 'AUSTRALIAN MADE'

'Advance Australia', 'Made in Australia' and 'Australian Made' are restricted expressions under Part 1 of Schedule 2 of the Names Determination.

Since 1999, the *Australian Made, Australian Grown* campaign has been administered by Australian Made Campaign Limited, a not-for-profit public company set up by its foundation members, the Australian Chamber of Commerce and Industry and the network of State and Territory chambers. The Commonwealth Government is responsible for the legislation and policy associated with origin labelling and the *Australian Made, Australian Grown* campaign. The Department of Industry is responsible for the *Australian Made, Australian Grown* campaign. The Department of

Industry does not allow any entities to use these restricted words apart from specific entities administering the campaign.

Criteria for the Assessment of Applications

Before consenting to the use of the expressions 'Advance Australia', 'Made in Australia' or 'Australian Made', or words or expressions having a similar meaning in a business name, ASIC must seek the views of the *Australian Made, Australian Grown* campaign, the Department of Industry, or any other relevant Government department that promotes Australian goods and services.

Applicants seeking Ministerial consent to the use of the expressions 'Advance Australia', 'Made in Australia' or 'Australian Made', or words or expressions having a similar meaning in a proposed business name will need to demonstrate that the business has a direct connection with an official Government program encouraging the purchase of Australian made goods and services. Membership of the program or use of an *Australian Made, Australian Grown* logo or branding is not sufficient to establish a connection.

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE WORDS OR EXPRESSIONS 'POLICE', 'POLICING', 'INTERNATIONAL CRIMINAL POLICE ORGANISATION' (ICPO) OR 'INTERPOL'

'Police', 'Policing', 'International Criminal Police Organisation' ('ICPO') and 'Interpol' are restricted words or expressions under Part 1 of Schedule 2 of the Names Determination.

Criteria for the Assessment of Applications

Applicants seeking Ministerial consent to the use of the words or expressions 'police', 'policing', 'International Criminal Police Organisation (ICPO)' or 'Interpol', or words or expressions having a similar meaning in a proposed business name, will need to demonstrate:

- (a) the name as a whole indicates clearly that the entity 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 applicant is a business enterprise owned or operated by ICPO, Interpol or their respective governing bodies; or
- (d) the proposed business 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.

When considering an application for consent under (d), ASIC must consult and obtain the views of the relevant body and the Commonwealth Attorney-General's Department but is not obliged to accept the views given by any relevant body or the Commonwealth Attorney-General's Department.

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE EXPRESSIONS 'CHAMBER OF COMMERCE', 'CHAMBER OF MANUFACTURERS' OR 'CHAMBER OF INDUSTRY'

'Chamber of Commerce', 'Chamber of Manufacturers' and 'Chamber of Industry' are restricted expressions under Part 1 of Schedule 2 of the Names Determination.

Criteria for the Assessment of Applications

Applicants seeking Ministerial consent to the use of the expressions 'Chamber of Commerce', 'Chamber of Manufacturers' or 'Chamber of Industry', or words or expressions having a similar meaning, in a proposed business name, will need to demonstrate:

- (a) the applicant is a 'genuine' Chamber of Commerce, Chamber of Manufacturers or Chamber of Industry, demonstrated by:
 - (i) one of its primary objects is to promote trade and commerce in the region that it proposes to cover; and
 - (ii) the entity acts as a unified voice for its affiliates/members; and
 - (iii) the entity represents a large number of business organisations and individuals; and
 - (iv) the entity maintains a (large) staff; and
 - (v) the entity engages in a broad spectrum of activities relating to the promotion of trade, commerce and industry; 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 another organisation has broadly similar objectives.

In relation to any application, ASIC may consult with:

- (a) any relevant State or Territory Chambers of Commerce, Industry or Manufacturers as applicable, and
- (b) the Australian Chamber of Commerce and Industry (ACCI) and keep ACCI informed about the processing of all applications for the use of the expressions 'Chamber of Commerce' and 'Chamber of Manufactures' and 'Chamber of Industry'.

In the case of an international or bilateral application, ASIC may 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. DFAT 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.

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE EXPRESSIONS 'STARR-BOWKETT', 'FRIENDLY SOCIETY' (NOT IN RELATION TO THE CONDUCT OF A FINANCIAL BUSINESS)

'Starr-Bowkett' and 'Friendly Society' are restricted expressions under Part 1 of Schedule 2 of the Names Determination.

Use of the expression 'Friendly Society' (in relation to the conduct of a financial business) is restricted under Part 3 of Schedule 2 of the Names Determination, and use of the expression in a business name requires consent from the Australian Prudential Regulatory Authority (APRA).

Starr-Bowkett societies are an old form of building society, their object is to provide loans to assist shareholders buy or build homes. They are regulated under State and Territory legislation, and are permitted to use the expression 'Starr-Bowkett' under the law under which they were incorporated or registered.

Criteria for the Assessment of Applications

Applicants seeking Ministerial consent to the use of the words 'Starr Bowkett' or 'Friendly Society' (not in relation to the conduct of a financial business) or words having a similar meaning in a proposed business name will need to demonstrate:

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

When considering an application for consent to the use of the word 'Friendly Society', ASIC must obtain the consent of APRA.

When considering an application for consent to the use of the word 'Starr Bowkett', ASIC may consult and obtain the views of APRA.

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

'Co-operative' is a restricted word under Part 1 of Schedule 2 of the Names Determination.

Criteria for the Assessment of Applications

Applicants seeking Ministerial consent to the use of the word 'Co-operative' or the abbreviation 'Co-op' in a proposed business name, notwithstanding that the business is not expressly required to use these words in its business name, will need to demonstrate:

- (a) the word 'Co-operative' or the abbreviation 'Co-op' is permitted to be included in the business name because of the State or Territory co-operative societies legislation under which the entity is incorporated or registered; or

- (b) the business name is to be held by an entity that is required or permitted to use, or related to an entity 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 entity is registered under co-operative societies legislation (e.g. the co-operative research centres established by joint venture agreements between the Commonwealth and industry).

An applicant seeking to use the word 'Co-operative' or the abbreviation 'Co-op' under criteria (a) or (b) will need to provide evidence of the registration of the applicant, or the related entity, under the relevant State or Territory co-operative societies legislation.

Applicants that are applying to use the word 'Co-operative' or the abbreviation 'Co-op' in their business name under criterion (c) will need to demonstrate (explain, give reasons, provide evidence) that there is no real likelihood that members of the public would be misled into believing that the entity is incorporated under co-operative societies legislation or otherwise entitled under legislation to use the word 'Co-operative' or the abbreviation 'Co-op' in their name.

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE EXPRESSIONS 'LEST WE FORGET', 'R.S.L.' OR 'RSL'

'Lest we Forget', 'R.S.L.' and 'RSL' are restricted words or expressions under Part 1 of Schedule 2 of the Names Determination.

Criteria for the Assessment of Applications

Applicants seeking Ministerial consent to the use of the abbreviation 'R.S.L.' or 'RSL' in a proposed business name will need to demonstrate:

- (a) 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; or
- (b) the name as a whole indicates clearly that the entity is not connected with the Returned Services League.

Applicants seeking Ministerial consent to the use of the expression 'Lest We Forget' will need to demonstrate a connection to an entity that preserves the history, reverence and/or remembrance of World War 1 involving Australian defence forces.

Where appropriate, ASIC may consult with the Commonwealth Department responsible for Veterans Affairs.

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE EXPRESSIONS 'STOCK EXCHANGE', 'SECURITIES EXCHANGE', 'SECURITIES MARKET', 'FUTURES EXCHANGE'

'Stock Exchange', 'Securities Exchange', 'Securities Market' and 'Futures Exchange' are restricted expressions under Part 1 of Schedule 2 of the Names Determination.

Criteria for the Assessment of Applications

Applicants seeking Ministerial consent to the use of the expressions 'Stock Exchange', 'Securities Exchange', 'Securities Market' and 'Futures Exchange', or words having a similar meaning, in a proposed business name will need to demonstrate:

- (a) the Commonwealth Minister has granted a market licence in relation to the entity, or exempted the entity from the operation of Part 7.2 of the Corporations Act 2001; or
- (b) if it is clear from the context in which the words are used in a business name that there is no suggestion that the business is or will be acting as a stock exchange, securities exchange, securities market and futures market. An example of this would be 'Stock Exchange Hotel' or 'Stock Exchange Newsagency'.

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE WORD 'CONSUMER'

'Consumer' is a restricted word under Part 1 of the Schedule 2 of the Names Determination.

Criteria for the Assessment of Applications

Applicants seeking Ministerial consent to the use of the word 'Consumer' in a proposed business name will need to demonstrate:

- (a) the business is formed, or is to be formed, for a purpose of representing, protecting, promoting or benefiting consumer interests; or
- (b) the use of the word 'Consumer' in the name of the business reflects the purpose for which the business is to be established and is not likely to mislead members of the public into believing that the business is associated with any Government, consumer association or public interest body.

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE WORDS 'EXECUTOR' AND 'FIDUCIARY'

'Executor' and 'Fiduciary' are restricted words under Part 1 of Schedule 2 of the Names Determination.

Criteria for the Assessment of Applications

Applicants seeking Ministerial consent to the use in a proposed business name of the word 'Executor' or 'Fiduciary', or a word having a similar meaning, will need to demonstrate:

- (a) the applicant is authorised by State or Territory legislation to act as an executor or administrator of estates or as a fiduciary; 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 as a fiduciary; 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; or
- (d) it is clear from the context in which the words are used in a business name that there is no suggestion that the business is or will be acting as an executor or administrator of estates, or acting as a fiduciary or providing fiduciary services.

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE WORD OR EXPRESSION 'AMBULANCE' AND 'FIRE BRIGADE'

'Ambulance' and 'Fire Brigade' are restricted words or expressions under Part 1 of Schedule 2 of the Names Determination.

Criteria for the Assessment of Applications

Applicants seeking Ministerial consent to use in a proposed business name of the words 'ambulance' or 'fire brigade' will need to demonstrate:

- (a) the business has a connection to, or a contract with, the Commonwealth or State (or any department, authority or agency of the Commonwealth or State) to provide an ambulance or fire brigade service; or
- (b) the name conveys an accurate impression about the nature of a product or service that the business offers, and does not suggest a connection with any department, authority or agency of the Commonwealth or State that provides an ambulance or fire brigade service.

ASIC may consult with any relevant Commonwealth, State or Local Government emergency services department.

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE WORD 'GUARANTEE'

'Guarantee' is a restricted word under Part 1 of Schedule 2 of the Names Determination.

Criteria for the Assessment of Applications

Applicants seeking Ministerial consent to the use of the word 'guarantee', or a word having similar meaning (for example, warranty) in a proposed business name will need to demonstrate:

- (a) the name conveys the sense of a guarantee of one entity 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 business offers.

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE WORD 'INCORPORATED'

'Incorporated' is a restricted word under Part 1 of Schedule 2 of the Names Determination.

Criteria for the Assessment of Applications

Applicants seeking Ministerial consent to the use of the word 'incorporated', or the abbreviation 'Inc', in a proposed business name, notwithstanding that the business is not required to use the name under State or Territory law, or the law of a foreign jurisdiction, will need to demonstrate:

- (a) the word is permitted to be included in the name because of the legislation under which the applicant is incorporated or registered;
- (b) the applicant is related to another entity that is required or permitted to use those words in its name; or
- (c) the context in which the word 'Incorporated' or the abbreviation 'Inc' is used in the name is not likely to mislead members of the public into believing that the entity is registered under legislation requiring the name of the entity to include 'Incorporated' as part of the name or to use an abbreviation of 'Incorporated', such as 'Inc', in the name.

An applicant seeking to use the word 'Incorporated', or the abbreviation 'Inc', under criterion (a) or (b) will need to provide evidence of the registration of (i) the applicant or (ii) the related entity (as applicable) that is required or permitted to use the words 'Incorporated' or 'Inc' in its name.

An applicant seeking to use the word 'Incorporated', or the abbreviation 'Inc', under criterion (c) will need to demonstrate (explain, give reasons, provide evidence) that there is no real likelihood that members of the public would be misled into believing that the entity is an incorporated body or otherwise entitled under legislation to use the word 'Incorporated' or the abbreviation 'Inc'.

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE WORDS 'TRUST' AND 'TRUSTEE'

'Trust' and 'trustee' are restricted words under Part 1 of Schedule 2 of the Names Determination.

Criteria for the Assessment of Applications

Applicants seeking Ministerial consent to the use of the word 'Trust' or 'Trustee', or words having a similar meaning, in a proposed business name, will need to demonstrate:

- (a) the applicant is authorised by Commonwealth, 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 or a superannuation fund. This may be demonstrated by reference to trust deeds, registration with APRA 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; or
- (f) the context in which the word 'trust' or 'trustee' is used in the name is not likely to mislead members of the public about the nature of the entity or that the entity is authorised to act as an executor or administrator of estates or trusts.

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE WORD 'G.S.T.' OR 'GST'

'G.S.T.' and 'GST' are restricted abbreviations under Part 1 of Schedule 2 of the Names Determination.

Criteria for the Assessment of Applications

Applicants seeking Ministerial consent to the use of the abbreviations 'G.S.T.' or 'GST' or words having a similar meaning in a proposed business name will need to demonstrate:

- (a) the business has a connection with an official Government program dealing with the Goods and Services Tax (GST); or
- (b) the abbreviation 'GST' in the name describes accurately the applicant's business that is the giving of advice on the GST;
- (c) the name as a whole indicates clearly that the entity is not connected with, or provide products or services related to, the Goods and Services Tax (GST).

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE EXPRESSION ‘ORDER OF THE EASTERN STAR’

‘Order of the Eastern Star’ is a restricted expression under Part 1 of Schedule 2 of the Names Determination.

Criteria for the Assessment of Applications

Applicants seeking Ministerial consent to the use of ‘Order of the Eastern Star’ in a proposed business name will need to provide written confirmation from the Order of the Eastern Star that the Order does not oppose the applicant’s registration of the business name.

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE EXPRESSION ‘TRADING AS’ AND ‘PROPRIETOR’

‘Trading as’ and ‘proprietor’ are restricted words and expressions under Part 1 of Schedule 2 of the Names Determination.

The term ‘trading as’ may imply that an entity is trading under an alternative name to the registered entity. To include ‘trading as’ in a name may suggest to the public that the words preceding or subsequent to ‘trading as’ are the registered entity when this may not be the case. A registered business name is the trading name ie. if Joe Smith is trading as ‘Flying Flowers’, then the registered business name is ‘Flying Flowers’, not ‘Joe Smith trading as Flying Flowers’.

The word ‘proprietor’ is defined as the legal owner of a business entity. To include ‘proprietor’ in a name may suggest to the public that the words preceding or subsequent to ‘proprietor’ is the name of the legal owner of the business name when this may not be the case.

Criteria for the Assessment of Applications

Applicants seeking Ministerial consent to the use of ‘trading as’ or ‘proprietor’ in a proposed business name will need to demonstrate that the name will not mislead consumers dealing with the entity about:

- (a) the type of entity (e.g. the nature of the entity's registration or incorporation, including any words or expressions required to be used as part of the entity's name); or
- (b) the nature of the entity’s activities.

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE WORD ‘CHARTERED’

‘Chartered’ is a restricted word under Part 1 of Schedule 2 of the Names Determination.

‘Chartered’ is a term commonly associated with entities created under Royal Charter, such as the Institute of Chartered Accountants in Australia.

Criteria for the Assessment of Applications

Applicants seeking Ministerial consent to the use of 'chartered' in a proposed business name will need to demonstrate:

- (a) that the entity has been created by, or is closely related or affiliated to, an entity created under Royal Charter (whether in Australia or elsewhere); or
- (b) the context in which the word 'Chartered' is used in the name is not likely to mislead members of the public into believing the entity has been created by or is closely related or affiliated to an entity created under Royal Charter.

In the case where an applicant seeks consent to use the expression 'Chartered Accountant' or 'Chartered Accountants', ASIC may consult with the Institute of Chartered Accountants in Australia (ICAA). Where ASIC does consult with the ICAA, ASIC is not required to accept the views of ICAA.

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE WORDS 'CHARITY' AND 'CHARITABLE'

'Charity' and 'charitable' are restricted words under Part 1 of Schedule 2 of the Names Determination.

'Charity' and 'charitable' are defined in the Charities Act 2013.ⁱⁱⁱ An entity (which is not an individual, a political party or a government entity) is a charity if the entity is a not-for-profit entity and the purposes of the entity are charitable purposes for the public benefit.

Any of the following purposes are charitable purposes - advancing health, advancing education, advancing social or public welfare, advancing religion, advancing culture, promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia, promoting or protecting human rights, advancing the security or safety of Australia or the Australian public, preventing or relieving the suffering of animals, advancing the natural environment.^{iv}

Criteria for the Assessment of Applications

Applicants seeking Ministerial consent to the use of the word 'charity' or 'charitable' in a proposed business name will need to demonstrate:

- (a) the applicant is a charity. This may be demonstrated by reference to the applicant's governing rules, its activities, registration with the ACNC and other documentation;
- (b) the applicant is endorsed by a charity and the context in which the word 'charity' or 'charitable' is used in the name is not likely to mislead members of the public about the nature of the entity's activities; or

ⁱⁱⁱ Commencement date is 1 January 2014

^{iv} As defined in Part 3 of the Charities Act.

- (c) the context in which the word 'charity' or 'charitable' is used in the name is not likely to mislead members of the public into believing that the entity is a charity or is connected with a charity.

GUIDELINES FOR THE USE IN BUSINESS NAMES OF THE WORDS 'PROPRIETARY', 'LIMITED' OR 'NO LIABILITY'

'Proprietary', 'Limited' and 'No Liability' are restricted words under Part 1 of Schedule 2 of the Names Determination.

The use of the words 'Proprietary', 'Limited' or 'No Liability', or their abbreviations 'Pty', 'Ltd' or 'NL', in a business name may mislead members of the public into believing they are dealing with a company registered under the Corporations Act 2001, a limited partnership or an incorporated association when this is not the case.

Criteria for the Assessment of Applications

Applicants seeking Ministerial consent to the use of the words 'Proprietary', 'Limited' or 'No Liability' in a proposed business name will need to demonstrate:

- (a) the words 'Proprietary', 'Limited' or 'No Liability', or their abbreviations, are permitted to be included in the business name because of the legislation under which the entity is incorporated or registered; or
- (b) the context in which the words 'Proprietary', 'Limited' or 'No Liability', or their abbreviations, are used is not likely to mislead members of the public into believing the business name is a body that is registered under the *Corporations Act 2001*.

An applicant seeking to use the words 'Proprietary', 'Limited' or 'No Liability', or their abbreviations, will need to provide evidence that the entity is required or permitted to use the word in its name.