

Our reference:
Your reference: 11.1.2.c



**Queensland
Government**

Office of the
Director-General

Department of
Justice and Attorney-General

The Honourable Dean Wells MP
Acting Chair
Legal Affairs, Police, Corrective Services and Emergency Service Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Wells

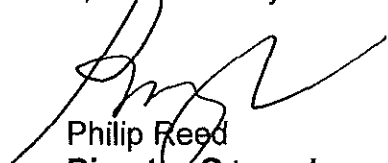
I refer to your letter of 9 September 2011 in relation to my Department's assistance in examining the *Business Names (Commonwealth Powers) Bill 2011*.

I enclose my Department's briefing on issues raised in submissions.

I have discussed my response to your letter with the office of the Attorney-General, Minister for Local Government and Special Minister of State. The Department is committed to providing the Committee with responses to any issues identified by the Committee and any other appropriate assistance the Committee requests.

If the Committee requires any further information, please contact Mr Chris Irons, Director, Fair Trading Policy. You may contact Chris on 3898 0172 or alternatively by email on chris.iron@deedi.qld.gov.au.

Yours sincerely


Philip Reed
Director-General
Encl. 21/9/11

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Legal Affairs, Police, Corrective Services and Emergency Services Parliamentary Committee:
Initial summary of issues raised by submitters to the inquiry into the Business Names (Commonwealth Powers) Bill 2011

Issue	What did witnesses say?	Department's initial views
Definition of 'business' in the Bill	The Queensland Law Society requested the Bill define the term 'business'.	<p>The use of the term 'business' is used in two broad manners. Firstly it relates to the initial 'text based' reference of legislative power and can only logically take the definition used in that 'text based' reference. That is, the text of the Commonwealth Bill.</p> <p>Clause 4 of the Commonwealth Bill provides a sufficiently wide definition of the term 'business' to capture the business model of a franchise.</p> <p>The term 'business' is used in the transitional provisions of the Bill. For the purpose of these provisions the Bill provides the term is to have the same meaning as current <i>Business Names Act 1962</i>. That is, the <i>Business Names Act 1962</i> supplements the terms ordinary meaning by providing that meaning also includes a trade and profession.</p>



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<p>Requiring a trade mark search prior to application for a business name</p>	<p>The Queensland Law Society recommends the Queensland Government advocates for a change to the Commonwealth Bill so all applicants are required to conduct a simple due diligence search (namely, the free IP Australia search TM Check) to ascertain the uniqueness of their business name.</p>	<p>The Australian Department of Innovation, Industry, Science and Research, the Australian Government agency facilitating this reform also made a submission to the Committee. In its submission this agency notes the Australian Securities and Investments Commission, the Australian Government agency which will administer the new register, will provide a link on its register website to the free 'Trademark' search tool offer by IP Australia.</p> <p>This will allow business name registration applicants to compare their proposed names with registered Australian trade marks.</p> <p>It is the responsibility of all business name registration applicants to conduct appropriate due diligence before applying for a business name to ensure the proposed name does not infringe existing intellectual property rights or will 'pass off' as another existing business.</p>
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Guidelines for near identical or undesirable names	The Queensland Law Society seeks reassurance guidelines will be provided to business owners to assist in determining what is a 'near identical' or 'undesirable' name.	<p>Such 'guidelines' will be available in the proposed Commonwealth Business Names Registration (Availability of names) Determination 2011.</p> <p>A consultation version of this proposed Determination was released to the industry and community during March – April 2011.</p> <p>This version contained characteristics of what would be considered undesirable. For example, a proposed name suggesting a connection with the Royal Family or the United Nations or is in the opinion of the ASIC to be offensive to members of the public.</p> <p>There are no franchise specific guidelines within this proposed Determination nor are there any other business model specific guidelines.</p>
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<p>Data matching and use of the proposed national register</p>	<p>Veda Advantage seeks modification of the Commonwealth Bill and its legislative package so that the information publicly accessible can be used to assist it with consumer credit risk assessments, identity verification and fraud.</p>	<p>The submission is only focussed on the Commonwealth Bill. Veda Advantage is seeking modification to the Commonwealth Bill and legislative package so that it assists with its service provision for clients in analysing consumer credit risk assessment, identification and fraud.</p> <p>In particular, its seeks to use the proposed national register to assist its clients meeting legislative requirements of the Commonwealth <i>National Consumer Credit Protection Act 2009</i> and the collection and verification of a customer's identity in the Commonwealth <i>Anti-Money Laundering and Counter Terrorism Financing Act 2006</i>.</p> <p>The purpose of collecting information on an entity which is behind a business name is to assist consumers with their transactions with a business. That is, transparency in order the consumer knows or can find out with whom they are dealing.</p> <p>The DIISR advised this limits the use and disclosure of information to be contained in the proposed national register. The objects of the Commonwealth Bill do not provide the register is to contain personal information of a standard suitable for identity checking or verification purposes.</p>
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		<p>There is no policy ground to change the objectives of the Commonwealth Bill of keeping certain personal information private. That is, the person's residential address. The Bill does however propose to require contact details of the person and thus contribute to the objective of consumer transparency of a business.</p>
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Support	Family Business Australia supports the Bill and the move to repeal the existing Qld framework and the move to the national system.	
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