

Our reference:
Your reference: 11.1.2.c



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 the Legal Affairs, Police, Corrective Services and Emergency Services Committee hearing of 22 September 2011 and your request to provide information in relation to fundamental legislative principles with respect to the Business Names (Commonwealth Powers) Bill 2011. In particular, I refer to those principles discussed in the Committee Secretariat's report provided to me at the hearing.

I enclose my Department's response to the report. I further note that the Committee considers the Explanatory Notes accompanying the Bill to be clear, precise and contain information required by section 23 of the *Legislative Standards Act 1992*.

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.

27/9/11

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DISCUSSION PAPER ONLY – NOT GOVERNMENT POLICY

Legal Affairs, Police, Corrective Services and Emergency Services Parliamentary Committee:
Initial summary of issues raised by the Committee Secretariat's report on fundamental legislative principles for the inquiry into the
Business Names (Commonwealth Powers) Bill 2011

Issue	What did the report say?	Department's initial views
<p><u>Sufficient regard to rights and liberties of individuals</u></p> <p><i>Privacy</i></p>	<p>Clause 12 of the Bill and clause 62 of the Commonwealth <i>Business Names Registration Bill 2011</i> may affect rights of individuals to information privacy.</p> <p>The report notes the Bill's Explanatory Notes justify and address these inconsistencies with a person's right to information privacy.</p>	<p>Noted.</p>
<p><i>Statutory offences created</i></p>	<p>Clauses 18 to 21 of the Commonwealth Bill contain new offence provisions.</p>	<p>These proposed offences reflect the existing offences under the existing <i>Business Names Act 1962</i> and are important to maintain the existing regulatory framework on a national scale.</p>
<p><i>Administrative power</i></p>	<p>Clauses 19 and 20 of the Commonwealth Bill do not provide a right of review in relation to a refusal by the Minister to make a determination exempting an entity from particular requirements reliant to the inclusion</p>	<p>Noted. This is a matter for the Commonwealth Parliament to determine.</p>



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	<p>of business names in written communications and their display at place open to the public.</p> <p>The report notes the Explanatory Notes state these protections are normally found in Queensland legislation.</p>	
<i>Administrative power</i>	<p>Clause 32 of the Commonwealth Bill proposes the Minister may exempt certain entities from disqualification despite conviction without setting out clear criteria for decision making.</p> <p>The report notes the Explanatory Notes state these protections are normally found in Queensland legislation.</p>	Noted. This is a matter for the Commonwealth Parliament.
<i>Immunity from proceedings</i>	<p>Clause 14 of the Bill proposes to protect the Chief Executive or a public service employee from civil liability for an act or omission made honestly and without negligence in relation to the giving of information to the Commonwealth.</p> <p>The report notes the Explanatory Notes provide justification.</p> <p>Clause 78 of the Commonwealth Bill proposes</p>	<p>Noted.</p> <p>Noted.</p>



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	<p>to confer immunity on the Minister, the ASIC, delegates and public servants for an act or omission done in good faith in the exercise of any power or function under the legislation.</p> <p>The Explanatory Notes record while this provision does not conform to the standard usually required in Queensland legislation, in that an absence of negligence is not stipulated and no redress to the State is provided, the immunity is considered to be sufficiently limited.</p>	
<p><u>Sufficient regard to the institution of Parliament</u></p> <p><i>Institution of Parliament</i></p>	<p>Clauses 6 may not have sufficient regard to the institution of Parliament because it refers State powers to the Commonwealth and therefore may be seen as eroding the sovereign power of the Parliament.</p> <p>The report notes the Explanatory Notes address this issue.</p> <p>Clause 8 of the Bill proposes to empower the Governor in Council to terminate the references at any time by proclamation</p>	<p>Noted.</p> <p>Noted.</p>



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	<p>The report notes the Explanatory Notes address this issue.</p> <p>Clauses 18 to 21 of the Commonwealth Bill propose to allow circumstances in which the strict liability offences provided for in clauses 18 to 21 do not apply, to be prescribed by regulation. That is, a 'Henry VIII' clause.</p> <p>The report notes the Explanatory Note provide this approach is common in Commonwealth legislation and the use of Commonwealth regulations in this manner does differ to practice in Queensland.</p> <p>Clause 10 of the Commonwealth <i>Business Names Registration (Consequential and Transitional Provisions) Bill 2011</i> proposes to allow regulations to be made to deal with outstanding matters which would override the draft Bills.</p> <p>The report notes the Explanatory Notes provide there is no expiry on this clause or regulations made under it, as normally would be expected of a transitional regulation</p>	<p>Noted. This is a matter for the Commonwealth Parliament.</p> <p>Noted. This is a matter for the Commonwealth Parliament.</p>



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<i>Unlawful conduct</i>	<p>making power in Queensland.</p> <p>The Bill does not define the term 'unlawful conduct' contained in Clause 5 of the Bill. This clause contains the referral of power to amend the proposed Commonwealth Bill.</p> <p>The reports notes the Committee asks the Minister to consider whether a definition of 'unlawful conduct' should be inserted in the Bill for the purposes of clause 5.</p>	<p>Clause 5 was drafted by the Parliamentary Counsels' Committee on behalf of all State jurisdictions to be used as the template provision for the proposed amendment reference for the Commonwealth Bill. This was also agreed to by the Australian Government. This is part of the unified national approach to the legislative part of this project to form a single national law.</p> <p>The New South Wales Parliament has passed its Bill referring legislative power to the Commonwealth Parliament, including the words as used in Clause 5 of the Bill.</p> <p>The Tasmanian Parliament has also passed its Bill referring legislative power, including the words as used in Clause 5 of the Bill.</p>
<i>Explanatory Notes</i>	The report notes the Explanatory Notes were tabled with the introduction of the Bill. They are clear, precise and contain information required by section 23 of the <i>Legislative Standards Act 1992</i> .	Noted.

