



LEGAL AFFAIRS, POLICE, CORRECTIVE SERVICES AND EMERGENCY SERVICES COMMITTEE

Members present:

Hon. D.M. Wells MP (Acting Chair)
Mr J-P. H. Langbroek MP
Mrs. J.M. Attwood MP
Mr C.J. Foley MP

Staff present:

Ms A. Powell (Research Director)
Ms A. Honeyman (Principal Research Officer)

EXAMINATION OF THE BUSINESS NAME (COMMONWEALTH POWERS) BILL 2011

TRANSCRIPT OF PROCEEDINGS

THURSDAY, 22 SEPTEMBER 2011

Brisbane

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Committee met at 3.16 pm

FORD, Mr David, Deputy Director-General, Department of Justice and Attorney-General

IRONS, Mr Chris, Director, Fair Trading Policy, Department of Justice and Attorney-General

LOW, Mr Danny, Principal Policy and Legislation Officer, Fair Trading Policy, Department of Justice and Attorney-General

REED, Mr Philip Reed, Director-General, Department of Justice and Attorney-General

Acting CHAIR: Good afternoon everyone. I declare this public meeting of the Legal Affairs, Police, Corrective Services and Emergency Services Committee open. I would like to acknowledge the traditional owners. The Legal Affairs, Police, Corrective Services and Emergency Services Committee is a statutory committee of the Queensland parliament and, as such, represents the parliament. It is an all-party committee that adopts a bipartisan approach to its inquiries. You all knew that, but I just thought you might like to hear me say it.

Before going any further, let me introduce the members of the committee. I am Dean Wells, the member for Murrumba and I am acting as chair in the absence of Barbara Stone, who is absent due to illness. To my right is John-Paul Langbroek, the member for Surfers Paradise and deputy chair. To my left is Julie Attwood, the member for Mount Ommaney and further to my left is Chris Foley, the member for Maryborough.

On 24 August 2011, the Business Names (Commonwealth Powers) Bill 2011 was introduced into the parliament and referred to the committee for examination. The committee is required to report to the House on its examination by 4 October 2011. The committee called for submissions by advertising in the print media, on the committee's website and also by writing directly to a number of individuals and organisations. Four written submissions were received and the committee will consider the issues raised in those submissions this afternoon. The committee also received a report from the Scrutiny Secretariat on the application to the bill of fundamental legislative principles. The committee is being assisted in its examination of the bill by officials from the Department of Justice and Attorney-General, and we thank them for the written briefing material on the bill. Before I begin, I must remind those present that the committee's proceedings are subject to the rules and orders of the Queensland parliament. In the unlikely event of a need to evacuate, follow staff directions. They will tell you to use the stairs that are around the corner. There are no members of the public here, but they would have been welcome. If they elect not to come, cest la vie.

In moving to our consideration of the bill, we have in attendance officers from the Department of Justice and Attorney-General; Philip Reed, David Ford, Chris Irons and Danny Low at the top table. I also note the presence of other departmental officers and I thank them very much for coming. The department has provided a written briefing on the bill and a report addressing the issues raised in the submissions. I think you have been given a report from the Scrutiny Secretariat. I will in a moment invite you to begin talking to the committee, director-general. After that, the department will perhaps wish to address the submissions, referring to any issues that may have been raised in the submissions that the department would like us to hear comment upon. I would be grateful if you could identify yourself before speaking for the benefit of Hansard. I know that you knew all that, but the transcripts of these things have to be self-contained for the purposes of people who might, for want of having other activities available to them, want to read this in 100 years time. So director-general, do you want to begin by addressing us?

Mr Reed: Yes. Thank you, chair. What we will do is take you through a little bit of the history and also address some of the issues raised, as we have in my letter to you of 21 September. We have some documents that might assist you, which help flesh out some of the background to this, including things like the Intergovernmental Agreement for Business Names Agreement. I will start by going through the history and then we will follow up with any questions that you want to ask us at the end.

The current Business Names Act 1962 requires the registration of a business name other than those within which a person's own name is contained in order to carry on a business. A business name is the simplest and, in many cases, the most convenient method for a business to establish a profile and a customer base in the marketplace. Unlike registering a corporation or an incorporated association, the business name does not require a corporate structure and, as such, is an integral part of a small business operation. Having made those remarks, I would like to stress that the registration of business names does not confer any intellectual property rights upon the registrant. Business name registration is a scheme through which consumers may access a public register to determine the proprietors behind a business name and hence the business. In other words, its object is transparency for consumers. There are similar

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schemes established in all other states and territories, which has had the unfortunate issue of putting the burden on businesses trading across borders. As such, businesses are required to register business names in each jurisdiction in which they trade at present.

In recognising this as part of business and competition reform, the Council of Australian Governments in 2008 agreed that the state and territory governments would transfer their responsibilities for business name registration to the Australian government. The bill is part of the Queensland government's commitment to this agreement through its proposed referral of power to the Commonwealth parliament to make a law for business name registration purposes. In doing so, the bill also proposes to repeal the current Business Names Act 1962 and make transitional arrangements to transfer registration responsibilities to the Australian government. These transitional arrangements essentially allow the Queensland business names register to complete all decision-making processes for applications received but not finalised before the commencement of the Australian government scheme.

If we look at what is happening in other jurisdictions, the initial bill was introduced into the Tasmanian parliament and that commenced the referral of powers process. That went into their Legislative Assembly on 5 July. The Tasmanian Legislative Council Committee on Government Administration B examined the Tasmanian bill and tabled a report on 25 August 2011. We have a copy of that here if you have not already picked that up. This bill was passed by the Tasmanian parliament on 21 September 2011 and is awaiting its royal assent. The New South Wales bill was introduced into the New South Wales parliament on 13 September and passed on 14 September and it received royal assent on 20 September 2011. The Commonwealth Business Names Registration Bill—the text of which this Queensland bill seeks to refer legislative power to—was introduced on 17 August in the House of Representatives and it is now before the Senate awaiting its debate.

We note that you received four submissions on the bill for the purpose of the committee's inquiry and we will give you some background on that. The submission from the Queensland Law Society supports the COAG project to create a single business name registration system. The society nevertheless raised some issues with the bill and the Commonwealth bill. In particular, the society seeks a definition of the term 'business' in the bill. The society is seeking the definition to expressly capture the franchising business model for clarity. In relation to this request, I would like to advise the committee that the use of the term 'business' is in two broad matters within the bill. Firstly, it relates to the initial text based reference of legislative power and can only logically take the definition used in the text based reference—that is the text of the Commonwealth bill. With that in mind, clause 4 of the Commonwealth bill provides a very wide definition of the term 'business'. Secondly, the term 'business' is used in transitional provisions of the bill. For the purposes of these provisions, the bill provides that that term has the same meaning as the current Business Names Act 1962.

The next issue is that the society has raised an amendment to the Commonwealth bill. This is to require business name registration applicants to conduct a due diligence search on the Commonwealth IP Australia website, being the website to search trademarks. We note that the federal Department of Innovation, Industry, Science and Research—the federal government agency facilitating this reform—also made a submission to the committee and in that submission the agency notes that ASIC, which will administer the new register, will provide a link on its register website to the free trademark search tool offered by IP Australia. So, hopefully, that will deal with this issue and allow business name registrants to compare their proposed names with the register of Australian trademarks.

The society is also advocating for guidelines to be provided on what will be a nearly identical business name under the national scheme. The proposed approach to registering a business name under the national scheme will use an identical and nearly identical names test when assessing the appropriateness of the proposed business name. This is in comparison with the current state and territory practice of assessing against a similar name and using a similar names test. The move to an identical or near identical test is a positive one, which provides more clarity for applicants compared with the essentially subjective similar names test that currently exists. We also note that the society's request for guidelines in its submission on what will be a nearly identical name will come from the proposed Commonwealth Business Names Registration (Availability of Names) Determination 2011. We also note that these were the same issues raised by the society in its submission to the Senate's inquiry into the Commonwealth bill.

DIISR—the federal agency—has noted in its submission the history and context of the COAG project and has also offered to provide services to the committee to provide information where required. We are quite happy to act as somebody who can go between, if you like for that to occur. But otherwise feel free, obviously, to contact them directly.

The third submission is from Family Business Australia—the peak body for families in business. It supports the repeal of the current Queensland legislation and register framework and the move to the national system administered by ASIC.

The fourth and final submission is from Veda Advantage—one of Australia's largest consumer credit reporting agencies. The submission is only focused on the Commonwealth bill and is seeking modification of the Commonwealth bill and the legislative package so that it assists with its service provision for clients in analysing consumer credit risk assessment, identification and fraud. In particular, it seeks to use the proposed national register to assist its clients meeting the legislative requirements of the Commonwealth National Consumer Credit Protection Act 2009 and the collection and verification of customers' identity in

the Commonwealth Anti-Money Laundering and Counter-Terrorism Financing Act 2006. 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 that the consumer knows or can find out with whom they are dealing. DIISR advised this limits the use and disclosure of information to be contained in the proposed national register. The objects of the bill do not provide that the register is to contain personal information of a standard suitable for identity checking or verification purposes.

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—and the bill does not propose to require contact details of the person and thus contributes to the objective of consumer transparency of the business.

To assist the committee further we have a copy of the signed intergovernmental agreement underpinning the project, the text of the Commonwealth bills tabled in the Tasmanian parliament, the remainder of the proposed Commonwealth legislative package, including the availability of names determination, the explanatory memorandum to the introduced Commonwealth Business Names Registration Bill 2011, the report by the Tasmanian Legislative Council Government Administration Committee B on the Tasmanian bill and the Senate standing committee report into the Commonwealth bill. With that we will conclude the opening remarks. We are quite happy to answer any questions that you might have of us.

Acting CHAIR: Do any honourable members have questions to ask?

Mrs ATTWOOD: I have a question. I just want an idea of when the Commonwealth expects to have the Commonwealth scheme up and running? You said there were three states that are passing legislation.

Mr Reed: Tasmania, New South Wales and now ourselves.

Mrs ATTWOOD: And there are other states that need to get their act together and pass legislation. What are the expectations of the Commonwealth in terms of when it will actually happen?

Mr Low: The proposed time line for full national implementation is 28 May next year. On the COAG endorsed time frame, all states are required to pass their referral legislation by 31 March next year. Within that referral package it is assumed they will also do their transitional legislation.

Mr FOLEY: I have done some quick calculations and it would appear that \$21.8 million per year is the revenue gained at the moment and administration costs are \$1.89 million. This is for Queensland, I take it. The profit at the moment is \$19.91 million a year for Queensland; is that correct?

Mr Irons: Yes, that is right.

Mr FOLEY: It is of little surprise to me that the Commonwealth is very keen to get its hands on the process, because over five years that is a net profit of \$99.55 million in return for an agreement that says, basically, 'We will pay you back what you get per year for five years plus more.' Why have the states even considered ceding this power?

Mr Irons: In addition to just the pure finances of it, I suppose one of the other issues to think about here is the red tape reduction and the business improvement that businesses should get out of it in the ideal world. Harking back to some of the director-general's earlier comments, at the moment if you are the proprietor of a business name in Queensland and you want to trade interstate, or you already do trade interstate, you are required to register that name in every other state and territory and hope, of course, that it is available for you to do so, assuming that it is not already taken by another proprietor. That requires you to do up to half a dozen other additional registrations in those states and territories. What is proposed with this system is that you will have a single point of entry to register that one name. That will then be applicable nationally. So for a business based in Queensland that is going to trade across borders, the benefits of this system are quite pronounced in that respect. It is also anticipated that that register, in addition to business names information, would also contain some of the other business related registration that a business has to engage in, for example, changes to the business name, changes to proprietors and also perhaps changes to ABN, as I understand it.

Mr FOLEY: I understand the efficiencies with ASIC. At the moment you may have a business partnership set up where one partner is a sole trader and the second member of the partnership might be a family trust or a corporation. So I understand that there are some benefits. But surely, those same benefits—if you register in one state you are registered nationally—could be achieved by all the states agreeing that if you register in one state that allows you to operate in other jurisdictions without killing the golden goose.

Mr Irons: I guess the short answer to that is that it has not happened up to this point and it has actually required some sort of coordinated national approach to get it to that point. I am probably going back a few historical steps here, but all the states and territories started out with roughly the same sort of business names legislation once upon time. This act was established in Queensland in 1962. I suppose at the time what you were just talking about I think was always anticipated to be the case, but things being what they are, states and territories being what they are, things evolved quite independently of each other over the years and it has taken up until this point where there has been a national agreement to actually refer the power to get now to that point.

Mr FOLEY: I guess I am just saying it seems a pretty lousy deal for Queensland.

Mr Reed: Maybe not to Queensland businesses.

Mr FOLEY: That is true, yes.

Mrs ATTWOOD: Can I just ask a question about the databases that you currently have for business names. Are they currently interactive between states?

Mr Irons: I think the short answer there is no.

Mr Low: Officers within the Office of Fair Trading do share data across jurisdictions where need be on a case-by-case basis, but, no, they are not linked per se. They do have an indirect link, especially for business names, through what is termed the National Names Index that is run by the ASIC. So they indirectly again link up through that.

Mrs ATTWOOD: Going on to domain names, can you give us a bit of an explanation as to how that will work as well in relation to business names? Is that going to be inclusive of the business name registration?

Mr Irons: I will start talking very generally and then I will see if we can drill down a bit to that. At the outset, if you are undertaking business as defined in the legislation—as the director-general said there are definitions for that—then that name that you are trading under should be registered. That starts out as the general concept. Then we drill down to domain names. I might refer to Danny on this one.

Mr Low: The domain name is simply a tool through which you can market your business. That is a separate registration scheme, I understand, so it does not particularly relate to the business names framework.

Mrs ATTWOOD: So it is not going to be taken into consideration under this legislation?

Mr Low: No, it is a separate industry regulated registration scheme.

Mrs ATTWOOD: I guess there are businesses out there that are not registered as businesses. Do you have any idea how many are out there that are not yet registered and how do you encourage them to register?

Mr Irons: There are a couple of ways that it happens and, unsurprisingly, it is a mix of both proactive and reactive. As I understand it, what currently happens with Queensland's business names registration system is that we sometimes receive complaints from the public that somebody has tried to find details about business 'X' and, of course, business 'X' is not registered so then there is a process that is followed after that point which enables the department to follow through and ask the purported proprietors why that name is not registered. That is that one. Then there is also, as I understand it, some proactive work that is done in that regard. For example, you might see names of businesses listed in a newspaper or a register and you might then crossmatch that with your database to actually ensure that those business names are registered. That is probably a bit of a microcosm of the sort of work that ASIC would then do under this national system. They would do something similar.

Mr FOLEY: That would interlace, I imagine, with the tax office anyway.

Mr Irons: I would expect so.

Mr Reed: They would have a better ability to do that than us.

Acting CHAIR: I am advised that it is a text based rather than a power based referral. Is what I am saying meaningful to you?

Mr Low: Yes. It is.

Acting CHAIR: Who gets to amend it if it needs to be amended?

Mr Low: I will bring you back to what the bill is actually trying to do, Mr Wells. There are two forms of referral of power in the bill, the first of which is termed the initial business names text based reference. That is where the parliament is proposing to refer to the text that was tabled in the Tasmanian parliament as the initial text based reference. Secondly is what is referred to as the subject matter based reference and that contains the amendment power for the proposed Commonwealth legislation and that is done in a subject based manner in direct comparison to a text based manner.

Mr Reed: This bill, whilst it has a whole series of provisions, is not the bulk of the legislation that is being asked to be passed. That is the text of the Tasmanian bill and that has been therefore passed as part of this process, or the power has been referred to enable it to then come into law, whereas the subject area is a broader concept and generally that would mean that you would end up with a lack of clarity about in total what you are actually referring on. So the text based referral is much clearer in its own right because you know the text of the bill that you are actually allowing your referral of powers to enable it to come into force, and that is primarily this particular exercise. The WA government will often do what they call mirror legislation. They will take part of the text of others' bills and put it in totality into their own statute whereas for us, if there are changes, some of these flow through automatically. For them, they have to go back to parliament on a regular basis to amend it as amendments are made, if that makes sense.

Mr LANGBROEK: The principle being that it is because Tasmania was the first jurisdiction to actually have the referral that that is used as the text on which the others are based?

Mr Reed: That is right. New South Wales has picked that up. Queensland has picked that up. The other states will pick that up.

Mr Low: It is simply just a method of doing it. The parliament could, if it chooses, put it in the schedule to the bill, but it becomes quite cumbersome to do that.

Acting CHAIR: Effectively, once we have ceded this then we do not have any say in the amendment of it thereafter, nor would we necessarily be consulted in the amendment of it thereafter?

Mr Irons: I think it is fair to say that what you are saying is technically right. What would happen in practice, however—and this is based upon other COAG referrals of power—is that the Commonwealth would, as a matter of courtesy I suppose, if I can put it in those terms, consult the states and territories about proposed changes to that. You are correct in saying that, ultimately, once the power is ceded then that is the end of the story as far as Queensland is concerned.

Mr Reed: Except that there are provisions within the bill that enable, through a process of Governor in Council, us to actually stop the referral of power at this level or any subsequent amendment and you can do both. So there is provision in the legislation there for executive government anyway to actually remove this referral at a point after six months. The intergovernmental agreement which we have tabled today also has reference to this.

Acting CHAIR: The simple-minded question, since my colleagues apparently have finished and that leaves me to ask the questions, is if I were to be confronted by a group of my constituents chosen at random and they were asking me questions and they asked, 'And what good came of it at last? What have you done?' and after I had mentioned such things as the Petrie to Kippa Ring railway, I mentioned the transference of the business names power from the state to the Commonwealth, how would I tell them that we had done something greatly to their benefit?

Mr Reed: I think you would probably ask any of them that have businesses that are operating in more than one state. If they do not, then you would say, 'Maybe you will never come across this, but in general for anybody who does'—and I must admit my wife has; she has had to register the business in two different states—then you would have to register the business in each state.' That is an administrative burden that this removes.

Acting CHAIR: The greatest benefit of this is actually the efficiency of not having a whole lot of different state registers so that there is greater clarity as to what is an effective business name and what is not. It is simply a business efficiency measure, is it not?

Mr Ford: By centralising it with ASIC it can then also provide direct linkages into the ABN system. To pick up the point that Mrs Attwood made before, it will also provide, according to the information that was provided to the Senate, direct links into the domain name area. Even though the domain name will not be part of the package, it will be very much part of the same web arrangements. So when you log on to register your business name, you can do all the ABN stuff and you can get the links through to trademarks and the links through to domain names all from the same portal effectively. So it becomes a very efficient mechanism for someone registering or changing the registration of a business.

Mr Irons: To supplement what David was just saying, he touched upon the fact that a lot, if not all, of the functions involved will be able to be done online, whereas at the moment a lot of businesses would be used to doing their administrative work around business names—that is, their renewals, their changes and indeed the initial registration—in person in a paper based system. This will move us towards a pretty consistent online system for doing things.

Acting CHAIR: I once for my sins had to read the whole of the ASIC legislation through. The thought of making those hundreds of pages even longer fills me with a sense of awe inspired guilt. So be it.

Mr FOLEY: Will Fred the plumber, who is a sole operator in Queensland, still be required to fill out an annual registration for a business name once this power goes from the states to the Commonwealth? Is there going to be similar process and similar dollars?

Mr Irons: I will address the first part of it first. For so long as Fred the plumber continues to trade under a business name other than simply his own name, yes, he would be required to register and therefore continue to renew it. So there will be a process of having to renew it for so long as he actually continues to trade under that name. As for the fee, we understand that the fee for new registrations will be \$30 for one year and \$70 for three years.

Mr FOLEY: Is that similar to what it is now?

Mr LANGBROEK: No, it is significantly less.

Mr Irons: That is right. It is significantly less.

Mr LANGBROEK: Acting Chair, you can point out to your good residents of Murrumba, who currently pay \$255.60 in Queensland to register and \$206.85 to renew for three years, that it will be only \$70. Show me the money, as they say.

Mr FOLEY: So there is a significant saving then.

Mr Irons: Yes.

Acting CHAIR: Honourable members, are there any further questions? Colleagues, thank you very much for your attendance and for the information you have put before us, and we look forward to our next meeting with you.

Committee adjourned at 3.48 pm