




Speech by

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MEMBER FOR KAWANA

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BUSINESS NAMES (COMMONWEALTH POWERS) BILL

 **Mr BLEIJIE** (Kawana—LNP) (5.00 pm): The Business Names (Commonwealth Powers) Bill 2011 is a bill that I hope will assist the development of Queensland businesses at a time when many operators in our business community are doing it particularly tough. The bill before the House creates a national registration scheme for the purpose of registering a business name. In doing so it will refer power from this parliament to the Commonwealth parliament. Consequently, the Business Names Act 1962 and the Business Names Regulation 1998 will be repealed.

From the outset I would like to state that the LNP will not be opposing this bill. However, I will seek to address some of the issues of concern I have. I was on the committee that looked at this bill. It almost goes without saying that the name of a business can often determine whether it succeeds or fails in the marketplace. It is a method by which an operator can establish identity, create a customer base, explain a product and fill a niche in the market. It is important to regulate the registration of a business name to ensure that names chosen are not misleading, inappropriate or offensive. This includes ensuring that a new business name is unique and not similar to an existing one that is in use across Queensland. The regulation of business names is an important safeguard for the operator of that business, as well as a vital proactive measure that protects the consumer before they even set foot onto the premises.

Essentially the current law in Queensland is that if a sole proprietor or a company wants to register a business name in Queensland they proceed to the Office of Fair Trading and register a business name for 12 months or three years. They go through a process where they fill out an application form. That application form highlights a business name. They can give, I believe, three examples of business names they would like to register if their first choice is not available. The officers then go through a process to see if that business name is, in fact, too similar to another business name that is already registered in Queensland. If that is not the case and it does not offend the provisions of the current act then it is likely that the business name will be registered. It is important that we note that registering a business name in Queensland does not give it any proprietorship over the business itself. The business is still owned either by a company or, in most cases in Queensland, a mum and dad sole operator. The actual proprietor of the business in most cases in Queensland is an individual person so we are not dealing with proprietary rights here, we are simply dealing with registration of business names. That is the current law where one goes in and is able to register a business name if it is not already registered in Queensland.

What we are doing here is, in fact, putting this into a national scheme. I note that it is a costly challenge for a business registered in Queensland, with the same business operation in another state or territory around Australia, to register that business name in each state and territory in which they wish to run their business. As one can imagine, it becomes a costly exercise to operate the same business with the same business name in states and territories across Australia. The introduction of this bill recognises the fact that business is often conducted across state and territory boundaries. With the introduction of the internet in the 1990s the e-business market is continuing to flourish and rapidly expand. The underlying intent of this bill is about recognising and reducing bureaucratic duplication for organisations that wish to compete in more than one state. It is about recognising that we are a truly global marketplace. With one click of a mouse we can order products from overseas and after a couple of days in transit the product will

be at our front door. The primary purpose of the national registration scheme is to enable those who engage or propose to engage with businesses to identify who they are dealing with when that business does not operate under its own entity name, for example, where a business trades under a different name. In addition, the creation of a national register will remove inconvenience and compliance costs of registration of business names across the various states and territories, as I noted previously.

As I indicated to this House, I am a member of the Legal Affairs, Police, Corrective Services and Emergency Services Committee that this bill was referred to. The report that was tabled by the honourable acting chair of that committee, the member for Murrumba, some time ago contained a statement of reservation by the honourable member for Surfers Paradise and me. It was not a dissent or in any respect not in support of this bill; it simply raised a couple of the issues. I was concerned that through the new committee process our time for consultation was limited. We had four submitters. I really do believe fundamentally that sufficient time was not had with respect to this particular bill. I note that the House determined that we had an earlier reporting date, and I respect the vote in the House, but it did create concern in terms of making sure that for such an important issue for Queensland businesses we ought to be careful. When we are referring power from the state to the Commonwealth we ought to spend as much time as we can in terms of consultation. I think the committee did the best it could in the time it had to report. I thank the members of the committee for their diligence in getting that done.

The committee sought advice and submissions. We received four. I thank the submitters of that advice. It did assist the committee in making certain recommendations. One organisation that I individually consulted with was CCIQ. The general manager of CCIQ, Nick, wrote back and I quote from the letter—

The CCIQ, through the Australian Chamber of Commerce and Industry, provided input into the Australian business number and business name registration project that was run by the Office of Small Business, Department of Industry, Tourism and Resources back in 2007.

A brief summary of this representation was that the chamber movement was supportive of the initiative given the reduction in regulatory compliance burden associated with the businesses operating in more than one state.

Accordingly, CCIQ is supportive of the Business Names (Commonwealth Powers) Bill 2011.

CCIQ also expressed its thanks for the opportunity to confirm with the Liberal National Party its position on this legislation. As stated in the explanatory notes, the bill proposes a referral power to the Commonwealth parliament to legislate for business name registration. This was proposed and agreed to at the Council of Australian Governments meeting in 2008 under the National Partnership Agreement to Deliver a Seamless National Economy. Registration does not give the owner any proprietary right as such but merely the right to trade under the registered business name. It does offer some form of protection from other similar names being registered in Queensland, but does not prevent other individuals or companies from registering the same or similar name in other jurisdictions throughout Australia. That is different from the Commonwealth Corporations Act, which is a national registration. It is quite easy to register a business name in Queensland and for a similar or the same name to be registered in other states and territories because there is not that national framework.

The referral of power to the Commonwealth is not a broad based referral. One ought to take a cautionary approach when meddling with the sovereignty of the state. We are uncomfortable with the ever-increasing trend of this government to cede Queensland legislative powers to the Commonwealth. We have made mention of that fact in this House before, but in this instance when we look at the figures and the savings that Queensland businesses will have it is safe to say that we are supportive of this national measure in that it will save and ease the burden on Queensland businesses.

The explanatory notes also outline the loss in net revenue of \$19.91 million per year that this referral will have on the Queensland budget. While this may not seem a substantial amount in the overall state budget, the rate that this government is continuing to refer legislative jurisdiction to the Commonwealth government is of concern. The approximate revenue generated by the Queensland business names register is currently \$21.8 million. The total over five years is approximately \$99.55 million. I note that as a reward payment the Queensland government is entitled to \$112.7 million from the Commonwealth government over five years.

For the initial five years, the Queensland state government appears set to recoup its estimated lost revenue through the receipt of the reward payment. However, of course, this will change following the end of the five-year period when the state will no longer be entitled to reward payments or revenue generated through the registration of business names. Yes, it will have an impact on future state budgets to the extent of approximately \$99 million over five years, because at the moment, where the state is recouping approximately \$21 million for the registration, the cost of administering the scheme is just over \$1 million. So obviously some \$18 million is going somewhere. After a five-year period, that will not be there. In his response, can the Attorney-General indicate where in the department that money currently goes and in, five years time, what programs or projects that that money funds will no longer be there because we will forgo that income? Forgoing that source of income to the tune of \$21.8 million, as I said, will have an

impact on future state budgets. Has the state government taken that into consideration and identified the potential impact that that loss of revenue will have? With the overall benefit that this legislation would achieve in assisting business development in Queensland, one would hardly consider that the Queensland government is in a fiscal position to be handing over state revenue to the Commonwealth government at this time.

I note that during his second reading speech the minister boasted about the claims that the new national register will see a decrease in fees of some 80 per cent for Queensland businesses. Unsurprisingly, currently Queensland is the most expensive state or territory in which to register a business name. The Commonwealth Business Names Registration (Fees) Bill 2011—the fees bill—will replace the existing fee arrangement. The proposed fees of \$30 for one year and \$70 for three years are considerably less than the current Queensland registration fees. However, it should be noted that the fees bill provides that regulations may prescribe fees for chargeable matters, including business name registration, renewal or an extract of the business names register. There does not appear to be a moratorium on new fees being introduced or increased by regulation. Therefore, for Queensland businesses there is no protection from inflated registration fees. However, I note that currently the cost to register a business name in Queensland is \$255.60 for three years and \$133 for one year. When we compare the current fee in Queensland of \$133 to a new fee of \$30 for national registration and the current Queensland fee of \$255.60 to a national registration fee of \$70, we can see that if there are some inflated prices it is going to take a while to catch up in terms of what Queensland businesses are currently paying to register a business name in Queensland.

We have concerns that the Commonwealth government may do just that, that is, inflate the prices, particularly given the state of the federal economy after four years of a federal Labor government. It should be remembered that Labor governments, both state and federal, are notorious for increasing taxes, fees, levies and charges to pay for their habit of spending well beyond their means. This referral was pitched as being a business-friendly policy that would cut red tape. For instance, if a business name currently registered in Queensland requires registration of that same name in other jurisdictions, we can see the potential savings for business. Under the current system, they would be required to register that name separately in each state or territory and pay separate registration costs. Members will see clearly that if you pay \$255 for three years to register a business name in Queensland and a smaller amount in every other state or territory in Australia where you operate that business, it can cost upwards of \$1,000 to register the same name. If there is a future national push to increase the registration costs, then a Queensland small business that does not intend to register in any other state or territory may be adversely impacted by an increase in costs. What I mean is that mum-and-dad small business operators who are sole proprietors will save money under this national registration scheme, but if a future federal government puts in a regulation and dramatically increases the fees, that one business, which may want to continue to operate only in Queensland, will be hit with an extra burden. In addition, it will be much harder for a Queensland state government to regulate the costs of regulation for Queensland businesses given the referral of this jurisdiction.

My parents were mum-and-dad operators of a small business in Caloundra. They started, owned and operated Gotta Go Camping for a 10-year period while I was at primary and high schools. Often at three o'clock I would be required to go to the shop, which I enjoyed greatly. However, if your parents own and operate a small business, often you do not have much choice but to attend every afternoon after school to help your parents in that small business. Therefore, I understand the physical and emotional drain that running a small business can have and I know how it affected my parents. I am sure that any regulation that can reduce operational costs for those businesses would be much appreciated in Queensland. The stakeholders said that and, on this side, we certainly appreciate it, realising that—and I note the shadow minister for small business will be speaking to the bill—it will have a considerable cost saving for businesses. In this place we should be doing anything we can to assist businesses in getting back on track.

I hope that the intent of the national registration scheme will remain to assist businesses by reducing red tape and operational costs instead of being a future revenue source for federal governments rather than state governments. Honourable members would be aware that right around the state small businesses are doing it tough at the moment. In my electorate of Kawana, continual feedback from the business community advises of the harsh nature of the marketplace at present. Businesses are closing their doors due to financial hardship which, I have to say, has not been assisted by the current state government as businesses continually have to face higher costs of living, higher expenses for electricity and so on. The cost-of-living expenses that they see in their businesses and also in their homes mean a reduction in the disposable income that Queensland taxpayers have at their fingertips, which only adds to the nature of the marketplace in Queensland at the moment. It is incumbent upon governments at all levels to reduce regulation and red tape on our business community where practicable, particularly the small business community that often struggles to compete with larger companies. I understand that

approximately 40,574 new businesses are registered annually in Queensland. As I have stated previously, the current registration costs for businesses in Queensland are \$133 for one year and \$255 for three years. Under the national scheme, the costs will be \$30 for one year and \$70 for three years. I think all honourable members will see the substantial saving in that.

I have concerns about the transitional provisions whereby each identical or nearly identical business name that is merged onto the national register will be identified by a potential geographic location. For instance—picking the name that I referred to in my statement of reservation—if Bluey's Seafood was currently registered in Queensland and the proprietor wanted to establish that business in New South Wales or Western Australia, under the transitional provisions of this bill you would have Bluey's Seafood (QLD), Bluey's Seafood (NSW) and Bluey's Seafood (WA). The problem arises if the proprietors are different. You could have Bluey's Seafood operating in Queensland, owned and operated by XYZ, and the same business name also operating in Western Australia or New South Wales. Upon the national merger of the business names registry, those identical names will be identified by a geographic location. I note that that is a difficult problem to solve, because you do not want to force people to change their business names because those names, either in New South Wales, Western Australia or Queensland, have been legitimately registered under their state or territory laws and the proprietors should be entitled to retain those names, which they will, identified by geographic location. This has the potential to create confusion in the marketplace and among consumers. I would appreciate the Attorney-General's advice with respect to the issue. Could the department look at overcoming those issue, when the national scheme comes into existence, where you have separate proprietors using the same business name registered in different states and territories.

The Australian Constitution does not provide express power for the Commonwealth parliament to legislate for the registration of business names. There may be power under the corporations power in the trade and commerce power, but to put the matter beyond any doubt the Council of Australian Governments agreed to transfer the responsibility for registration of business names to the Australian government. This COAG decision resulted in the Intergovernmental Agreement for Business Names, the IGABN.

This approach requires each state and territory government to refer power to the Commonwealth parliament. Tasmania passed laws in July 2011, followed by New South Wales just last month. I note that in August this year the Commonwealth parliament introduced the Business Names Registration Bill, the Business Names Registration (Transitional and Consequential Provisions) Bill and the Business Names Registration (Fees) Bill in anticipation of each state and territory parliament enacting the required changes to refer jurisdiction to the Commonwealth.

As I noted earlier—and it should be noted further—during the committee inquiry into the bill there were four submissions received. These were from the Queensland Law Society, the federal Department of Innovation, Industry, Science and Research, DIISR, Family Business Australia and Veda.

One of the issues raised related to the issue of trademarks. As noted in the report, the Queensland Law Society recommended the bill be amended to require an applicant for registration of a business name to conduct a simple due diligence search to determine whether the business name they intended to register was in fact unique. I note that the Attorney-General, prior to my contribution, has now tabled the government's response to the report. I am obviously on my feet and have not had an opportunity to read the government's response so I apologise to the House if I am covering issues that the Attorney has covered in his response.

The issue the Law Society raised would also assist the applicant in promoting awareness of any other similar business names that had been registered. The Department of Justice and Attorney-General and DIISR both stated that the onus for ensuring no breaches of an existing trademark or intellectual property was on the applicant for a business name. The Australian Securities and Investments Commission was noted as the agency responsible for administering the national register. It was also noted in the DIISR submission that the national register will provide a link to a free trademark search tool on its business name registration website to assist the applicant to ensure that no trademark breach occurs.

Given the serious legal ramifications of a breach, I would appreciate if the Attorney-General could convey any advice that has been received to ensure that the importance of this trademark search tool would be clearly evident to those conducting a business search. Given that the onus for not breaching a trademark is placed on the applicant, it is of the utmost importance that compliance with this step of the process is properly and adequately advised to the applicant.

I will now discuss some of the contentious issues of the bill. Clause 12 of the bill relates to the provision of information and notices to the Commonwealth government. When information from one agency is transferred to another, in this case to ASIC, it is legally imperative that priority is placed on protecting the privacy of those who are currently on the Queensland register. In this case, this requires the migration of electronic information from one database to another. I understand that, while this appears to

breach a person's right to information privacy, disclosure of such information is restricted to the new national business names register administered by ASIC. I am seeking the Attorney-General's assurance that all information provided to ASIC during this information migration will only be used for the purposes of the national business names register and that the department will strictly monitor this information transfer process.

Clause 21 deals with the offence of carrying on business in Queensland under particular business names being held. I seek the Attorney-General's advice on this and ask him to outline what, if any, public information campaigns will be conducted to advise of the changeover to the national registration scheme.

I note that the Legal Affairs, Police, Corrective Services and Emergency Services Committee made three recommendations on this bill which we on this side support with the reservations that I outlined with the honourable member for Surfers Paradise in our statement of reservation in the report. Recommendation 2 suggests that the bill be amended to omit clause 8, which provides for the delegation to the Governor in Council of the power to terminate the initial or amendment reference of power to the Commonwealth parliament. This is a safeguard to protect the institution that is the state parliament. This amendment would, of course, amend the open-ended referral power to the Commonwealth, as is currently the case.

Recommendation 3 suggests that the bill be amended to include a definition of unlawful conduct to ensure an appropriate limit to the referral power under clause 5(1)(f). I would appreciate the Attorney's advice on the determination of unlawful conduct as contained in the bill. Clause 5(1)(f) currently states—

the prohibition or restriction of the use of business names by an entity because—

- (i) the entity has engaged in unlawful conduct; or
- (ii) a person involved in the management of the entity has engaged in unlawful conduct.

For greater clarity, this clause needs to be outlined in greater detail.

As I stated at the outset, the LNP will not be opposing this bill. We see it as standing up, to an extent, for small businesses in Queensland. They are finding it tough in this economic environment. The national scheme will see the end of the registration of a business name as businesses know it in Queensland. What will essentially happen is that the registration will take place through ASIC and not through our Queensland departments. The Australian Securities and Investments Commission will keep a national register of all business names.

Where one wants to register a business name, bearing in mind it has no proprietary right to the business name, they will go to ASIC and put the registration through ASIC. No longer will we see the office of Fair Trading doing those registrations. How ASIC will handle that we are yet to see. If the Attorney, in his summing-up tonight, wants to give an indication of what discussions have been held and will be held between now and when this is to come into existence that would be appreciated. Basically, I am after guidance on how businesses can proactively prepare for potential issues and confusion in the marketplace where, as I indicated before, a business name is currently registered in Queensland under one proprietor and currently registered in New South Wales under another but is the same business. Will there be an education program to ensure that we are not going to confuse businesses and make them think this whole process is not worth it, bearing in mind that there will be cost savings?

The concerns that I have raised with respect to this government's almost superficial regard for the responsibilities of state government in its frequent referral of powers to the Commonwealth government are of the highest order. It should be noted that the overall benefit to business in this state should be improved by the implementation of this national registration scheme, bearing in mind the reservations that I have with respect to this current government's all-too-easy approach to handing over and ceding legislative responsibility to the Commonwealth.

Under Labor, Queensland has lost its ability to attract significant business investment to our state. But I can say to all honourable members that a can-do LNP government will restore Queensland to No. 1 again. This includes the No. 1 state in Australia to do business.

Mrs Kiernan interjected.

Mr BLEIJIE: I take the interjection from the member for Mount Isa. We are not the No. 1 state in Australia to do business. If we were, we would have a AAA credit rating. If our economy was so great, we would have a AAA credit rating. But if the member for Mount Isa wishes to enlighten us as to how beneficial it is to have a AA credit rating in the scheme of the global economy then I am quite happy to allow her. If the member for Mount Isa can enlighten us on how it benefits Queensland to have a AA instead of AAA credit rating, I am happy to hear it and I am all ears.

Ms Jones interjected.

Mr BLEIJIE: If the member for Ashgrove wants to tell her constituents and tell me how businesses in Ashgrove have benefited under that member's contribution then I am all ears.

The fact is that Queensland is one of the most expensive states in Australia to register a business name. That is on this Queensland Labor government's watch, no-one else's. People talk about the high cost of running a business and the high cost of registering a business in Queensland. That is on this Labor government's watch, no-one else's.

One of the ways we can undo a lot of this unnecessary regulation and bureaucracy is to change the government in Queensland and give business in Queensland hope that one day we can again be No. 1, to create business and investment opportunities so that my children can give, learn and earn in this great state of Queensland.

In closing, a business name provides the opportunity for a business owner to create an identity. It is also an integral part of our small business operation. A register of business names also allows consumers to access information on the proprietor behind a business name, thus providing protection in the marketplace. We are not opposing this bill; we are supporting the provisions with reservation. But, as I indicated, if businesses really want to get back on track, if businesses want investment opportunities and want to grow, then my plain and clear message to businesses in Queensland is: get rid of the Labor state government and elect a can-do Campbell Newman led government.