Speech by

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BUSINESS NAMES (COMMONWEALTH POWERS) BILL

Mr LANGBROEK (Surfers Paradise—LNP) (5.49 pm): It is my pleasure to rise to speak to the Business Names (Commonwealth Powers) Bill which we examined at the Legal Affairs, Police, Corrective Services and Emergency Services Committee. I acknowledge the contributions of the member for Murrumba, the chair of the committee, and the member for Mount Isa. I also acknowledge the shadow Attorney, who is the shadow minister, for his contribution both at the committee and this evening. He indicated that we support this bill but we have reservations, and we have expressed those in the statement of reservations in the report tabled by the legal affairs committee. I want to deal with some of those matters.

Whilst I note that the member for Murrumba stated in his rather brief contribution that it is all about getting this done for small business, I think it is also very important for our new committee system to be looking at potential shortcomings. That is the whole point of our new committee system—to adequately investigate issues around bills even though they may seem rather simple, even though they may seem rather clean-cut and even though it may seem rather obvious that we would be passing these bills on behalf of small business.

To that end, the member for Kawana and I submitted a statement of reservations, and I want to acknowledge his contribution to that. We dealt with a number of issues—the committee process, the referral of power, the revenue issues, the cost to register a business name and identical or nearly identical names. The member for Kawana dealt with that quite adequately and quite fulsomely in his contribution. I do not want to go over all the things that the member for Kawana spoke about, but I do want to speak about some of those things and provide a bit more context about the opposition's concern about some of those matters that came before our committee and the way that the government has not necessarily stood up for Queensland as well as it might in terms of the issues of referral of powers and the tabling of intergovernmental agreements.

This bill was referred by the House to the Legal Affairs, Police, Corrective Services and Emergency Services Committee for examination and report on 24 August. That meant that we were supposed to provide our report to the House within six months from when the referral was made, but only two weeks after the referral the House moved that the report on this important bill be brought forward to 4 October—five months ahead of the original reporting time frame. As the honourable member for Kawana has already stated, the LNP objects to the rushing of this bill and the subsequent inquiry through the committee process. We are concerned that a full and proper inquiry is circumvented when we have such time frames cut down.

Only four public submissions were received by the committee, and I know they were acknowledged by the member for Kawana and they are mentioned in the report. Those four submissions were received from the Queensland Law Society, the federal Department of Innovation, Industry, Science and Research, Family Business Australia and Veda. I note that the member for Kawana sought his own response from some other people in his electorate or some other affected parties. Forcing committees to rush their

inquiries because the Labor government seems unable to bring forward enough legislation to put on the parliamentary agenda undermines the spirit of the new committee system. It does not reflect openness and accountability. However, unfortunately, this is to be expected from a lazy Labor government.

The bill proposes the referral of power to the Commonwealth parliament to legislate for business name registration, changing the way business names are registered in Queensland. As the law stands, those wishing to carry on an enterprise in Queensland in a name other than their own are required to register a business name for one or three years. Registration does not confer on the owner any proprietary right; it merely confers the right to trade under the registered business name. While it offers some protection from other similar business names being registered in Queensland, it does not offer the same security in other jurisdictions around Australia.

The bill proposes to refer the power to an act and amend the Commonwealth Business Names Registration Bill and the Business Names Registration (Transitional and Consequential Provisions) Bill. I am concerned about providing my support to the bill, given the reduced time frame for stakeholder consultation as well as the lack of consultation undertaken by the state government prior to the debate of this bill. The Labor government is happy to throw caution to the wind when meddling with the sovereignty of this state. It has become an increasingly dangerous trend of this apathetic government to relinquish Queensland legislative powers to the Commonwealth. We dealt with that in the committee's report *Examination of Business Names (Commonwealth Powers) Bill.* On page 21, point 8 talks about an intergovernmental agreement under which we are now having this bill produced. In our report, we state—

Much work has been done in Australia on the scrutiny of national schemes legislation. In 1996 a working party of representatives of scrutiny of legislation committees throughout Australia issued a position paper on the subject. Key findings in that position paper included that there is a need for Parliaments to be informed about intergovernmental agreements, and that relevant information including a copy of any intergovernmental agreement need to be tabled in each Parliament prior to any uniform legislation being introduced.

That was a report done in 1996, and none of that was produced here before this bill was introduced into the House. In fact, in our final report the committee has strongly encouraged the government to table in the Legislative Assembly as a matter of course intergovernmental agreements that the Premier enters into on behalf of Queensland at the Council of Australian Governments. I note that in his response the Attorney has said that the government understands the committee's rationale for this suggestion, that it acknowledges that the tabling of IGAs would provide committees with valuable context when considering bills of this nature, that they will give this matter future consideration and that they will consult with the Commonwealth as appropriate. I put it to the House that this is something that is extremely significant for the people of Queensland. It is a matter to do with the sovereignty of our state parliaments that is constantly being eroded with the referral of powers.

I want to deal with some further matters to do with what the parliament of Tasmania had to say and their concerns about this legislation and this text based referral, which actually originated in the Tasmanian parliament. Their committee which dealt with this matter, the Government Administration Committee 'B', had a significant bit to say about sovereignty of state parliaments and I want to refer to some of that. Their report states—

Although it is the Parliament in each State that is responsible for the referral to the Commonwealth of the powers to establish and maintain the BNR—

which is what we are dealing with here, the business names registration—

the Committee has reservations about the lack of involvement by the Tasmanian Parliament in this process.

...

The question of the sovereignty of the Tasmanian Parliament in dealing with legislation formally agreed to by COAG is becoming more of a concern as growing numbers of such "nationally uniform" legislative packages are presented for approval.

I think we could cross out the word 'Tasmanian' and put in the word 'Queensland' to express our similar concern that we have ministers going to ministerial councils and under COAG coming back here and presenting bills, fait accompli, for this parliament to rubber-stamp. The ministerial council agreements are never tabled so this parliament can consider why we are actually considering the legislation and why the referral has been made. The report goes on to state—

... the introduction of such legislation is often accompanied by Government warnings about its urgency and about the consequences of delay or, even worse, its rejection.

That of course happened when the original bill had to be referred to the Tasmanian parliament for it to be the first source of the Commonwealth referral to occur. They were told that there was some urgency to adopt the bill so that the Commonwealth could introduce its bills into the Australian parliament. As I

understand it, those bills are currently in the federal parliament before the Senate and the Commonwealth has proposed a date of May 2012 for the commencement of business names registration.

It may appear that, once again, the approval of state parliaments around Australia is regarded as a formality as a result of an agreement entered into by state and federal governments without reference to the elected representatives of the people in those states. Under the provisions of the intergovernmental agreement that it signed with the states, the Commonwealth is permitted to make minor or technical amendments to its business name legislation without reference to the states. For more substantive amendments, the Commonwealth is required under the terms of the agreement to seek the approval of the Ministerial Council for Corporations. However, there is no provision in the agreement, the Commonwealth legislation or the Queensland bill for the Commonwealth to seek the agreement of state parliaments—that is, the bodies responsible for initial referral of the business names powers to the Commonwealth. There is not even any mechanism that would require state parliaments to be informed of substantive amendments to the Commonwealth legislation that require the approval of the ministerial council.

It should be noted that a ministerial council is not an elected or parliamentary body but an organisation comprised solely of representatives of Commonwealth, state and territory governments. In that case, having taken that information, the committee has expressed as a matter of concern that the intergovernmental agreement for business names has never been tabled in or endorsed by this House of the Queensland parliament even though it is fundamental to the main objective of the overarching bill. I certainly express my concerns about that. I think I have made it quite clear that I am very concerned about the sovereignty of the Queensland parliament. For those of us who have been here for some time in this place, when we think back to the number of times that ministers have come back from COAG—

Ms Jones: You're worried about the Queensland parliament and you've got a leader that's not even elected! How dare you come in and say that!

Mr LANGBROEK: I take the interjection from the member for Ashgrove, who continues in her shrill, shrill voice to talk about something that is actually different from the matters contained in this bill, and I acknowledge her concern about the opponent that she is obviously facing in the seat of Ashgrove. This is a matter about what happens before the parliament, not about what is going to happen on election day—something which I know she is concerned about. I am also concerned that, whilst in his response the Attorney-General has thanked the committee for its recommendation that the bill be passed, recommendations 2 and 3 have not been accepted. With regard to recommendation 3 where we recommended that business names be amended to include a definition of unlawful conduct to ensure an appropriate limit to the referral of power under clause 5(1)(f), it is actually mentioned that we would create an issue with any of those other jurisdictions potentially if we were to uphold this recommendation. That shows that at times we are quite happy to take advice from other jurisdictions.

The response mentions that the New South Wales and Tasmanian parliaments have passed their respective referral bills without changing clause 5(1)(f) but that there is a concern, as the Attorney says, that any proposed amendments by the Commonwealth parliament in reliance of this amendment reference would arguably be restricted to those which prohibit or restrict the use of a business name where that conduct relates to the nature of the business and that all other unlawful conduct would be irrelevant and would begin to undermine the purpose of the new scheme. So there we have the Attorney expressing concern that any particular recommendation we might make might undermine the whole bill. It seems that the Queensland parliament has to constantly pay attention to what is happening in other areas, especially the Commonwealth, and yet there is very little consideration given to the concerns that we might express about legislation and whether it has actually come before the people of Queensland.

The shadow Attorney has spoken about the issue of revenue. The revenue raised over five years is $99.55 million and at first there is going to be a quick fiscal hit for the Queensland government—a bonus—because it is going to get $112.7 million from the Commonwealth government over five years. The honourable member for Kawana has obviously expressed his concerns that, under a federal Labor government labouring under the budget that it has and the budget constraints that it, of course, has created for itself, there will be a temptation to raise the fees at the conclusion of five years. Queensland will have forgone its revenue and we will, of course, then have given the responsibility for business names registration to the Commonwealth parliament and the situation may well arise where fee increases, as we have seen in Queensland, greater than increases in the CPI are the norm and just add to the general cost of living. That is the last thing the small business sector needs. To that end, we heard the member for Mount Isa say that she is very optimistic about the small business sector. I come from the small business sector as well and it is also okay to actually speak about the difficulties that people are facing in the small business sector in my electorate of Surfers Paradise, across the Gold Coast and, in fact, across the state. Over the last couple of years we know that bankruptcies under this Labor government have increased by a massive extent, and the last thing that people need is the uncertainty of business name registration increasing as well—another impost for businesses that are doing it tough.

Whilst we are referring state power to the Commonwealth which may reduce the cost for businesses wishing to register nationally, the small business wishing to register in Queensland only may be adversely affected by an increase to these national registration costs, should they come. In addition to economic woes that this state may face under the proposed recommendations, as I have said already, I am concerned that the Commonwealth legislation has not been tabled in the Queensland parliament. I have noted from our report that a number of other jurisdictions are referred to. The ACT government tables a list of intergovernmental agreement negotiations in the Assembly every six months. Ministers in Western Australia must identify in the second reading speech of a bill whether the bill ratifies their multilateral or bilateral intergovernmental agreement or if it introduces a scheme of uniform legislation throughout the Commonwealth. The minister must also identify any relevant intergovernmental agreements. So it has been done in other places and I would encourage this government to do the same thing.

I know that we have already spoken about the objectives, but I want to quickly summarise them. The objectives of this bill are to refer the legislative power of the Queensland Legislative Assembly to the Commonwealth parliament for the purpose of making legislation for the registration and regulation of business names; repeal the existing Queensland business names legislation, the Business Names Act 1962 and the Business Names Regulation 1998; facilitate the migration of the business names registration data to the Australian government through ASIC; and provide for transitional and consequential amendments. The bill proposes a text based referral of power to the Commonwealth government to legislate for business names pursuant to the Australian Constitution versus a subject based referral of power, which is a broad sweeping referral of power and at risk of wider interpretation, and I note that this is what happened in Tasmania so that the only power referred to the Commonwealth was the text of the two draft Commonwealth bills that were tabled in Tasmania when that was first done in that state. What this does is enact and amend the Business Names Registration Bill 2011 and the Business Names Registration (Transitional and Consequential Provisions) Bill 2011. It requires each state and territory to pass legislation to refer legislative power to the Commonwealth. Whilst they were passed by the House of Representatives, I believe that the bills are still before the upper house—the Senate—in Canberra.

I have already acknowledged the bodies from whom public submissions were received. I believe that a comprehensive and ethical inquiry should take place and, in the spirit of accountability and transparency, a greater number of stakeholders should have been consulted prior to our debate. As the shadow Attorney has indicated, we will not be opposing the bill. We are concerned—and our statement of reservation has pointed it out—about the issues of the committee process, the referral of power and the potential loss of revenue to Queensland from a money-hungry government federally that will seek to pass the pain on to those they are far distant from in that there will be subsequent increases that potentially will come from a future Labor federal government.