

Second Reading

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [4.05 p.m.], on behalf of the Hon. Greg Pearce: I move:

That this bill be now read a second time.

I am pleased to introduce the Business Names (Commonwealth Powers) Bill 2011. The bill will help to cut red tape for businesses in New South Wales, especially for small businesses that operate across State boundaries. The bill is the culmination of an important national reform initiative, which will have significant and positive outcomes for the entire Australian economy. The purpose of registration is to ensure that consumers and traders are easily able to identify who is operating a business. This will ensure transparency and help to prevent dodgy operators from hiding behind a trading name.

Currently each State and Territory, including New South Wales, has in place its own legislation for registering business names. This means that a trader who wants to trade under a business name in multiple jurisdictions must register the name in each State, which is both costly and time consuming. Maintaining these multiple State and Territory registration systems imposes undue costs and administrative burdens on the business community and does not reflect the demands and realities of today's Australian economy. This situation is particularly frustrating for those people who operate their businesses along State borders. Nor does it take into account the growth of electronic commerce under which a business with a physical presence in only one jurisdiction may now operate online to provide goods and services throughout Australia. My family operates businesses in the Queanbeyan region that, in the past, have included business in the Australian Capital Territory. The different compliance arrangements required, including for business names, involved a frustrating process. Members from both sides of the House, and I, welcome these amendments to simplify those arrangements.

That is why, as part of the National Partnership Agreement to Deliver a Seamless National Economy, the Council of Australian Governments established the National Business Names Project in July 2008. An intergovernmental agreement for business names was signed in July 2009. The agreement provides that the States will refer their business names registration powers to the Commonwealth. In turn, the Commonwealth will establish a single national business names register under which a person may register a national business name. The establishment of a national register is only the first stage of longer-term national reforms that will ultimately make it easier for businesses to interact with all levels of government on many routine matters. This part of the project is known as the Business Online Service. The Business Online Service will enable a business to establish an online account that will provide a single portal for interaction with government. A business will be able to use this account to carry out many routine transactions, including searching for business licensing information, notification to government agencies of a change in particulars of a new business address, or renewals of different licences and authorities.

All jurisdictions have been working towards creating a single national business names registration scheme. This has required extensive consultation on the necessary legislation, the functional requirements of the new system, and the processes for transferring State and Territory information and operations to the Commonwealth. Establishment of a national scheme is a major step in the reduction of government red tape and will provide enormous benefits to the economy as a whole. It will reduce the regulatory cost burden, and the

seamless online facility will streamline the whole process. I will now outline some of the key features of the new national business names scheme. It will be administered by the Australian Securities and Investments Commission and will provide an integrated system for the registration, renewal and searching of business names.

Applicants will have the choice of registering their name for one or three years. Traders will be able to register and renew their names online, which will mean that they can carry out a transaction at a time suitable to them. Of course, if they still want to fill in a paper form the Australian Securities and Investments Commission will allow for that. I cannot imagine why it would, but we must always remain flexible, particularly in the light of changing technologies and the slow take-up of some of those technologies, even for businesses that seek to compete in very competitive environments.

It will be essential to have an Australian business number in order to register a new name under the national scheme. The system will streamline this process by enabling a business to apply simultaneously for an Australian business number and a business name using the online facility. All existing business names on State and Territory registers will be migrated to the new system at changeover and will be deemed validly registered. Where a person has registered the same name in several jurisdictions it will be necessary for them to maintain only one registration in order to operate nationally under the new scheme. That is certainly a massive improvement. Where a business owner holds several different business names, all of which will be able to be used throughout the country, there will be a facility to enable a common renewal date for all of those names.

Fees are likely to be lower than under most current State systems, producing an additional saving for business. The Commonwealth legislation also provides that detailed information on the national register will continue to be available to State and Territory licensing and law enforcement authorities. Where information about a person has been suppressed on a State or Territory register, such as for personal health or safety reasons, that information will be protected on the national register and not released to the general public without that person's consent. The Business Names (Commonwealth Powers) Bill 2011 provides the necessary New South Wales legislative framework for these important reforms. Firstly, it provides a text-based referral of the State Government's business names powers to the Commonwealth based on legislation introduced into the Tasmanian Parliament. Secondly, it deals with a number of transitional arrangements. These preserve the rights of existing New South Wales business name holders and, together with the Commonwealth transitional provisions, they allow for smooth transfer of administration so as to minimise disruptions to business. Thirdly, it makes a number of necessary consequential amendments to other New South Wales legislation.

I now turn to the detailed provisions of the bill. The bill refers certain business name matters to the Commonwealth by reference to the text of the Commonwealth's Business Names Registration Bill 2011 and the Business Names Registration (Transitional and Consequential Provisions) Bill 2011, as tabled in the House of Assembly of Tasmania on 5 July 2011. Whoever said that good things do not come from Tasmania? The text of the two Commonwealth bills is defined in the New South Wales referral provisions as the tabled text. For ease of reference I shall refer to these respectively as the main Commonwealth bill and the Commonwealth transitional bill. The terms of the referral provisions in the New South Wales bill are as agreed by all States and are largely self-explanatory. However, I will mention a few key provisions.

In clause 3 the definition of "business name" is the same as that in the main Commonwealth bill. An Australian business number will be essential for registration of a new business name under the national scheme, and the definition clarifies that a business will not include any activity for which an entity is not entitled to an Australian business number. The term "exemption provision" refers to clauses 19 (5) and 20 (3) of the main Commonwealth bill. Clauses 19 and 20 are offence provisions concerning requirements to include a business name in written communications and to display a business name at places of business open to the public. However, clauses 19 (5) and 20 (3) provide exemptions, for example, if the display of a business name would be contrary to a Commonwealth, State or Territory law.

Clause 5 (2) of the New South Wales bill preserves these exemptions by providing that the Commonwealth will not be able to omit an exemption provision in its legislation without enacting an equivalent provision or otherwise limit the operation of an exemption provision. When allocating a new business name under the national scheme the Australian Securities and Investments Commission will not be able to issue a name that is the same as a name already allocated to an entity on a notified State register as defined. This will avoid confusion with entities registered under State laws, such as incorporated associations and cooperatives. Clauses 4, 5 and 6 of the New South Wales bill contain the substance of this State's referral to the Commonwealth. Clause 5 is a particularly critical provision. Clause 5 (1) specifies exactly what continuing business name matters within the power of the State are referred to the Commonwealth.

Just as importantly, clause 5 (2) sets out those matters not being referred to the Commonwealth. The Commonwealth will not be able to restrict the ability of a New South Wales government body to carry on a business under a name or to impose restrictions on a government body to include a name in communications or to display a name. There are equivalent protections for legislation relating to notified State registers. The Commonwealth will not be able to restrict this State's ability to provide for an entity's name by way of the New South Wales legislation; nor will it be able to effect the imposition or payment of any taxes under our State laws. Clauses 6 and 7 of the bill provide for the formal referral of powers, with reference to the tabled text of the Commonwealth bills, and limit the Commonwealth powers to make amendments. Clauses 8 and 9 are formal provisions concerning the manner in which New South Wales may terminate its referral of powers. Clause 10 provides for evidence as to the tabled text in the Parliament of Tasmania.

I have already outlined the many benefits which the new national scheme will provide for businesses in New South Wales. However, it is particularly important to ensure a smooth operational transition to the new scheme and to protect the rights of existing business name holders under the current New South Wales Business Names Act 2002. I refer now to schedule 1 to the New South Wales bill, which provides the necessary savings and transitional provisions. These complement those in the Commonwealth transitional bill. Part 1 contains various definitions. Existing business names legislation is defined as the New South Wales Business Names Act 2002 and any regulations made under that Act, as well as the relevant provisions of the Licensing and Registration (Uniform Procedures) Act 2002.

Part 2 covers the operational transfers of functions to the Commonwealth. Clause 2 enables New South Wales to migrate data and provide information to the Commonwealth for the purposes of establishing the national register. Clause 3 provides that the existing business names legislation ceases upon the changeover date except where some provisions continue in operation in order to finalise certain matters that are pending as at that date. Clause 4 preserves the operation of offence provisions where the conduct occurred before the changeover date. Clause 5 preserves the right to recover fees and charges payable under the

existing legislation as at the changeover date, and enables fees to be charged under any provisions that continue in operation.

Clause 6 enables the Commissioner for Fair Trading to refuse to exercise certain functions during the transitional period before the changeover date. The practicalities of final data migration to the Commonwealth system may require New South Wales to close its business names register some days prior to the changeover date with no new matters accepted. I assure honourable members that there will be plenty of advance notice about any closure of the New South Wales register if that is required. Clause 7 covers the renewal of business names and reflects the Commonwealth transitional bill and operational arrangement made with the Australian Securities and Investments Commission. The States will issue renewal notices for business names where the due date for renewal occurs before the changeover date, while the Australian Securities and Investments Commission will issue the renewal notices for business names with due dates on or after the changeover date.

Clause 8 is an evidentiary provision relating to certificates of business names and extracts from the New South Wales register issued before the changeover date. Clauses 9 to 14 cover the resolution of matters that are outstanding as at the changeover date. Clauses 9 and 10 enable completion of pending applications for registration, renewal or restoration of a name, or for variation of particulars. Clauses 11 and 12 preserve the existing rights of review and appeal, and pending proceedings in the Administrative Decisions Tribunal or a court. However, there is no appeal against a decision to refuse to carry out certain functions prior to changeover in accordance with clause 6. Clause 13 provides that all matters on hand but not yet completed will be notified to the Commonwealth as held matters and will be completed under the existing legislation.

This will include those matters where the review or appeal period has not yet expired. Once a held matter has been finalised the Australian Securities and Investments Commission will be notified as to whether the relevant business name is to be confirmed as registered on the national register or whether it is to be removed. Clause 14 preserves existing offence provisions to held business names. Part 3 of schedule 1, clauses 15 to 18, contains miscellaneous provisions relating to compensation, delegations, references to previous business name legislation and the making of regulations.

Schedule 2 provides for repeal of existing business names legislation whilst schedule 3 contains consequential amendments to other New South Wales legislation. The transfer of State-based business name powers to the Commonwealth is an important national reform that will benefit business across this country while ensuring that consumers remain protected. It is an important measure that will cut red tape and regulation for local business and make it much easier for them to expand interstate. This is exactly the type of measure New South Wales needs to get this State back up and running. The Business Names (Commonwealth Powers) Bill 2011 is a culmination of a significant national reform initiative that will provide real and tangible benefits to the people of New South Wales. It is a sign that the Council of Australian Governments can work and we must continue to ensure that it delivers for all the people of Australia and the people of this State—and I can certainly assure this House that it is the Government's strong commitment to ensure that red tape is cut that will sustain that into the future. I commend the bill to the House.