

The object of this Bill is to refer certain matters relating to the registration and use of business names to the Commonwealth Parliament so as to enable the Commonwealth Parliament to make laws about those matters. The proposed Act will be enacted for the purposes of section 51 (xxvii) of the Constitution of the Commonwealth, which enables State Parliaments to refer matters to the Commonwealth Parliament.

The Bill also makes provision for savings and transitional matters and the consequential repeal and amendment of certain legislation.

Summary of operation of the Bill

The Bill operates by reference to the text of the proposed *Business Names Registration Bill 2011* and *Business Names Registration (Transitional and Consequential Provisions) Bill 2011* of the Commonwealth tabled in the House of Assembly of Tasmania on 5 July 2011. This text of these proposed Commonwealth Bills is defined in the Bill to be the **tabled text**. Because the proposed Commonwealth Bills contain matters that are not within the legislative competence of the States, the Bill also contains a definition of **initial business names matters**, which means matters to which the provisions of the tabled text relate to the extent to which those matters are included in the legislative powers of the Parliament of the State.

The Bill refers to the Commonwealth Parliament the initial business names matters, but only to the extent of the making of laws with respect to those matters by enacting Commonwealth Acts in the terms, or substantially in the terms, of the tabled text. The Bill defines this reference to be the **initial reference** and the Commonwealth Acts enacted pursuant to it to be the **national business names legislation**. The Bill also refers, subject to particular exclusions, certain matters (**continuing business names matters**) to the Commonwealth Parliament so as to enable that Parliament to make amendments to the national business names legislation from time to time. The Bill defines this reference to be the **amendment reference**.

The Bill enables both the initial and amendment references, or only the amendment reference, to be terminated by proclamation made by the Governor.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain terms used in the proposed Act.

The term **business name** is defined to have the same meaning as it has in the tabled text. The term is defined in the tabled text to mean a name used, or to be used, in relation to one or more businesses. The tabled text defines **business** to mean an activity, or series of activities, done:

- (a) in the form of a profession, a trade, employment, a vocation or a calling, or
- (b) in the form of an adventure or concern in the nature of trade, or
- (c) on a regular or continuous basis, in the form of a lease, licence or other grant of an interest in property.

However, the definition of **business** in the tabled text excludes an activity, or a series of activities, done in circumstances in which an entity doing that activity or series of activities in, or in connection with, Australia would not be entitled to an ABN (Australian Business Number).

The term **entity** is defined to include an individual, body corporate or unincorporate, partnership or anything that is an entity within the meaning of the tabled text. The tabled text also includes trusts and superannuation funds as entities.

The term **exemption provision** is defined to mean a provision in the terms, or substantially in the terms, of clause 19 (5) or 20 (3) of the proposed *Business Names Registration Bill 2011* of the Commonwealth that forms part of the tabled text. Those provisions of the proposed Commonwealth Bill exclude entities from the operation of clauses 19 and 20 (which provide for the inclusion or display of business names in written communications and at places of business) in a manner that is contrary to a law of the State or a Territory or the Commonwealth.

The term **government body** is defined to mean:

- (a) the State or an agency or authority of the State or of the State acting jointly with the Commonwealth, another State or a Territory, or

(b) a local council or county council established under the *Local Government Act 1993*.

The term **notified State register** is defined to mean a register that is maintained under a State law and is a notified State/Territory register within the meaning given by clause 6 of the proposed *Business Names Registration Bill 2011* of the Commonwealth that forms part of the tabled text. A **notified State/Territory register** within the meaning of clause 6 of the proposed Commonwealth Bill is a State or Territory register, or kind of State or Territory register, specified in Schedule 1 to the proposed Commonwealth Act in respect of which the Australian Securities and Investments Commission receives regular electronic updates from the State or Territory concerned. The NSW registers that are notified State/Territory registers are as follows:

- (a) the Register of Co-operatives established under the *Co-operatives Act 1992*,
- (b) the Register of Incorporated Associations established under the *Associations Incorporation Act 2009*,
- (c) the Register of Limited and Incorporated Limited Partnerships established under the *Partnership Act 1892*,
- (d) the register of co-operative housing societies and Starr-Bowkett societies established under the *Co-operative Housing and Starr-Bowkett Societies Act 1998*,
- (e) any register of the same kind as a register mentioned in paragraphs (a) to (d), established in substitution for a register mentioned in one of those paragraphs.

Clause 4 defines the term **initial business names matters** in the manner described in the Overview.

Clause 5 provides for each of the matters that is to be a **continuing business names matter** for the purposes of the amendment reference. These matters are:

- (a) the registration of business names,
- (b) the regulation of the use of business names to assist entities who engage with an entity carrying on business under a business name to identify the entity,
- (c) the regulation of the use of business names to assist entities who engage with an entity carrying on business under a business name to contact the entity,
- (d) the regulation of the use of business names to reduce the risks that arise from an entity carrying on a business under a name that is not the entity's own,
- (e) the prohibition or restriction of the use of business names that are undesirable, offensive or confusing,
- (f) the prohibition or restriction of the use of a business name 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.

The proposed section also expressly excludes the following matters from the continuing business names matters (and, therefore, the amendment reference):

- (a) the imposition of a restriction on a government body affecting the ability of the body to carry on business under a name,
- (b) the imposition of a restriction on an entity affecting the ability of the entity to carry on business under a name registered to the entity on a notified State register,
- (c) the imposition of a restriction on an entity affecting the ability of the entity to carry on business under a name that is specified as the name of the entity in a State law,
- (d) the imposition of an obligation on a government body to include a name in a communication or to display a name,
- (e) the imposition of an obligation on an entity to include in a communication, or to display, a name that is registered to the entity on a notified State register,
- (f) the imposition of an obligation on an entity to include in a communication, or to display, a name that is specified as the name of the entity in a State law,

(g) the omission of an exemption provision without the insertion of an equivalent provision, or the imposition of a limitation on the operation of an exemption provision,

(h) any matter relating to the imposition or payment of taxes under a State law.

Clause 6 deals with the references described in the Overview. Clause 6 (1) and (2) make those references.

Clause 6 (1) provides for the inclusion of the initial business names matters in Commonwealth Acts enacted in the terms, or substantially in the terms, of the tabled text. The expression “substantially in the terms” of the tabled text will enable minor adjustments to be made to the tabled text.

Clause 6 (2) in effect refers the continuing business names matters to the Commonwealth Parliament in connection with the future amendment of the national business names legislation.

Clause 6 (3) removes a possible argument that one of the references might be limited by the other.

Clause 6 (4) makes it clear that the reference of a matter has effect only to the extent that the matter is not otherwise within the legislative power of the Commonwealth Parliament.

Clause 6 (5) specifies the period during which a reference has effect.

Clause 7 makes it clear that the State Parliament intends that the national business names legislation can be amended or affected by Commonwealth legislation enacted in reliance on other powers (though this may be the subject of provisions in the Intergovernmental Agreement that will underpin the scheme) and that instruments made or issued under that legislation may affect the operation of that legislation otherwise than by express amendment.

Clause 8 deals with the termination of the period of the references specified under clause 6 (namely, the period ending on a day fixed by the Governor by proclamation).

The clause enables the Governor, by proclamation, to fix a day as the day on which:

- (a) the initial reference and the amendment reference are to terminate, or
- (b) the amendment reference is to terminate, or
- (c) the initial reference is to terminate (if the amendment reference has been previously terminated).

Clause 9 makes it clear that it is the intention of the State Parliament that the separate termination of the period of the amendment reference does not affect laws already in place. Accordingly, the amendment reference continues to have effect to support those laws unless the period of the initial reference is also terminated.

Clause 10 provides for the accuracy of a copy of the tabled text containing the proposed Commonwealth Acts to be certified by the Clerk of the House of Assembly of Tasmania. Such a certificate is evidence of the accuracy of the tabled text and that the text was in fact tabled as contemplated by the Bill.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 2 Repeal of existing business names legislation

Schedule 2 repeals each of the following:

- (a) the *Business Names Act 2002* No 97,
- (b) the *Business Names Regulation 2004*,
- (c) any other regulation made under the *Business Names Act 2002*.

Schedule 3 Consequential amendment of other legislation

Schedule 3 makes amendments to certain Acts and Regulations that are consequential on the enactment by the Commonwealth Parliament of the national business names legislation pursuant to the referral of matters by the proposed Act.