

**BUSINESS NAMES (COMMONWEALTH POWERS) BILL 2011**

*Second Reading*

Resumed from 30 November 2011.

**HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition)** [3.14 pm]: The opposition is broadly very supportive of the Business Names (Commonwealth Powers) Bill 2011. This bill will replace the Business Names Act 1962, a piece of legislation that has been in place for nearly 50 years. I understand that the genesis for this change came about as a result of a Council of Australian Governments agreement in July 2009. It has taken almost three years to get from that meeting to the introduction of this bill into this chamber, which is quite a lengthy period of time. A significant change under this bill is that businesses will no longer have to register a business name in each state and pay separate fees. Under the new arrangements, they will be able to register once on the national register and pay one fee. This commonwealth bill will also centralise various functions in the Australian Securities and Investments Commission and shift the cost of administration to the commonwealth. I imagine that that would be a fairly attractive option for the states.

I have a question to the minister that was not canvassed in the briefing. I note that in last year's budget some reference was made to the redeployment of staff and I understand that about 15 staff were redeployed and a number of others are on contract. I wonder whether the minister could advise the chamber in his response about what will be the real saving to the state by not having a state-based business register. How much will we save in that regard?

I note and congratulate the Standing Committee on Uniform Legislation and Statutes Review for the very good report it did on this bill. Time and again that committee has delivered us excellent work on these types of bills. I do not say that lightly because the committee goes into a great level of detail when looking at the relationships between federal and state legislation. As I read through this report, it was interesting to note some of the difficulties the committee experienced. I do not know whether any members of that committee will speak on the bill, but recently there has been discussion in the chamber about some of the difficulties that committee has experienced with the delay in its ability to provide reports to this chamber. Page 2 of the committee's report into this bill refers to the time lag encountered when simply getting appropriate copies of the documents it needed to do its work. That is interesting and it is very good that the committee is up-front and quite open about the difficulties that it faced. I do not believe it should shy away from that. From time to time departments or ministers are tardy in providing the appropriate information to a number of other committees. The committee's report goes through a range of issues associated with the bill. I do not believe that the bill contains any great negatives; it is probably quite a positive change. It is extremely attractive for businesses to register just once and pay a single fee. However, there are some issues about businesses in different states that have a similar or identical name and how to differentiate between those businesses. I was told that if a business in Queensland was called ABC, it would have "Queensland" in the business registration, and if a business in Western Australia had the same name, it would be registered as "Western Australia". I hope that over time there will be other ways to finesse that. The advice I was given last week at the briefing was that under this new arrangement, when a business puts forward its name for registration and there is another business with a similar name, the registering business will be given a number of options containing similar words to use in the registration process. It will be interesting to see how various businesses manage that.

Some of the issues that have been canvassed by the committee are matters that come up time and again when dealing with these types of bills. One of the significant issues that the committee refers to is clause 11, which is a Henry VIII clause. That issue comes up from time to time in this chamber. The committee was concerned with how aspects of this legislation could be amended without consultation with Western Australia. I think that the Minister for Commerce and all members would share our concern that decisions could be made on the eastern seaboard that will impact on us even though the Western Australian Parliament did not have oversight of, or input into, the change. It is very important for the committee to have canvassed that issue again in this report. When the committee made its recommendations, I note that it sought a response from the minister about how that issue can be managed and has asked the minister to clarify particular terms and the full scope of the power being referred to the commonwealth by the legislation. I am sure that the minister will provide that information to the chamber.

When I read the committee report, it reminded me of a bill that related to the gas industry that we dealt with a couple of years ago. Under that bill, decisions would be made by ministerial council and would be provided by way of either direction or note rather than through regulation or an amendment to an act, which would have allowed the capacity for oversight. That is a worrying trend that we have to watch so that the Western Australian Parliament does not miss opportunities to have input to decisions that affect things that happen in our state.

When I had the briefing last week, I raised an issue which was not picked up by the committee and which is not in the bill. I know that this year is the International Year of Cooperatives. I attended a recent function at which there was discussion about how cooperatives were very keen to get some sort of national legislation in place to deal with their area of business. I think they are very important; they are a significant part of industry and historically are of great benefit to industry and the community. As I understand it, cooperatives are not covered by this legislation. How will cooperatives in Western Australia register their businesses? Will there be an alternative set of arrangements for them or will they automatically apply to the national register? Has consideration been given to putting in place in due course legislation to deal with cooperatives not only in Western Australia but also at a national level? I would be interested in any advice that the minister has on that issue. I am sure that Co-operatives WA also would be interested in knowing how this legislation will or will not impact on the way that their businesses are registered.

I am sure that Hon Adele Farina will make some quite significant comments, particularly on clauses 4 and 11. They are the two stand-out clauses and there seemed to be quite a lot of debate in the Standing Committee on Uniform Legislation and Statutes Review and concern expressed about how they will operate. Although I note that the committee recommends that this bill be agreed to and passed, it is very helpful that the committee has gone into such a degree of detail and has ranged over the issues with the Henry VIII provisions and the potential for Western Australia to be excluded from decision making.

The issue of distinguishing names on the national register also is canvassed very well on pages 12 and 13 of the report. The committee identified a range of potential issues with the approach that has been taken with the national register. I think they are quite valid. One point is that consumers will not be able to distinguish between businesses with identical names without checking the national register. I am not sure how individuals will be able to access the national register—whether the data will be publicly available online or whether some sort of fee will need to be paid to find that information. I would be interested if the minister could advise us how consumers will be able to check the names of businesses under this new set of arrangements.

Another issue canvassed in the committee report that I thought was quite interesting is that under the new commonwealth set of arrangements, a business can renew its registration for a period of three years, but I understand there is no provision for a renewal period of less than a year. I am not sure that too many businesses would want to register for less than three years. I am not sure when that would be the case. Members of the committee might be able to provide examples if that issue was canvassed with them. Is there any flexibility under the new arrangements for a business to register for less than that set period or will it be only for the time that has been provided for in the legislation?

**Hon Simon O'Brien:** I will address that when I address recommendation 5.

**Hon KATE DOUST:** The other matters are to do with a review. I note that there is a supplementary notice paper with some amendments as a result of a couple of the committee recommendations. I note that the minister has put on the supplementary notice paper a provision for a review of the act. It is very positive that the minister has acknowledged the committee's concern. I know that when we deal with bills in this chamber, it is a frequent observance that more often than not we put legislation through this place and we do not always give ourselves the capacity to revisit it and see what is working and what is not working. I think that is a very positive thing. Given that this legislation will be managed by the commonwealth, it will be useful to see how it works for businesses in Western Australia. I understand that an office has been established in Perth so that people can register their businesses. I imagine that there is some sort of advertising campaign or correspondence to businesses to alert them to that change.

These types of changes are quite useful and significant. We are no longer operating in splendid isolation in Western Australia. Given the changes in technology and the way that businesses are conducted, businesses operate not just within the confines of our state; a lot of businesses cross borders. It is much more convenient for these types of organisations, be they small or large businesses, to streamline how they manage their business by registering on one occasion and in one place and paying one fee. It is a very good cost saving for those businesses. I imagine that this would be a very attractive change indeed for those in small business.

Although this is not an onerous piece of legislation, and I am sure it will be received very well by the business sector in our state, it has been a very important exercise for the parliamentary committee to apply quite a rigorous working over to this bill and to highlight again to us some of the difficulties we face when we hand over state powers to the federal government, regardless of the make-up of that government, and how that handover can sometimes impact on our state. The ongoing concern that has again been expressed in this report is about the potential for Western Australia to not have as great a say as it should have in the final decision making on changes to legislation or regulations that will directly impact on matters in Western Australia. It is quite useful to have those matters highlighted in the document when working through the legislation. The second reading speech and the legislation are fairly straightforward and mechanical as they deal with administrative changes, but

it is useful to have that narrative and to keep the matters that are highlighted at the back of one's mind. The devil is in the detail sometimes with these types of bills, and the committee has done a good job at highlighting some of the potential issues we may have to deal with down the track.

I do not have a lot more to say about this relatively straightforward piece of legislation, aside from the couple of issues I have raised on the similarity in names as they are registered, the Henry VIII provision, and how WA is treated in future decision making with amendments to the legislation. I also note that the government has picked up on the recommendations of the committee and also the review. It is always very good when the government is cooperative and prepared to acknowledge the hard work of a committee and to take on board a change. We hope this will be a great example for other legislation that we will deal with in the future.

**HON LIZ BEHJAT (North Metropolitan)** [3.31 pm]: Hon Kate Doust just said that she hoped that some of the members of the Standing Committee on Uniform Legislation and Statutes Review would speak to the report on the Business Names (Commonwealth Powers) Bill 2011. I am always happy to oblige. I never miss an opportunity to get up and speak about the Standing Committee on Uniform Legislation and Statutes Review and the hard work that it does. We were involved in this very interesting report, which was one of the last two reports done by this committee under the old standing orders, and it probably ranges into areas where members may not see us go in the future. But that remains to be seen.

The paramount issue that our committee always looks at is state and parliamentary sovereignty and whether those issues are being affected. I particularly want to draw the house's attention to paragraph 6.3 of the report, which reads —

Section 4.4(1) of the IGA provides that the Commonwealth will not repeal or amend the national law without the approval of the Ministerial Council. However, "*approval of the Ministerial Council*" is defined in section 1.3(1) of the IGA as meaning a positive vote of the Commonwealth Minister plus at least three other members, at least two of whom must represent states

Paragraph 6.4 of the report reads —

The Department confirmed this accurately reflects the position under the IGA. It also said:

*Could a decision be made to amend the law contrary to the wishes of Western Australia? The answer is: yes.*

*The IGA was developed as a result of unanimous agreement. But the mechanism for dealing with future amendments to the law is the ministerial council process—same for corporations, same voting arrangement for business names. So, it is not unanimous. As I say, it is the commonwealth plus three others, two of which are states. All future amendments will go through that. Normally, it is unanimous because of the issues about trying to maintain good relations, but the technical answer is that it is possible for an amendment to be put up which Western Australia does not support. But that was a policy decision and the government agreed to sign off on the IGA. The government made a conscious decision about that process.*

That might be fine, but the report continues —

6.5.1 The wishes of Western Australia Government/Parliament may be overridden if the national law were to be repealed or amended by the Commonwealth on the advice of the Ministerial Council ...

We see another example of Canberra trying to wield its big stick towards Western Australia. We know that our state, unfortunately, is not flavour of the month with those on the other side at the moment. People might think this is just the Business Names Act and it is not terribly important, but it is another example of how this whole rush towards a national seamless economy is a nonsense and how Western Australia's sovereignty can be overridden by Canberra. I draw members' attention to paragraph 6.9 of the report, which reads —

The Committee draws these provisions of the IGA to the attention of the Legislative Council given their effect of diminishing the sovereignty of the State and the Western Australian Parliament.

In itself that is an incredibly important part of what is in this report. I know that other matters in the report will be canvassed in more detail by the chair of our committee. But I want to raise one other issue with the minister which does not appear in the report but which, since the tabling of report, has been raised with me separately by legal practitioners in this area. I do not know the new terminology, but the old terminology refers to a fixed and floating charge over all of the assets of a company. If one wishes to do a partial discharge of that fixed and floating charge, which may encompass a business name, it is a very simple process of lodging a form—I think it is form 213 or something like that—so that any charge that a finance company or bank may have over that business name could simply be discharged by that form. Everything is now going to the Australian Securities

and Investments Commission rather than being administered by the state, but apparently ASIC does not have that provision. This is probably a mechanical process that needs to be looked at, but in reality there can no longer be a partial discharge of the charge and, in effect, the entire charge must be discharged and then all of those things must be recharged minus that which one wishes to discharge. This not only sounds convoluted and complicated, but it will be! Members must bear in mind that when we talk about business names it is generally small business people and not large corporations, so my concern and that of a number of people who practise in this area is that we will be adding on costs to this whole process for small business at a time when we really should be streamlining the process. I am really concerned when we sign up for these national schemes that half the time they are sold to us as a pup that is going to make this a seamless economy, and make the process easier and cheaper. But when we ask the people who have to use this legislation out there in the real world, it turns out it is not that way and it will cost them more and will take up more time. One of the things that members of this government pride ourselves on, as I know the minister does, is the reduction of red tape rather than the creation of more red tape and tying people up in that red tape. Perhaps during the minister's response he can assure me that those things will be addressed, because that will give a lot of comfort to people in the community.

I do not want to say too much more about the bill. As I said, our chairman will talk further on that, but I did want to bring those particular matters to the minister's attention.

**HON ADELE FARINA (South West)** [3.39 pm]: I will speak very briefly to the seventieth report of the Standing Committee on Uniform Legislation and Statutes Review on the Business Names (Commonwealth Powers) Bill 2011. The bill very much speaks for itself, but I would like to begin by acknowledging the work of the members of the committee in undertaking the inquiry and the assistance provided by the staff in the preparation of the report.

As has been explained by speakers previously, this bill effectively transfers the power to create and maintain a business names register from the state across to the commonwealth. That will entail the establishment of a national register, as opposed to state registers. When a business registers on the national register, it will effectively be registered right across Australia and will not have to undertake individual registrations in every jurisdiction, which is what businesses are currently required to do. The committee report identifies a number of issues and seeks further clarification from the minister, and I will address a few of those issues. There is ambiguity as to the full scope of the power being referred to the commonwealth by the legislation. This has been raised a number of times throughout the committee report and raises a number of concerns. I believe it is important that in consideration of the bill, the government clearly articulate the full scope of the power being referred. I hope in his response that the minister will clarify that matter. There is also lack of clarity surrounding the term "unlawful conduct".

**Hon Simon O'Brien:** To go back a step if you wouldn't mind: are you able to amplify your concern about the scope a little more?

**Hon ADELE FARINA:** It has been a while since I read the report. The lack of clarity around the scope of the power being referred was raised. Provisions in the bill allow for regulation-making powers that can reduce the scope if the state is concerned that the commonwealth has adopted a much broader scope than the state intended in passing the laws. My view is that, in passing the law, we should be clear about the full scope we are providing to the commonwealth. While I appreciate that there is some merit in including those provisions in the bill, it is also of concern to me that we feel it is necessary to have those provisions in bills, because we have not sufficiently defined the referral power in the first place. It was an issue raised by a number of other jurisdictions in their consideration of the bill.

**Hon Simon O'Brien:** I see what you are getting at. I will discuss it.

**Hon ADELE FARINA:** I think that, in passing the bill, we need to be very clear about the full scope of the referral power.

The other issue is the lack of clarity around the term "unlawful conduct", which is used in the bill. In the hearings, while the department provided us with an example of unlawful conduct, we did not get a definition in the bill, and that has the potential to raise some ambiguity in the interpretation and application of the law, which will then require resolution in the courts. When we pass laws we want to avoid our laws being resolved in the courts due to lack of clarity. The committee raised this as an issue of concern and seeks from the minister some clarification of the term "unlawful conduct". It also seeks some clarification from the minister for why a definition for unlawful conduct is not in any of the laws adopting the scheme. The committee considered whether it would be advisable to include in the WA bill an amendment to define and clarify that term, but on balance, because it would have effect only in Western Australia if we were to do that, and would impact on the uniformity of the scheme, we felt that it would not be appropriate for the committee to recommend an amendment to provide a definition of the term. Therefore the committee has asked for clarification of what the

minister intends that term to mean in proposing this law to the Parliament, and that the minister take the issue back to the ministerial council that a view has been expressed in this place that a definition of “unlawful conduct” would be appropriate and beneficial in all the laws implementing the scheme, and ask the ministerial council to again look at that issue. The committee is of the view that if an amendment is needed, it needs to be made to all the laws implementing the scheme, not simply to the Western Australian bill.

The committee also identified Henry VIII clauses, and they are detailed at pages 7 to 12 of the report. I will not go through all that because I am sure members have read the report. The minister knows all about Henry VIII clauses, and I am sure he is bursting at the seams to tell us all about them. The committee made one recommendation in that regard, however; namely, that an affirmative process for the adoption of regulations be put in place rather than what is proposed in the bill. I understand that the minister may well have a very positive response to us about that. However, for the purposes of the debate in this place, the standing committee has prepared a statutory form amendment to address that issue.

In the report the standing committee also acknowledges that a lot of effort has been made by the department and the ministerial council to ensure that there is not duplication of business names. To address the problem of the duplication of business names as a result of state registers being merged into a national register, a location indicator will be provided. To a large extent, from a business point of view, that issue has been addressed. But the committee has expressed some continuing concern that from a consumer point of view, that problem may not have been completely addressed. However, I do not think there is any quick fix to that situation and I think it really is a case of having to review the legislation and see how it is playing out. Time will tell whether the issue has been sufficiently dealt with.

The issue of trademarks came to the attention of the committee very late in its inquiry. The issue is a possibility of a business name infringing on trademark rights. The scheme adopts a very much hands-off, leave it to the courts, approach. The committee noted that this is not the approach taken in other overseas jurisdictions that have implemented schemes in which the business names register provides an alert when there is the possibility of an infringement against a trademark. Again, this is a situation in which we cannot make an amendment purely in this state, because it will impact on the uniformity of the scheme. Therefore, on balance, the committee resolved to accept the decision and that this is something we will have to review over time and assess whether there is sufficient safeguard in what is being proposed to avert the potential conflict or whether more needs to be done.

That takes us to another issue that we did not manage to resolve in the committee’s inquiry into the bill—that is, the renewal of registration of a business name. We got to the end of our inquiry under the very tight time constraints that we have had to work to and it was still not clear in the committee members’ minds whether the legislation permits a business to renew a registration for one year only or for a period of three years. Currently under Western Australian law, businesses have the option of renewing their business name for one year or three years. We seek clarification from the minister whether, under the national scheme, that option will remain for businesses because, in many cases, businesses prefer an annual renewal rather than incurring the cost of a three-year renewal.

A number of issues I have raised in relation to some ambiguity and lack of clarity in the bill and some concerns about the implications of some of the changes that are being proposed has led the committee to explore the need for a review mechanism in the bill. There is no review clause in the WA bill, the commonwealth act or the IGA. While the department expressed to the committee the view that a review clause was not necessary as there is a requirement for ASIC to provide an annual report to Parliament and that there is also an agreement in place that ASIC will need to meet certain performance indicators in its administration of this legislation and that they will be detailed in the report, the committee resolved to simply seek from the minister his view about whether the review mechanism ought to be considered. We can understand the department’s argument that the annual report will provide a feedback mechanism but the issue will be, if WA businesses are being impacted: how do we as a Parliament effect change if we believe it is necessary? A review mechanism would allow the Parliament to do that because a review report would be tabled in the Parliament, so the Parliament would have an opportunity to consider and debate the outcome of the review report. ASIC’s annual reports are tabled in the federal Parliament; they are not tabled here, so members would need to look specifically for that information and then find a mechanism to bring that information before this Parliament if a concern is expressed. We owe it to businesses in Western Australia to have a more direct opportunity to have an influence by reviewing the legislation and the scheme, particularly if it is impacting negatively on businesses in WA. However, I will be interested to hear the minister’s response to that.

The other issue raised by the committee is that if we are not going to have a review clause and we are simply going to rely on the ASIC annual report and comment on its performance against the key performance indicators it has been set, the information provided in the ASIC annual report should actually be provided on a jurisdictional basis so that we can see the impact it is having in Western Australia rather than across Australia as

a whole. The information could actually mask something that is happening differently in a particular jurisdiction. Again, we raised that as a suggestion for the minister to take back to the ministerial council, and we would be interested to hear the minister's views on that when he gets an opportunity to respond. I do not intend to say anything more in relation to the committee report, because I think it is an excellent report that sets out the committee's arguments very well. I will raise a few other issues in more detail during consideration of the report in the Committee of the Whole, but I might leave it at this point and look forward to the minister's response.

**HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce)** [3.51 pm] — in reply: It is a privilege to close the second reading debate by way of my reply. In doing so, at the outset I thank honourable members for their contribution to the debate and also most particularly their indication of support for the Business Names (Commonwealth Powers) Bill. During the consideration of these matters and, in fact, before today when I was dealing with Hon Kate Doust and seeking some assistance on the way the house progresses this matter—I will come back to that in a moment—it occurred to me that this was actually a good bill to provide an opportunity to examine a few matters in a little more detail and in a dispassionate way.

Because we seem to have bipartisan or even multipartisan agreement on what is proposed by this bill, there does not seem to be any heat attached to this debate. It is a good, constructive debate that has been carried on in constructive, thoughtful, positive and respectful terms. It gives us an opportunity to have what I hope will be a discussion of what I have to say by way of this second reading debate, and also to discuss some things more freely when we resort to the Committee of the Whole House. I refer particularly to some matters related to the referral of powers. Every bill that refers powers seems to raise new questions, but there are some fundamentals that it does not hurt us to revisit, because every time we adopt a bill that refers some part of the state's sovereignty to the commonwealth, we introduce another precedent. We need to make sure, if we are to safeguard the interests of Western Australia, that precedents are not established without due consideration for what the future might hold. That is one benefit from having this present bill before us and having it accepted across the house in a bipartisan way.

Hon Kate Doust was first to indicate her support. She did so on behalf of the opposition, and I thank her for that. She raised a number of questions, however, in making her observations about the bill and its policy, and I would like to deal with those in turn, as I will for the several other members who participated. In the course of my speech in reply I am also going to talk in some detail about something that was raised by all members, I think, and that was the questions canvassed by the Standing Committee on Uniform Legislation and Statutes Review. I am going to go through a detailed response to each of those recommendations. In doing so, I will sweep up some of the matters that were touched on by members. At the end of that, if I have not covered everything, members can sing out or throw something across the chamber or attract my attention to something that I have missed.

**The PRESIDENT:** No, they cannot.

**Hon SIMON O'BRIEN:** Mr President, I was speaking metaphorically of course, but just in case anyone does not understand that, I will rephrase it in deference to the Chair and say that, if I have not covered everything, I should be delighted to revisit the matters if we get to the committee table—which is what I really meant.

Hon Kate Doust observed that this was a referral of the whole function and that within the Department of Commerce we currently have a business names section that provides front-counter and other services to the public. That will wind down, obviously, and be disbanded as this referral power takes its full effect. I might add that there has been some considerable contemplation of this for a period of time. There will have to be some transitional arrangements as well, I imagine, but in due course the current business area will cease to be. I understand that all staff have redeployment plans satisfactorily formed for them, whether it be to transfer to some other part of the department or move on to somewhere else, because it is important that we look after our people, whether we are starting a program or concluding one.

I might add in passing that this has been an ongoing challenge for the Department of Commerce in recent years. There have been a number of major changes to its service delivery models. I think it is a credit to that organisation that it has been able, I think, to thrive in such an environment, because of course for every area that perhaps winds up its operations—here is a good example that we are considering today—others are created to take on new and exciting responsibilities, such as the Building Commission, for example.

Hon Kate Doust also asked about the quantum of savings to the state by this measure. I am unable to give a precise figure, because this is part of a larger program. The full income to the state from the collective Council of Australian Governments reforms is yet to be finalised. In terms of business names, we are actually going backwards in a revenue sense; we are losing money from one perspective. Do not be alarmed; this is not bad. However, from one perspective we are losing money. I think I have seen some information reproduced on page 19 of the report, which actually comes from a transcript of evidence given to the committee. We see there that

the figure for money raised in 2010–11 was \$4.295 million—I believe that is a net figure. The actual income is something over \$6 million, I believe. The actual cost of providing the service is rather less.

To clarify, this matter was raised by Hon Adele Farina's committee and discussed in sections 7.36 to 7.42 of the report. In those sections the standing committee drew to the attention of the Legislative Council the loss of state revenue that will occur as a result of the business names reforms. The government is conscious that the implementation of the business names reforms will result in a reduction in state revenue. This was considered as part of the government's decision to agree to the implementation of the reforms and the establishment of the national register. In this instance the disadvantage to the state—that is, the loss of income—is outweighed by the benefits of the national scheme to businesses and consumers in not only Western Australia, but also the other states and territories.

To get down to the specifics, the state government receives annual revenue of \$4.295 million from the registration of business names. However, costs to the state will be reduced by approximately \$1.656 million annually through the transfer of responsibility for business names registration to the commonwealth government. That is what it costs us to employ people and provide this service. At face value, the annual net loss to the state would be approximately \$2.639 million. However, businesses will still obtain a business names register service—probably a better one, because it will be recognised Australia-wide—but they will not pay that extra \$2.639 million. In other words, the new system will provide these equivalent services more cheaply than we can as a standalone state. If we then contrast that with the anticipated reward payments to the state from the commonwealth of \$56.838 million through the 27 reforms that are part of the package, we cannot identify what portion of that applies to this single reform. This is not a standalone reform in that sense, as I understand it. That is probably all the information I can provide the member about the actual costs or savings to the state.

Hon Kate Doust also observed that this is the International Year of Cooperatives. Indeed, I announced that last year, just to be ahead of the game.

**Hon Kate Doust:** Just to be sure.

**Hon SIMON O'BRIEN:** Just to be sure; we were bang on time with that.

Cooperatives have their own standalone legislation, which is state based, and they do not register business names in the same way that other businesses do. The name of a co-op is registered with the Department for Commerce. The names of registered co-ops across Australia will be provided to the Australian Securities and Investments Commission so that an entity will not be able to register a business name on the national register when that name is already registered to a cooperative. It provides that protection.

It is probably a matter for discussion on another day, but of all the states Western Australia leads the way in terms of the prominence of its cooperatives, which include big organisations such as the RAC and CBH Group, just by way of example.

Hon Kate Doust asked about how consumers will check their details in the new regime. We want to free this up and make it easier for everybody, so access will be free to consumers. Consumers will be able to search online at the ASIC website or by phone. ASIC offices—I understand that there is one in Perth—will also be fitted with terminals to allow searching. Of course, during the transitional period the Department for Commerce will also provide access to terminals to enable searching. We will do that for about six months after the national register is implemented.

**Hon Kate Doust:** I raise that because we seem to have an ever-increasing number of scams and a lot of people want to check to see whether a business is really a business before they respond.

**Hon SIMON O'BRIEN:** That is a fair point and this is a one-stop shop, if we like, so that people can search one register to do just that, rather than have to go to a variety of sources. In due course the national register should have a solid reputation and people will examine it with confidence, just as they would have examined the Western Australian register.

Another thing that I am also examining—I will not dwell on this because it is not part of the bill—is an opportunity for small business centres to take a role in providing services, such as providing access to terminals and responding to queries from prospective businesses wanting to set up in the area. In that way we could get a bit more value out of the small business centres. Hon Kate Doust discussed a few other matters. I will come to the recommendations in the report in a second. I will just leave that for now.

I also acknowledge Hon Liz Behjat for her observations. I know that she is a very conscientious and dedicated member of this committee. She asked questions relating to fixed and floating charges and whether a partial discharge would be possible in the case of a particular business. I have to say that I do not know the answer to that and I think that is probably a matter to take up out of session. I have asked my advisers to find out from

Hon Liz Behjat out of session what the problem is and to make sure that if any bases are left uncovered, we cover them.

Hon Adele Farina, as the chair of the committee, also addressed the committee's report; I thank her for that. We clarified one or two things for my benefit by interjection and I think all the matters she raised are ones that I will now formally cover by responding in turn to each recommendation of the committee. I will turn to that now.

Let me say by way of introduction that I was grateful for the committee report and for the committee's work. In turn, the government does not want to argue over points. We are generally quite keen to take on board what the committee has raised because it is often a constructive way to improve a bill. When the committee has gone on further to say, "Here is something that we do not necessarily want to change, but something we want clarified," we are more than happy to do that as well.

I turn now to the recommendations. Recommendation 1 was that I explain to the house the full scope of the power being referred to the commonwealth government by the legislation. We had a brief exchange across the chamber just to clarify what the Standing Committee on Uniform Legislation and Statutes Review was on about in relation to this, so I thank you, Mr President, for allowing that, because we got some clarity and I now know what the committee was talking about.

In the report, the standing committee is of the view that the referral of power to the commonwealth Parliament has not been adequately defined, which creates uncertainty about the scope of the referral and the potential future exercise of the referred power by the commonwealth. Let me make the following observations in respect of that.

Firstly, members need to understand that this is a referral of power; it is not an undertaking to participate in some harmonised scheme. We are taking a power that the state currently exercises; we currently provide front-counter services down in St Georges Terrace by way of business names regulation in this state, and we are proposing to shut that down, refer that power to the commonwealth government and let it get on with it in the future. We have some safeguards built in at a national agreement level about opting out, and we might come to some of those when we discuss some of the clauses.

There are some other ways in which individual states might wish to limit the diversity of what they refer, and that will be through a process defined in the bill as "exemption". That is something that individual states can determine and dictate, so it is a different model, and I do not blame the committee for querying it. This is the sort of thing that I referred to in my remarks a while ago when I was talking about the challenges of dealing with the different models that come up for uniform legislation, and how we have to be a bit careful in going along with them because we are setting a precedent every time we adopt something that is a bit different from the other models that are already on our statute book.

The question was: what is the scope of the power being referred to the commonwealth? The short answer is actually contained in clause 4. I will briefly discuss that. Clause 4 discusses what is described in this legislation as "continuing business names matters". Clause 4(1) sets out what constitutes continuing business names matters, to the extent that they are included in the legislative powers of the state Parliament. Clause 4(2) qualifies that by outlining matters that are not continuing business names matters; both subclauses list the respective matters in detail.

One would think that that would answer the question: what is the scope of what is being referred? The fact of the matter is that it does not give us the whole answer, because this can be ameliorated by exemptions claimed by the state to particular things that would otherwise be continuing business names matters. This is the nature of the uncertainty that the honourable member described, and it takes us to a discussion, a little later on, when we talk about matters relating to disallowance or approval by the house of what is proposed to be, for want of a better word, un-referred. Perhaps we could discuss those mechanisms.

Those who are following this debate will know how complex this is; those who are politely listening are probably starting to glaze over, so we will keep this heavy duty matter for a little later in the proceedings! The committee members are interested, but I am just worried that we are losing a few of the others around the periphery, and we would not want to do that! I think that is how we will best deal with that recommendation.

Recommendation 2 is that I provide examples to the Legislative Council to illustrate the intended scope of the term "unlawful conduct", other than bankruptcy or insolvency. One of the continuing business names matters—which, members will recall, are listed at clause 4(1)—being referred to the commonwealth Parliament is the prohibition on or restriction of the use of business names by an entity because either the entity has engaged in unlawful conduct, or a person involved in the management of the entity has engaged in unlawful conduct. The committee wanted to know what "unlawful conduct" means for those purposes and was a little critical that the term is not defined in the commonwealth business names legislation.

The general intention of the unlawful conduct provision is to provide scope for the commonwealth business names legislation to be amended, if necessary, to include further circumstances identified as relevant to the issue of a person's continuing fitness to carry on business under a business name. Other relevant examples in addition to offences relating to bankruptcy and insolvency could include fraud, or breaches of laws that set out specific requirements for the use of words, names or titles—for example, qualification titles such as “doctor” or “pharmacist”. Caution should be exercised in trying to provide an exhaustive list of conduct that would be considered to be unlawful conduct for the purposes of the referral of power, as it may inadvertently result in examples being left off the list and thereby becoming an issue in the future. In essence—I do not think this is a new concept in drafting—the authors of the commonwealth legislation that we are endeavouring to adopt by referral did not want the term “unlawful conduct” to be necessarily limited or restricted in its meaning, for the reasons I have just outlined.

**Hon Adele Farina:** Will you take an interjection, minister?

**Hon SIMON O'BRIEN:** Absolutely, if I may.

**Hon Adele Farina:** Could that not be addressed by simply saying “including but not limited to”, and providing instances that are considered to be unlawful conduct?

**Hon SIMON O'BRIEN:** I am confident that the unlawful conduct provision will be interpreted and administered in a way that would require a rational connection to exist between the unlawful conduct—whatever it might be—and the person's continuing fitness to carry on a business under a business name. That is what we are really looking at here. We are not really discussing fraud, murder or what have you; we are talking about a national business names register. However, consistent with recommendation 3 of the standing committee, I am happy to raise the issue with the commonwealth government. We should bear in mind that it is also not necessarily convenient in this sort of scheme for us to unilaterally adopt a definition.

That then leads me to recommendation 3, which is that I, as minister, make representations to the ministerial council to effect the insertion of a definition of “unlawful conduct” into the commonwealth act. I have just given an undertaking that I will write to the chairman of the Ministerial Council for Corporations recommending that a definition of “unlawful conduct” be considered for insertion, because if it were to be considered, that is the appropriate place to do it.

Recommendation 4 of the committee is that clause 11 of our bill be amended to provide for greater parliamentary scrutiny of any regulations made pursuant to clause 11 and suggests that may be effected by way of inserting a couple of lines. That proposed amendment is on the supplementary notice paper. Another proposed amendment, seemingly similar in effect, stands in my name on the supplementary notice paper. The view that I have taken in requesting that that amendment be drafted, with slightly different wording, is that if it were the will of the house to adopt this recommendation, we should get the wording right.

**Hon Adele Farina:** It is interesting that parliamentary counsel can provide two sets of wording for the same request; however, in any event, I—

**Hon SIMON O'BRIEN:** I think it a matter of principle that that happens. Had I known this was going to happen, I may have met Hon Adele Farina in the corridor to swap ideas to see what could be produced. But that is an exercise for another day.

**Hon Adele Farina:** I am more than happy with the minister's suggested words for the amendment.

**Hon SIMON O'BRIEN:** Okay. At least we will be debating the best wording.

There is no law that says any legislation that emerges from this place has to make sense. There is no provision whatsoever for that. This observation has been made by distinguished members. Hon Peter Foss comes to mind, as does Hon Nick Griffiths, who also made the same observation. But we would all, I hope, make a similar related observation that, despite that, we try strenuously to make sure that legislation does make sense. Perhaps other places do not try as hard as we do.

My response to recommendation 4 is as follows. For those members following the debate, the standing committee has noted that clause 11 of the bill contains a Henry VIII clause. I have some correspondence that I do not intend to table that comprises some notes from someone somewhere observing this matter who wants to argue about that. I do not wish to argue about that; perhaps it is because I think that it is a bit of a Henry seven-and-a-half clause! However, the point the honourable member and her committee have made is taken at face value. A Henry VIII clause enables an act to be amended by subordinate legislation; that is, an act of Parliament contains a provision that allows the creation of, for example, a regulation and the regulation amends some provision of the principal act. Members can tell when this device was first invented by the term “Henry VIII clause”.

Clause 11 provides that regulations may be made to exclude matters from the scope of the commonwealth business names legislation or to displace provisions in state law from the operation of the commonwealth business names legislation, and we will talk about that in a little more detail during Committee of the Whole. Clause 11 has been drafted to provide a mechanism by which any identified inconsistencies between state law, other state law and the commonwealth business names legislation will be dealt with in a timely manner, because, in the event of an inconsistency, the state law will be invalid. If an amendment act were required to exclude a matter or displace a state provision from the commonwealth business names legislation, there would be a significantly longer period between the identification of the inconsistency and the rectification of the issue to ensure the validity of state law. It takes a long time, and rightly so, to go through all the processes necessary to amend an act of Parliament—identification of the problem; consultation; preparation of the cabinet submission seeking approval to draft amendments; and the cabinet processes, assuming they are negotiated successfully. Then, of course, drafting has to take place. In fact, the drafting of the drafting instructions might have taken some time before that. Parliamentary counsel has to find the opportunity within other priorities to get this work done. It has to go back to cabinet by way of another submission to seek approval to print and introduce the bill. If it is introduced into the Legislative Assembly, it has to sit on the notice paper for, I think, three weeks before it can be brought on, and then it is progressed and, along with everything else, has to find its turn. Then the bill is sent to the Legislative Council and sits on our notice paper for a minimum of one week, and so on and so forth. That is long enough. Of course, if it occurs at a time when the house is in recess, it is hardly an instant response. That is understood. I understand why clause 11 was drafted this way: it was in a search for a mechanism by which we could actually meet the needs of the state—not sacrifice the sovereignty of Parliament. I am sure that meeting the future needs of the state, and not snubbing the prerogatives of the Parliament in any way, was in the minds of those drafting this legislation.

The standing committee also notes that clause 8 of the bill, which also delegates power from the Parliament to the Governor by way of subordinate legislation, has been drafted in a manner that retains the legislative prerogative of the Parliament by requiring that any proclamation made under clause 8 first be approved by both houses of the Parliament. I think it is the committee's contention that this provides a clue to a mechanism that may save us from the need for an amending act in due course, without unduly delaying the time needed for the executive of the state to identify and act upon some item that we may wish to exempt ourselves from in relation to the referral of power to the commonwealth.

The standing committee's recommendation requires an amendment to clause 11 to provide that approval is required by both houses of Parliament before regulations made under clause 11 come into effect. That is already contained in this very bill—or a similar clause is already there. Certainly, it has been done for other legislation that has passed through this place, and many members know that.

Therefore, although some may wish to argue about it, I know the views of the house on this matter and I accept them. It is not only an occasion of accepting reality and tapping the mat; I am actually pleased on behalf of the government to accept this particular recommendation. We may need to discuss this a little more if anyone has not had enough! However, I will leave it at that for now.

**The PRESIDENT:** The question is that the —

**Hon SIMON O'BRIEN:** No, Mr President; I have more to say. I will leave that point for now.

**The PRESIDENT:** That point! We still have two minutes to go.

**Hon SIMON O'BRIEN:** I did not know whether you wanted to interrupt me, Mr President.

**The PRESIDENT:** I will in a minute!

**Hon SIMON O'BRIEN:** You have not had enough yet?

**Hon Ken Travers:** He is just warming up.

**Hon SIMON O'BRIEN:** Made of stern stuff!

Recommendation 5 requests that I clarify whether renewal of the registration for one year will be permitted under the national scheme. This matter was also raised by Hon Kate Doust. The standing committee has noted that, based on the proposed fee structure of the national business names register, it appears that it may be possible to renew a business name for a period of one year, but that is not explicit in the commonwealth Business Names Registration (Fees) Regulations 2011. We have made inquiries with the Australian Securities and Investments Commission, which, of course, will be responsible for administering the national business names register, and ASIC has confirmed that business name registrations and renewals will be available for a period of either one year or three years, which should provide enough flexibility. I would have thought that in almost all

cases the registration of a business name is something that a business would want for the medium or long term. Nevertheless, if someone needs a one-year registration, that can be done.

Debate interrupted, pursuant to standing orders.

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