

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

*Introduction and First Reading*

Bill introduced, on motion by **Hon Simon O'Brien (Minister for Commerce)**, and read a first time.

*Second Reading*

**HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce)** [3.12 pm]: I move —

That the bill be now read a second time.

The Business Names (Commonwealth Powers) Bill 2011 seeks to adopt the commonwealth Business Names Registration Act 2011 and the commonwealth Business Names Registration (Transitional and Consequential Provisions) Act 2011, and refer to the commonwealth Parliament the power to amend those acts pursuant to section 51(xxxvii) of the commonwealth Constitution. In addition, this bill will deal with transitional and consequential matters to allow for the implementation of the national business names reforms in this state. This bill will give effect to the intergovernmental agreement endorsed by the Council of Australian Governments on 2 July 2009 to refer power to the commonwealth Parliament to legislate in regard to business names registration for the purpose of establishing a national business names register.

The legislative scheme: On 3 July 2008, COAG agreed to the development of a single national system for the registration and regulation of business names. Currently there is a separate business names register operating in each Australian jurisdiction. A business proprietor who trades under a business name in more than one state or territory must register this name and pay the relevant fee in each jurisdiction. The establishment of the national business names register will mean that a business proprietor will be required to register a business name only once to be able to trade under that name in every jurisdiction in Australia. The commonwealth legislation will effectively replace the Business Names Act 1962, which is the legislation that currently regulates the registration of business names in this state. The national business names register, which is scheduled to commence on 28 May 2012, will be operated by the Australian Securities and Investments Commission.

Commonwealth Constitution: The commonwealth Constitution enables the commonwealth Parliament to exercise a legislative power referred to it by a state Parliament. The Constitution also allows a state Parliament to adopt commonwealth legislation that has been enacted by relying on a power referred by another state Parliament. In both cases, referral and adoption, the law that ultimately applies in the state is commonwealth law. The commonwealth Parliament does not have sufficient legislative authority under the commonwealth Constitution to completely regulate the registration of business names throughout Australia. Tasmania effected a referral of power on 4 October 2011 with the enactment of the Business Names (Commonwealth Powers) Act 2011. This referral enabled the commonwealth Parliament to enact the Business Names Registration Act 2011 and the Business Names Registration (Transitional and Consequential Provisions) Act 2011 on 3 November 2011. The Business Names (Commonwealth Powers) Bill 2011 adopts the commonwealth acts and refers to the commonwealth Parliament the power to amend the adopted legislation.

Clause 4 of the bill reserves certain business names matters to the state Parliament. These matters include the imposition of requirements relating to the display or communication of a business name upon a government body or an entity carrying on business under a name specified in a state law and the imposition or payment of taxes. The bill also provides a mechanism for the Western Australian government to revoke the adoption and referral of power, should that prove warranted.

Transitional and consequential provisions: In addition to adopting the commonwealth business names legislation and referring to the commonwealth Parliament the power to amend the adopted legislation, the bill makes necessary transitional and consequential amendments to the Business Names Act 1962 and other state acts.

For the information of members, I table a copy of the commonwealth business names legislation and I commend the bill to the house.

[See paper 4135.]

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.