

Bill introduced on motion by Mr Anthony Roberts.

Agreement in Principle

Mr ANTHONY ROBERTS (Lane Cove—Minister for Fair Trading) [5.00 p.m.]: I move:
That this bill be now agreed to in principle.

I am pleased to introduce the Business Names (Commonwealth Powers) Bill 2011. This bill will help to cut red tape for businesses in New South Wales, especially for small businesses that operate across State boundaries. It is the culmination of an important national reform initiative that will have significant 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 ensures transparency, and helps prevent dodgy operators from hiding behind a trading name.

At present, each State and Territory has in place its own legislation for registering business names, including New South Wales. 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. As I am sure members will acknowledge, 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. The situation is particularly frustrating for those people who operate their businesses along State borders. It also does not take into account the growth of electronic commerce under which a business with a physical presence in only one jurisdiction may now operate online and provide goods and services throughout Australia.

That is why the Council of Australian Governments, as part of the national seamless economy partnership agreement 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. Establishment of the 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 governments. A business will be able to use this account to carry out many routine transactions, such as searching for business licensing information, notification to government agencies of a change in particulars such as 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 for the economy as a whole. It will reduce the regulatory burden and costs, 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 a name for one or three years. Traders will be able to register and renew their names online, meaning they can carry out the transaction at a time that suits them. Of course, if they still want to fill in a paper form the Australian Securities and Investments Commission will also allow for that.

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 only be necessary for them to maintain one registration in order to operate nationally under the new scheme. 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 will not be released to the general public without the 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's 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 turn now to the detailed provisions of the bill before the House. The bill refers certain business names 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. 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 several 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, subclauses 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 limiting 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 critical provision. Clause 5 (1) specifies exactly what "continuing business names 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 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 New South Wales legislation, nor affect the imposition or payment of any taxes under our 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 also limit the Commonwealth's 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 that 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 of 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 transfer 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 also 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 changeover date. The practicalities of final data migration to the Commonwealth's 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 can assure members that plenty of advance notice will be given 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 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 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 periods have 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 is to be removed. Clause 14 preserves existing offence provisions to held business names.

Part 3, schedule 1, clauses 15 to 18 contain miscellaneous provisions relating to compensation, delegations, references to previous business names legislation and the making of regulations. Schedule 2 provides for repeal of existing business names legislation. Schedule 3 contains consequential amendments to other New South Wales legislation. The transfer of State-based business names powers to the Commonwealth is an important national reform that will benefit businesses across the country while still ensuring that consumers remain protected. It is an important measure that will cut red tape and regulation for local businesses 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 the culmination of a significant national reform initiative that will provide real and tangible benefits to the people of New South Wales. I take this opportunity to thank the dedicated staff in the Office of Fair Trading, who have worked tirelessly to bring this reform to the House, and other members of the New South Wales public service who through their professionalism and devotion to their duties have enabled us to take this task forward to the Commonwealth. I commend the bill to the House.

Ms CHERIE BURTON (Kogarah) [5.14 p.m.]: The Opposition does not oppose the Business Names (Commonwealth Powers) Bill 2011. The background of the legislation is that the previous Labor Government commenced this process in July 2008 when the Council of Australian Governments agreed that all States would refer their business names and registration powers to the Commonwealth and the Commonwealth would establish a single national register for business names which would enable businesses to register a business name and obtain an Australian business number [ABN] in one transaction. In 2009 the Commonwealth determined that an Australian business number would be a prerequisite for obtaining a business name under the national scheme.

The implementation of a national business names register is an important project designed to simplify business processes and reduce business costs. It will remove the need for a person to register a business name in multiple jurisdictions. The system will be administered by the Australian Securities and Investments Commission and will be available online. As the Minister outlined, there are protections for existing business name holders. All names currently registered in States and Territories will be migrated to the new system and protected under grandfather provisions, which enable them to be continued and renewed. Where a person has the same name registered in several jurisdictions, he or she only needs to maintain one of those registrations. In the case of identical migrated names being registered to different persons, the Australian Securities and Investments Commission may include a distinguishing term on the register, such as, location.

The referral of powers is a text-based referral, based on the text of the Commonwealth Business Names Registration Bill 2011, the main Commonwealth bill, and the Business Names Registration (Transitional and Consequential Provisions) Bill 2011 tabled in the Parliament of Tasmania, the lead State. The State's referral provisions contain appropriate exclusions and protections for State laws, as the Minister outlined in his agreement in principle speech, and the main Commonwealth bill contains concurrent operation provisions in relation to State and Territory laws. Commonwealth and State transitional legislation provides for a smooth operational changeover under which States will issue renewal notices for due dates before the changeover date and will complete all matters on hand as at that date. Existing appeal rights are preserved and the Australian Securities and Investments Commission will continue renewal notices for all business names with renewal dates after the changeover date.

The Business Names (Commonwealth Powers) Bill 2011 will provide these powers to the Commonwealth and contains the necessary provisions and consequential amendments to other New South Wales legislation. Passage of this legislation in 2011 is necessary to ensure commencement of the scheme in May 2012. The Opposition supports the legislation. I commend the Government for bringing it on in a timely manner. Businesses will be able to look forward to a more streamlined process when registering business names, particularly across the States. I commend the bill to the House.