THE LEGISLATIVE COUNCIL COMMITTEE ON GOVERNMENT ADMINISTRATION 'B' MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON THURSDAY, 4 AUGUST 2011

BUSINESS NAMES BILL INQUIRY

Mr ROBERT MALLETT, EXECUTIVE OFFICER, TASMANIAN SMALL BUSINESS COUNCIL, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Ms Rattray) - Welcome, Robert.

Mr MALLETT - I'm the Executive Officer of the Tasmanian Small Business Council. In addition I'm the executive officer of the Hair and Beauty Industry Association and I also bring a national hat as the general manager of the Council of Small Business Organisations of Australia, which is the national peak body for the small business sector.

Both the Tasmanian Small Business Council and the Council of Small Business Organisations of Australia have fully supported the move to a national business names and ABN registration system. We think that will lessen the amount of time to some degree that it is going to take for small businesses especially to register their name. It should lessen the complexity with which they do it. I understand that it is also actually going to reduce the price, which is always a positive.

CHAIR - Up to 60 per cent we believe.

Mr MALLETT - Yes, so that is particularly positive. It has been going since 2007, so we're a little bemused why it has taken three-and-a-half years to get to here, given that I have never heard of any other organisation having an in-principle objection to this going ahead. It seems to have taken an interminable length of time to get what appears to be a lay-down misère piece of legislation through, in the main.

Having read the legislation, overall it is fairly simple, but obviously in the workings of it it takes a lot of pages to explain how this is going to happen. There are a couple of queries that I would have. I am not quite sure to what extent that can be altered. One of them is part of the transition and consequential provisions bill of 2011, page 17, clause 17, which is nominating a principal place of business and address. This may be approached from somewhere else. It does not actually specify that it needs to be a physical address. Small business people are often maligned for being fly-by-nighters et cetera. I use the word 'maligned' because every now and then there are dodgy ones. It may be somewhere else in another piece of legislation, however if a physical address was a requirement when you register the business name, I think overall that would be a positive when it comes to consumers and other people in the event that they may have an issue with that enterprise. As I say, it may be elsewhere in some other piece of legislation that is not immediately apparent here, however I think it would be a positive thing to do rather than just a GPO box, for example.

CHAIR - It is certainly one area that I didn't have flagged, so thank you, and the other?

Mr MALLETT - The other, with all due respect, is that bureaucrats are bureaucrats and so it comes down to a determination by an individual as to whether a business name that is about to be registered is identical or similar. There is no question as to whether a business name is identical because identical is identical, however I am not quite sure what determines a similar business name. There does not seem to be any clear guidelines about how that might be. I think Tasmania has for some time effectively, when you do a business name search, looked for the rest of the country and you have already had a clear idea as to whether or not the name you are seeking is either going to be fairly similar to an existing one. But now if every State and Territory is going to be part of it, and they may not have had that process before, then I think you should allow reasonably similar names because it is not going to be that long before we run out of words. I do not know that a hairdressing salon in Cairns necessarily is going to be competing with a hairdressing salon in Kingston if their names are a little bit similar. How many times can you use the word 'hair' with one other word to form the name of your business? I do not know how you enter that into legislation but I would like some latitude for at least similarity, or if there is a wide geographical distance then a business could appeal if they were refused. They could, in some way, shape or form appeal a similar name on the basis of the unlikeliness of their competing or being confused.

CHAIR - That was one area that the committee had some discussion on, so we appreciate that input especially. Robert, you did touch on ASIC's role.

Mr MALLETT - ASIC, I suppose, up until now have had a role under the Commonwealth corporations powers to some degree, dealing with companies. Only 30 per cent of Australian small businesses, for examples, are companies; 70 per cent of them are sole traders or partnerships. So, all of a sudden, they are going to have a lot more inquiries from a lot more different organisations to be dealing with, from what I can see. They have no latitude for a smaller business missing a deadline or getting something slightly wrong. They have no hesitation in finding you immediately, electronically - whenever. There is no latitude for a mistake. Small businesses do have to be every single thing in their business. They do not have a department to deal with it and if they get it slightly wrong and there is a mistake, there needs to be some mitigating circumstances so that the force of ASIC, who are used to dealing with the BHPs and Grollos of the world, do not necessarily take the same heavy-handed approach to the small business if they are going to be the responsible body.

CHAIR - I think that is a very valid point and we know that small business certainly does do everything. A lot of us have been involved in small business at one time or another and some still are. It certainly is a key point.

Mr MALLETT - It is hard. We are not asking for a free kick, I suppose. We are not asking for things could not reasonably be expected. In the Small Business Council, both on a national basis and in Tasmania, there is a lot of talk about red tape and compliance and compliance reduction et cetera. I note that the Liberal Party have a bill on the Table such that if you are going to put one regulation on, you take two off. I am not sure that we necessarily agree in principle with that. It is more the complexity of compliance. If we can reduce the complexity of compliance, rather than removing that from the whole thing and not having it there at all, rather than making it full, make it half full, but still get the same effective outcome with the community, whether it is safety or whatever, then in

that case we are doing much the same thing if we reduce that level of compliance. But ASIC tend to be 'take it or leave it'; there are no questions and that is a bit of pity.

CHAIR - Black and white, no grey.

Mr MALLETT - Yes and there should be room for grey.

Mr GAFFNEY - On the points you have raised, have you been able to raise those at a forum or at a different level?

Mr MALLETT - I have not taken the piece of legislation specifically to that. However, the sorts of principles I am talking about now are uppermost in the conversations of every single CoSBOA or TSBC meeting when it comes to discussion, because compliance is such a significant issue with small business people. The amount of time it takes them to comply and not get on and do their business, which is their trade or profession, is increasing dramatically.

Mr GAFFNEY - I am also looking at ASIC where you said they are used to dealing bigger firms. Have you been able to voice that? We have to make some comment on this bill and some of the concerns that we have. Have you been able to add a broader concern?

Mr MALLETT - Definitely at the CoSBOA level - that is the Federal body. We are constantly concerned with ASIC's role and the way they approach the small business sector.

Mr GAFFNEY - Their response to that? How do they feel that they will deal with it?

Mr MALLETT - I have had extensive talks with the commissioner within ASIC who is responsible for small business. In his own words he said it's all a bit like trying to turn around the *Queen Mary*. It's happening, it's just going to take a very long time. They obviously are intending to make changes, but from a regulatory point of view it is slow work.

Mr DEAN - I'm concerned about the similarity of names and the registrations and so on. How is that going to occur now while they're getting this up and running? Are they all going to be accepted in the first place, when the national registration begins?

Mr MALLETT - I don't think so. I didn't see a commencement date, other than when it receives royal assent.

CHAIR - It's May 2012.

Mr MALLETT - When it comes to Tasmanian businesses, already when you put in a name you think you might want to register it searches the national database, so you get a bit of an idea. I'm not sure if every other State and Territory does that.

Mr DEAN - I would have thought there would be many names there that would have been registered that are very similar, in fact the same I would suggest in many instances, but with a different State or different setting in a different State. If that's going to be

managed, I can't see why your position shouldn't be one that should be supported - that is, similar names, provided it is identified by the State, should not be acceptable.

Mr MALLETT - It just depends. For example, on a personal level I was looking to register a business name that I had thought of and I was looking to operate it to appeal to Queensland businesses but based here in Tasmania. The one that was registered had something-something Qld and I wanted to extend one of those names and use the word 'Queensland'. When I rang and said, 'How close can they be?', the person in the Hobart office said, 'I would consider that would be too close'.

Mr DEAN - 'Qld' as opposed to 'Queensland'?

Mr MALLETT - Yes. A registered business name is a registered business name and that's the trading name as well. I was a little bit surprised myself and didn't go ahead, but that is what part of that concern is.

Mr DEAN - I guess the central office where the national registrations occur will be the ones who make the determination on whether it is or not?

Mr MALLETT - They will determine that, yes. At the moment that's done through the Department of Justice here in Tasmania, through a local officer.

Mr DEAN - And there's no right to contest that?

Mr MALLETT - No. You get the opportunity to write down three names you would like, you pay the fee - if you don't get the first name you can get the second one - and the fee stays there until you eventually determine a name. You don't forfeit your fee if that one is not accepted; your fee stays on the table until such time as you've come up with a name that is accepted by the department.

Mr GAFFNEY - Does that person have any criteria?

Mr MALLETT - I have no idea.

Mr GAFFNEY - There's nothing written down stating the criteria or whatever?

Mr MALLETT - I don't have any idea how they might determine what constitutes 'similar'.

CHAIR - We have been advised that there has been some consultation around this, and obviously there might have been some businesses that went to the initial consultation process in 2007 that might not even be still in business. It said the 'major' cities, so would that have been just Launceston and Hobart?

Mr MALLETT - It could have been, but I honestly can't remember. When we've talked about it, especially at a national level - the TSBC is a member of the Council of Small Business of Australia - we end up having somebody from the Department of Innovation, a senior deputy secretary or someone like that, to come and talk to us in principle about what we're intending to do and in principle we support the amalgamation of the process.

CHAIR - I expect with that transfer over of names there's not that concern in the community from the 30 000 -

Mr MALLETT - I have not heard of any businesses that have said, 'I think I'm going to have somebody else from Western Australia who will have the same business name as me, what am I going to do about it?'.

CHAIR - Members, are there any other issues you would like to touch on with Mr Mallett in relation to this? I think your presentation has been terrific and the fact that you have that national hat on has probably helped you have a greater understanding of how this will affect your member businesses overall. We will certainly be interested to see whether there is that reduction in costs, as indicated, and that red tape is reduced.

Mr MALLETT - Look, it's not a lot, necessarily, and it only happens once every three years, I think, but every little bit helps. When things are tough, every dollar counts.

Mr GAFFNEY - Aside from the bill, could you discuss what mechanics could go wrong with this, what are some issues, or do you see that they should be able to have the software in place and it should be a smooth transition?

Mr MALLETT - We would expect that to be the case.

Mr GAFFNEY - So you're quite comfortable with that?

Mr MALLETT - We are talking about governments with millions of dollars at their disposal - they should be able to set up a reasonably simple software system.

CHAIR - And they've had plenty of time to prepare.

Mr MALLETT - They have. I know that the relevant jurisdictions - the Department of Justice, the Department of Innovation and ASIC - have been talking about this for a long time, so they have had plenty of time to set up an appropriate process.

Mr GAFFNEY - In your Australian role, have most of the States, most of your counterparts -

Mr MALLETT - Yes, most of my counterparts are quite happy,

Mr GAFFNEY - You haven't had any State jumping up and down?

Mr MALLETT - No, none at all.

Mr MULDER - You have talked about your concern that it seemed like a postal address was okay under clause 17, but I think there is also a connection with the ABN and I don't think a postal address is adequate for an ABN.

Mr MALLETT - You're right.

Mr MULDER - Therefore there would be a requirement -

Mr MALLETT - A requirement for a physical address; I think you're probably right, I just couldn't remember the ABN aspect.

Mr MULDER - I know with the similar names issues there is the allowance of using a suffix, and I think an example has been given as Joe's Plumbing Sydney versus Joe's Plumbing Adelaide. You might give me your perspective on it, but I understood they were only going to allow the suffix of a State, or something like that, to apply in the transitional period as they are transferring stuff across. So if they're existing then they're grandfathered, but with new ones it simply wouldn't be acceptable to have Joe's Plumbing in two different locations with a suffix.

Mr MALLETT - I don't know.

Mr MULDER - We have been sat here struggling to read through this, and you can talk about simple IT solutions but if the legislative framework is any guide to go by it's obviously not going to be that simple. Your faith in a government department for innovation is also an interesting concept as well. Those are about my only observations.

Mr DEAN - On national registration, what are the other benefits?

Mr MALLETT - For small businesses, virtually none, other than it's just a central point of contact and there will be a reduction. The vast majority of small businesses don't trade interstate, they are based in Tasmania, and I think a lot of them would think - and that's why I bring up the point - 'If I've got a business name in Tasmania, I'm not going to be crossing somebody in Darwin and if, for whatever reason, there's some form of litigation, I'm hardly likely to get caught up in it because it's going to be clearly obvious that I don't live in Karratha or somewhere like that.'

From that point of view to some degree it is restricting the amount of names or ways small businesses are able to use it because we have 2.5 million small businesses in Australia and one would like to think that possibly the climate will be that they will grow. But I understand where there are cross-border issues, for example in Albury-Wodonga - those sorts of places - where you have different States and Territories. In Tasmania, we are somewhat protected from that because of Bass Strait, so a small business here is a small business here and doesn't usually have any connections interstate.

Mr DEAN - So registration allows you to conduct your business anywhere in Australia?

Mr MALLETT - In any jurisdiction, using that same name.

Mr DEAN - The issue that has been up - and I think this discussion was in our briefing - is what is the position where you have other regulations and laws applying in this State to businesses that are different on the mainland? For instance, health regulations might well be one where the controls in Victoria or New South Wales may be different or stronger or even not as strong? What is the position there?

Mr MALLETT - Our word of caution is that harmonisation or similar legislation is definitely an advantage, however we are about to look, for example, at the harmonisation of the occupational health and safety laws and we have some significant concerns with that. Some of my members are definitely worried that they will be bullied - that we

could be forced or pressured into having to join the harmonised laws across the country when in fact there will be businesses in Tasmania who will say, 'This is not on. We do not want this to happen,' but I'm a bit worried that our voice will not actually be heard because we will get the usual, 'They're doing it everywhere else in the country so we're going to do it as well,' and I don't think that is a valid argument.

Mr DEAN - It seems to me to be one of the biggest issues here really as to how that will apply and how it will impact on businesses wanting to operate all around every State as opposed to the other legislation in existence. Occupational health is a good one.

Mr MALLETT - Small businesses have this problem all the time. With due respect to those people in the audience who are on councils, it is just unbelievable that we have so many council building regulations. So a plumber who is based in Hobart and wants to work in Glenorchy, Clarence, Kingston -

Mr DEAN - And so many councils, I agree with you.

Mr MALLETT - and Huon Valley and probably Southern Midlands has to end up knowing five different planning laws. That is just a nonsense, they should not have to do that and it puts so much pressure on them as a businessperson. The threat of legislation and the red tape involved in having to comply is just not something they should have to do.

Mr DEAN - Currently if you are a registered business in Tasmania and you wanted to also register your business in Victoria, you would at that stage, I would suggest, become familiar with all of the legislation that applies to your business in Victoria at the time of registration. With national registration it is a different situation, isn't it; you simply apply, get national registration if you name fits in et cetera and if you are going to do business in any part of Australia you are expected to know the legislation that applies.

Mr MALLETT - It's a bit beyond my expertise; however, for example, if my business is The Front Man, if I actually wanted to go and do work to a job or do something for somebody in another State, I don't have to register my name there because I'm going there to work and I'm a Tasmanian business. But I think if you wanted to set up a business specifically in that State you would then have to register the name specifically and comply with all the requirements.

Mr DEAN - Thanks, Robert.

CHAIR - Thank you very much, Robert, we appreciate your time today and please extend our thanks to Geoff as well.

Mr MALLETT - Yes, he did a lot of work on this beforehand.

CHAIR - I feel sure he would have done and we appreciate it. As has been indicated, being the lead State we felt that there was an obligation for the House and in particular this committee to have as much understanding as possible about how this might affect particularly the 30 000 Tasmanian small businesses who might not always get their voice heard in the big picture. So we felt this was a very appropriate process for us and we appreciate your time today.

Mr MALLETT - We thank the honourable members for the invitation to do so.

THE WITNESS WITHDREW.

Mr MICHAEL STOKES, SENIOR LECTURER, FACULTY OF LAW, UTAS, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED**.**

CHAIR - Thank you very much for coming, Michael. We would be really appreciative if you would perhaps address your mind to the aspects of the briefing paper that you feel could be relevant for the committee to take on board.

Mr STOKES - What I would like to do is address certain aspects of the bill, the constitutional aspects both of the Tasmanian act and the Commonwealth one and how they relate together. The first point, if I can address the *Hansard* of the second reading speech - this is on page 15 of *Hansard* from 14 July this year - is that it mentions that the referral bill is text-based, which means the only constitutional power that is referred is the text of Commonwealth bills that are tabled along with this bill. Now, that seems to me to be incorrect because there is a substantial referral of power going well beyond the actual bill. It is correct in saying that that bill-based approach presents the least risk to Tasmania's constitutional sovereignty but the fact that it goes well beyond a text-based referral of one particular bill raises questions about State sovereignty, and that is particularly what I want to address.

CHAIR - Yes, thank you; that is what the committee would appreciate.

Mr STOKES - If we go to the Tasmanian bill, the Commonwealth powers bill, there are essentially two referrals of power in here, and these are in clause 6 subclauses (1) and (2). The subclause (1) referral is power to enact the Business Names Registration Bill, the Commonwealth bill, so that is a text-based referral, but subclause (2) goes well beyond being text-based. It says each continuing business names matter is referred to the Parliament of the Commonwealth but only to the extent of making laws with respect to the matter by making express amendments to the national business names legislation. So there is a referral of power to enact this text, the Commonwealth bill, and then there is a referral of power to enact amendments to that bill. That referral of power, in my opinion, is quite broad and takes it well beyond the text-based referral talked about in the second reading speech.

We have a definition of 'continuing business names matters' in clause 5 and that strikes me in some of the clauses as really very broad, because how a court would handle the interpretation of those terms of course is going to be up to the court. If you look, for example, at clause 5(1)(d). Clause 5(1) starts off:

> 'Each of the following matters is a continuing business names matter …'

Those business names matters are referred by clause 6(2), as I have mentioned Paragraph (d) says:

> '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;'

What do we mean in that context by the name not being 'the entity's own'? It may not be the entity's own because an obvious meaning of that would be it is not the entity's

registered business name. But what if it is a breach of a trademark or somebody else claims intellectual property in that name outside of trademarks? That strikes me as a very broad term and, remember, that as long as the Commonwealth enacts the laws as an amendment to this bill, it can enact basically whatever legislation it likes about what it might mean for the name not to be 'the entity's own'. That one seems to me to be a particularly broad referral.

The next paragraph (e) talks about 'the prohibition or restriction of the use of business names that are undesirable, offensive or confusing'.

CHAIR - To whom?

Laughter.

Mr STOKES - These are quite broad referrals and they take the referral of powers substantially beyond anything which is text-based; that is, just the text of these two Commonwealth bills.

Paragraph (f) talks about the prohibition or restriction of the use of the use of a business name by an entity because the entity is engaged in unlawful conduct. It is quite difficult under the legislation for an entity to carry on business unless it has a registered business name. What name is it going use? The only name you could use is the name, for example, if it is a partnership, of all the partners, or if it was a single person, the name of that person. As to the term 'unlawful conduct', that is for the Commonwealth, I presume, to define in amendment. The Commonwealth, by defining 'unlawful conduct' in various ways and enacting provisions under that could potentially make it quite difficult for a business which had committed any sort of offence.

CHAIR - To register its name?

Mr STOKES - Yes, and if the current register is named, to operate as a business it gets rather more difficult.

Subclause (2) restricts the meaning of the broad terms in subclause (1). You cannot impose restrictions on government bodies, and there is 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. So you do have some restrictions there which limit the potential for legislation amending these two acts, but how these are going to fit together if the issue comes before a court, I do not know.

Potentially, it seems to me that clause 5 and clause 6(2) of the State act will grant a substantial reference going well beyond just the text-based reference mentioned in the second reading speech. How significantly you take that is basically for the Parliament to decide. I must say that I am quite glad that Parliament is having a look at some of these because I really think there is pressure from COAG to get Parliament to rubber-stamp agreed legislation.

Mr DEAN - We think the same.

Mr STOKES - I am sure you do.

CHAIR - They mostly come through Queensland, with all due respect, and the fact that we do not very often get to be the lead State is something that the Parliament, the Legislative Council and then this reference to this committee felt was important to thoroughly scrutinise.

Mr STOKES - Yes. There are other concerns I think with the actual legislation if you are looking at the impact on, say, sovereignty. First of all, I should explain a little bit about what a reference does legally. When a State refers a power it does not surrender power over that, so Tasmania will still retain power to legislate on business names. But then you have section 109 of the Constitution which kicks into operation, so if the State business names legislation is inconsistent with Commonwealth legislation passed under the referred power, the State legislation ceases to operate. The other thing about section 109 is that it could go well beyond just business names legislation. Any State legislation on any topic which is inconsistent with the Commonwealth referred legislation could then be invalid under section 109.

CHAIR - If the Federal Government decided to challenge?

Mr STOKES - No, it is up to individuals to challenge.

CHAIR - It is up to individuals?

Mr STOKES - Yes. If you are prosecuted under a State law and you think there is an inconsistency with the Commonwealth law then you, as the defendant, can bring the challenge. Most challenges are brought by individuals and very often the Commonwealth and States will join forces in opposing the inconsistency but still lose in the High Court. Under section 109, when you refer a power you could get inconsistency between any State law and the tests for inconsistency are quite light.

I don't know how many of you have had a chance to look at the Commonwealth legislation. Like a lot of Commonwealth legislation these days it verges on the completely unintelligible.

Laughter.

Mr STOKES - Some of their legislation beggar's belief; it is just appallingly prolix and verbose. What you may be particularly concerned about here is division 4, the interaction between business names legislation, meaning Commonwealth business names legislation, and State and Territory laws. Basically division 4 is an attempt to avoid some of the broader implications of section 109 inconsistency. It points out that it is not intended to exclude or limit the concurrent operations of any law of a referring State or an affected Territory. One way you can avoid inconsistency sometimes is to state that the intention of this law is not to prevail over inconsistent State law; the two laws are intended to be able to operate side by side. Then there is a list of matters in subsection (2) where the business names legislation is not intended to exclude or limit the concurrent operation of a law that requires or permits a word or expression to be used by an entity or class of entities, prohibits or restricts the use of a word or expression by an entity or class of entities. But importantly, (c) relates to the accreditation or licensing of an entity that carries on a business. A broad interpretation of inconsistency between, say,

Commonwealth business names legislation and State accreditation legislation might in certain situations lead to inconsistency so they want to rule that out in that provision.

With State legislation making provision for the conversion of one body into another or the amalgamation of bodies and a few other things, my concern constitutionally about that provision is whether there anything to stop or invalidate Commonwealth amendments of that under section 6(2) of the State referral of powers act, remembering that referral is a continuing business names matter that is referred to the Parliament of the Commonwealth. It was pointless my trying to go through and work out whether a continuing business name matter would be broad enough to allow the repeal, say, of section 12 of the Commonwealth act, freeing up the possibility of all types of inconsistency. The one I would be particularly concerned about would be something relating to accreditation or licensing.

CHAIR - The interesting aspect from my perspective, Michael, is that this might not necessarily be the bill that is presented to the Parliament. We don't necessarily know that this is it in its complete form.

Mr STOKES - You mean this one?

CHAIR - Yes. We know it will be substantively the same -

Mr MULDER - Can they do it? If we pass the Tasmanian bill and it refers to the text, can it be anything other than the text that we were debating?

Mr STOKES - Yes, it can. That's a good point. If you look at section 6(1) of the Tasmanian act:

> 'The initial business names matters are referred to the Parliament of the Commonwealth, but only to the extent of the making of laws with respect to those matters by enacting Acts in the terms, or substantially in the terms, of the text.'

That means that the Commonwealth legislation doesn't have to be identical with what you now have in front of you. It simply has to be 'substantially' the same.

Mr MULDER - By definition, wouldn't that meant that it can't contain new or radically different provisions that this one now contains, or else it wouldn't be substantially the same?

Mr STOKES - Yes, you are right. Radically different provisions would be difficult to fit in. Ultimately the question of what is substantially the same will be a question of judgment for a court if there is a challenge to the legislation. You can imagine the types of arguments that might be put: 'We agree that it makes this change, which is fairly significant, but it's only to one section of the act'. You can't really see that as substantial and there would be a lot of toing-and-froing on that point. I haven't compared this with other references to see whether this is a common form of words, nor have I looked to see if there has been any litigation on the matter.

Mr DEAN - I suspect that that term is similar to that position relating to other national laws that have been implemented. Would it be similar in other legislation with the State supporting that legislation - the first State off the rank, as it were?

Mr STOKES - Quite possibly it is. As I said, I haven't checked that, nor have I checked how the courts have interpreted 'substantially'. You need to be aware that at least some changes could be made in the act, changes which are not substantial.

CHAIR - Are there other areas, Michael?

Mr STOKES - I have pointed out the possibility of amendments to section 12 freeing up the operation of section 109. There could also be amendments to, say, sections 13 and 14. Section 14 is an interesting one. It deals with what it calls 'displacement provisions'. The effect of a displacement provision means that it is basically an inconsistent State law. It is trying to reverse the effect of section 109 by making the State law prevail over the Commonwealth by saying where you have a State inconsistent provision which falls into the category of a displacement provision, then if a displacement provision permits an act, a Commonwealth provision that forbids that act essentially won't apply. It is trying to get around section 109. But again, I am not 100 per cent certain that those provisions can't be amended within the continuing business names referral in clause 6(2).

There are also some doubts, probably not very great as a matter of interpretation, but there could be a bit more clarity. I think sometimes that the lack of clarity in some of these provisions is used to hide the fact that there was disagreement perhaps at COAG and so there is a bit of deliberate ambiguity here so that it could be interpreted as both sides want and then leave it up to the courts.

The first thing I want to mention is that there is a great deal of uncertainty, because the courts have never ruled on it, about exactly what happens when a State withdraws or repeals a referral of power. There is absolutely no doubt that the State Parliament has the power to repeal the referral. A method of terminating the reference is given in clause 8. The Governor can do it at any time by proclamation and that will take effect six months later, but that does not prevent the Parliament itself simply passing repealing legislation. It retains that option, so there is absolutely no doubt that Parliament can repeal the referral, but the exact legal consequences of repealing a referral are unclear.

There are two views. One is that the Commonwealth loses that power and legislation based on the referral would be invalid. The other view is that the Commonwealth law remains until repealed but is unamendable. Which of those two views the High Court will eventually adopt is not quite certain. I think the former is the more logical one. If the State gives the Commonwealth a power it should be able to take it away again and the exercise of the power fails.

Mr MULDER - We have a fairly good constitutional history of attempts to do that but they have failed miserably, haven't they? I am thinking of things like the engineer's case and going back to areas where the States have ceded power to the Commonwealth and subsequent High Courts have ruled that they can't get it back.

Mr STOKES - There was no cession of power in the engineers' case. The few cases that there have been on referrals of power of this sort make it quite clear that the State can end the referral any time it chooses.

Mr MULDER - That was a real issue I had and I think you've answered most of my questions, or the ones I was capable of forming, with both clause 8 and clause 9 basically dealing with that capacity to withdraw it and the effect of it.

Mr STOKES - Having said what I said about the referral, it is not quite clear what the consequences of withdrawing the referral are going to be under this bill.

CHAIR - Then how does that fit in with section 109 of the Constitution as well?

Mr STOKES - One of the things they say in this bill is that it is valid not only under the State referral but also under other Commonwealth heads of power. It is fairly clear that the Commonwealth can deal with some business name matters, so corporate business names can be dealt with under the corporations power. Any scheme for registering business names so that a trader in one State can trade in another State could fall under the Commonwealth trades power. So for bits and pieces of this the Commonwealth didn't need a reference. It specifically states that the only parts which are valid because of the reference are those which would not be valid under another power. If that stood alone you could have potentially really difficult questions of interpretation if the State withdrew the referral because this bit might be valid, that bit might be valid, this bit invalid and so on. Having said that, there are provisions in here which suggests that if a State does withdraw the referral the scheme ceases to operate in that State.

This is sections 8 and 10 of the Commonwealth Act. Section 8 defines a referring State or adopting State and subsection (5) deals with the effect of terminating a reference. This is on page 11. A State ceases to be referring State if in the case where the Parliament of the State is referred to the parliament of the Commonwealth, for matters covered by subsection 3, that reference terminates. In the case where the Parliament of the State has adopted the initial version of this act and the initial version of the transitional act, the adoption of the initial version of this act or the initial version of the transitional act, terminates.

It terminates the reference and it terminates the adoption of the initial version of the act. But does that mean that the act no longer applies to the State? It is not completely clear because it still might apply to the extent that it can under other powers to that particular State.

CHAIR - Like the corporations?

Mr STOKES - Yes, the corporations power and the trade power. Section 10 deals with this and talks about the general application of this act and the transitional act. This is on page 14. Each provision of the act and the transitional act applies in this jurisdiction. 'Jurisdiction' means the geographical area that consists of each referring adopting State and each affected Territory.

You could draw the implication from that that if the State withdraws its referral it no longer, by the definition we have seen, is a referring or adopting State and therefore the

act will cease to apply. They talk about the overseas application of this act in another place, so it is quite clear that the act can have an application outside of section 10. You could make arguments, and this is what I mean, it might have been drafted -

Mr DEAN - Deliberately.

Mr STOKES - Deliberately. You could make an argument that it can still apply to the extent that it is within Commonwealth power, a State that had withdrawn the referral, because other sections indicate that. For example, it can have an overseas application that it can apply. It has jurisdictional coverage, apart from section 10. You would imagine that parts of it would have to have jurisdictional coverage regardless of section 10, because if you set up a scheme which will allow, say, a business name registered by a New South Wales business, to have that business name in Tasmania, should Tasmania, by withdrawing from the scheme, be able to take away the rights of that New South Wales business?

I think there is potential for real legal difficulties, if the State ever wanted to withdraw, in working out just what are the legal consequences of that withdrawal and to what extent it means this act does not apply in that State.

Mr MULDER - That gets back to an issue that the Commonwealth, as you said, through its corporation power but also others, has the power to do most of what it seeks to do by a reference.

Mr STOKES - Yes.

Mr MULDER - So it then comes down to the question of which bits couldn't it do if it did not get a reference?

Mr STOKES - That is right.

Mr MULDER - Sorry, I should have couched that in a much more complicated way.

Laughter.

Mr STOKES - If I rolled my eyes a bit over that, that is because that is such a complicated thing. For example, the Commonwealth might be able to claim power over the whole business names area under the corporations power by saying, 'We can regulate the business names of corporations under the corporations power. We can regulate the business names of non-corporate entities under the corporations power because they will be dealing with corporations, and to facilitate their dealing with corporations we ought to be able to regulate business names and ensure uniformity of business names throughout Australia'. The fact that they will be dealing with other non-corporate entities at the same time probably would not affect the validity of that legislation.

Mr MULDER - Once the tentacle is in the craypot you don't know where it's going to go.

Mr STOKES - That's right. The Commonwealth has been able to regulate contractors dealing with corporations, contractors who are not corporations themselves, on the grounds that as part of the corporations power they ought to be able to regulate the

activities of persons dealing with corporations, so they may well not need this reference. Certainly there are suggestions in section 10 that if a State withdraws the reference this act will not apply in that State, but it is quite clear that the act isn't totally dependent on the reference and, given that it is more an implication from section 10 rather than directly expressed, I wouldn't bank on it.

Mr MULDER - Earlier we had some discussions about how with the current growth in e-trading and the Internet-based transactions and business names, that was probably one of the drivers so that Australia could get its act together so we could participate in international commerce over the Internet and to do so you would need registered business names and ABNs to verify identity. It seems to me that if we were to go down the path of issuing this and then didn't like it and withdrew it, we would have the risk of cutting the entire Tasmanian business community out of the international marketplace, which in turn would mean that we couldn't afford to withdraw it.

Mr STOKES - You may well be right. Once you're into these schemes it's often very difficult to withdraw from them. Everything you have said is perfectly rational but it's a little bit outside my area of expertise, so I don't want to make much in the way of comment on it.

Mr MULDER - The driver for joining it might be that if we don't join it we can't engage in international commerce and that makes it even more difficult to withdraw if we did join it. It seems to me that we're being herded down this path whether we like it or not, and if we don't supply the method of our own demise it will be taken anyway simply because it needs to be. All they have to do is trot out and sign another international e-commerce convention drafted by the UN and they can do it anyway.

Mr STOKES - They may well be able to do it under a combination of the corporations and trade power anyway. Everything you've said makes perfect sense. I wanted to address the constitutional and sovereignty issues and restrict my evidence basically to those issues because it is where I have some expertise, rather than simply being able to offer an opinion. I have explored what you might call the constitutional implications.

Mr DEAN - In addressing some of those issues, Michael, are you saying that we need to be very much aware of that? Are you suggesting that there are any areas that we should be identifying very clearly that probably ought to be considered for some change?

Mr STOKES - I would probably put in subsection (5), continuing business names matters, that the whole of part 1, division 4, which is about interaction between business names legislation and State and Territory laws, falls outside continuing business names matters. In subsection (2) it lists 'none of the following matters is a continuing business names matter'. I would ideally want to insert in there that any amendment to part 1, division 4, which is dealing with the relationship between Commonwealth and State legislation, that there is no reference to them in that. Maybe the simplest way of doing it is pop in a subsection (3) - 'This referral of power does not include any power to amend part 1, division 4'. That prevents the Commonwealth from using section 5(2) to amend those key provisions which are designed to preserve things like the State's power to accredit and license business operations and things like that.

Mr GAFFNEY - Michael, who do you have discussions with in this State or throughout Australia to arrive at the conclusion to say, 'I believe this should go into this bill because of this'. Who have you collaborated with?

Mr STOKES - I haven't collaborated with anyone on this particular legislation. What I have relied on is my understanding of a couple of High Court cases on referral of powers and my understanding of section 109 of the Constitution. I must say there is a very recent High Court case which gave an extraordinarily broad interpretation in favour of the Commonwealth. With my ability to interpret legislation, these are the things that ring my warning bells, if you look, as far as State sovereignty is concerned.

Mr GAFFNEY - If you were in our shoes what would be a course of action that you think we should take to check out or verify what you are suggesting because we have to come back with a suggestion to our parliamentary colleagues about how we feel about this bill?

Mr STOKES - There are a number of approaches that you could take. I am not quite sure whether the Solicitor-General has been asked questions about specific provisions but apart from that you might get senior counsel opinion. There are senior counsel whom I would recommend and in recommending them I would say that I have not discussed this so they would not be influenced by my opinion at all. One would be Stephen Estcourt who has substantial experience and knowledge in constitutional matters. Peter Tree would be someone else, or you could go to someone like George Williams, who is very accessible on these things and is extremely knowledgeable on Australian constitutional law and would probably be interested because he is a Tasmanian.

Mr MULDER - Michael, regarding the 6(2) references in the Tasmanian bill, each continuing business name matter is referred to the Parliament of the Commonwealth. Business names matters as defined in the Commonwealth text basically means what it says, business names -

Mr STOKES - Yes, 'continuing business names matters' are defined in clause 5 of the Tasmanian bill.

Mr MULDER - And that is referring to the names that exist now that are going to continue on into the Commonwealth legislation?

Mr STOKES - Continuing business names matters are this list in clause 5 and I talked a bit about the broad terms in which that is drafted. There are such things as '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'. What do we mean when we say a name is not the entity's own? One obvious interpretation would be that it is not the name under which the entity is registered.

Mr MULDER - Entities are defined all the way from individual people to corporations and all sorts of other things, so 'entity' is anything.

Mr STOKES - Sure. My concern though is what does it mean when we say the name is not the entity's own? If that name is associated with me, for example, even though it is not a trademark or my registered business name, can I say that is not your name because of its

association with me? It is just a very broad term and some of the other terms defining these references are equally broad.

Mr MULDER - I think very early on in your piece you made reference that clause 6(1) is basically okay except for the 'substantially in the terms' bit as a text-based referral, but that your concern with 6(2) was that there was a capacity to amend that legislation. We are referring a capacity to make future amendments, but from my extremely lay understanding of it, it seems to refer those amendments only in terms of continuing business names, not the processes or the principles or the concepts within the business name.

Mr STOKES - It is not continuing business names, it is continuing business names matters, and they are defined. What a continuing business names matter is is defined in clause 5 and my concern is that some of those definitions are very broad.

Mr MULDER - They go beyond just continuing business names.

Mr STOKES - Yes, things like when a name is not the entity's own. That is not particularly exact legal terminology and could be open to some very broad interpretation.

Mr MULDER - It is under the heading of continuing business names matters, but it doesn't seem to be a continuing business names matter at all, it is a different matter altogether. So it is the definition in clause 5 that causes you concern with the wording in subclause (2) because the definition is too broad.

Mr STOKES - Yes, because you are referring power on each of those matters listed in clause (5) to the Commonwealth.

Mr GAFFNEY - That is where you stated before that the entity related to in 6(1) was text-based and in 6(2) it's not text-based, so it therefore doesn't relate to the definition as much as in clause 5.

Mr STOKES - Yes.

Mr MULDER - Thank you, Mike, I won't say it is clear but it's clearer than it was.

Laughter.

CHAIR - Just the matters that have been raised and brought to our attention is something that the committee will look at.

Mr DEAN - The Government, if that issue is brought to their attention, may well concede that there is that need for that to change, so that is a way of addressing it in the first place.

Mr STOKES - Sure.

CHAIR - There has been concerns raised in other States about this particular process of this national uniform legislation and the fact that if the first jurisdiction does not get it right

then everyone else is locked in. It has been a very useful exercise and we appreciate tremendously your time and effort in looking at it.

Mr GAFFNEY - I got the impression that once a State passes whatever legislation it means then the Commonwealth has the right to enact on it, regardless of what any other State may want to throw into the mix, but the other States do not necessarily have to accept it.

Mr STOKES - That is right, legally they don't, and if Tasmania refers this then the Commonwealth could pass business names legislation under this for Tasmania. I did not notice anything in here which said that before the Commonwealth can exercise the power all the States and Territories had to sign on, which means that if Tasmania were the only State to sign on the Commonwealth could pass legislation applying to Tasmania. There would probably be little point in doing so but they could do it. If other States made substantial changes the Commonwealth could still legislate to impose this legislation on Tasmania, even the though the legislation imposed on other States might be different.

Mr DEAN - That would be interesting, wouldn't it, if you had a national position relating differently to different States? I wonder how that would work.

Mr STOKES - Sometimes this happens.

Mr GAFFNEY - Fortunately they have it for the GST payments.

Mr STOKES - Sometimes it happens with what they call uniform legislation too, when each State Parliament passes an act in identical terms. It very often ends up that it is not in identical terms and there will be differences from one State to another.

Mr GAFFNEY - I think they highlighted in one of the papers that if it was not passed in a State by 30 September it would be very hard from a time management focus to get the legislation enacted by 1 May 2012, so someone had to get it up and running by 30 September this year.

Mr STOKES - Yes. That is the administrative side of it and they have their dates when they want to have it implemented, obviously, which is May next year, as you mentioned.

CHAIR - Michael, do you think it would be worthwhile for the committee to look at some referencing in our legislation that it is contingent on all States or do you think that is not our role, when you are saying that we could well be the only ones under the auspices of the Commonwealth?

Mr STOKES - You could pop a provision in if you wanted to that this reference will only take effect once the other States have signed on and made similar references.

Mr GAFFNEY - The paper that is in front of us and the bill that is in front of us went through in 2007, so it is getting to a stage where it is the fine end and it is the things that you have pointed out today. I think there seems to be a reasonable acceptance across the States. Each State might have a little thing to add but I do not think it is going to totally crunch the bills.

Mr STOKES - Sure. When I said that you could do that, I was saying constitutionally you can do that.

CHAIR - You could.

Mr MULDER - It is also an issue about whether those minor differences are of sufficient gravity to be worse, taking a different course.

CHAIR - That is certainly a conversation for a later time for the committee to consider.

Mr GAFFNEY - I suppose our point of view would be that any wording we think of that might fit to change, it would be good to get your impression of whether that covers or suits the issue you have raised. I think the committee would like the chance to run by you any changes.

Mr MULDER - Isn't that more a question for the OPC?

CHAIR - Anyway, when the committee has considered the evidence that has been provided we could well seek your input as to whether that reflects what the committee is trying to do from the information that we have received, particularly from your evidence today, Michael.

Mr STOKES - Yes, I would be quite happy to do that.

CHAIR - Thank you - very much appreciated.

Mr STOKES - It has been a pleasure to be able to assist.

THE WITNESS WITHDREW

Mr CHRIS BATT, DIRECTOR, CONSUMER AFFAIRS AND FAIR TRADING, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - We had a briefing at an earlier time that was arranged by the Government but we are particularly interested in a few aspects of the bill in relation to the Commonwealth bill. I might take you firstly to clauses 48 and 49 of the Commonwealth bill, in relation to the cancellation. I am interested particularly in clause 49 where it says the registration has expired, down to subclause (3):

> 'If the registration period for the registration of a business name to an entity expires, ASIC may give notice in writing to the entity that ASIC will cancel the registration unless it is renewed.'

When there is a reference to 'must' everywhere else in that section, why wouldn't it be that they 'must' give notice in writing if they're going to cancel a business name? I need to understand that.

Mr BATT - I understand the question but I don't know specifically why it has been drafted in this way. There are two requirements. The first is that there must be a renewal notice given, and that is consistent with the current procedures that we adopt. I think that the current Tasmanian law requires us, so it is a must-give notice of our intention to cancel a business name. For whatever reason the Commonwealth and the States and Territories collectively have decided that they will provide some discretion in this case. I don't profess to know why that is the case but clearly all States and Territories consider that is a reasonable position. One of the practical things is that it does not matter how many notices you give them, they forget or they just omit to do it or do it at the last minute or whatever. Anyway, I am not absolutely sure.

CHAIR - Obviously you have been involved in this process - was it right back in 2007?

Mr BATT - I think it started around then.

CHAIR - So you don't recall if there was any discussion in relation to the other States agreeing to this?

Mr BATT - What I don't recall, which is probably a different way of looking at it, is that this was an issue that was raised as a matter of concern by any other jurisdiction, so I presume that all other jurisdictions are reasonably happy with this requirement. I might add that the States and Territories, particularly Victoria and New South Wales, have a lot more staff than we have and have gone through this process with a fine toothcomb and have actually raised quite a lot of objections. I think if there was any particular concern about it then I would have known about it.

CHAIR - It would have been picked up before now. In relation to the Tasmanian bill it has been suggested that the reference in the second reading speech that this is just a text-based reference has been somewhat disputed when you look at 6(2) in relation to the continuing business names matters. Would you care to comment on that, the fact that once you are giving away your powers then it does become more than just text-based in relation to that?

Mr MULDER - Also, clause 6(2) looks like it limits further amendments just to continuing business names matters, but one of the previous people here pointed out to us that continuing business names is defined in clause 5, but that is such a wide definition that it basically makes almost any amendment possible, even though 6(2) seems to try to constrain it.

Mr BATT - I have taken that on board but I am just trying to reflect on what the actual question is.

CHAIR - It is relating to the text-based reference in the second reading speech but whether aspects of clauses 5 and 6 actually make it broader than that.

Mr BATT - The answer is yes, but not as broadly as has been suggested. It is a text-based referral and there are words here which talk about referral. The initial text can be amended without reference to the States and Territories but only if it is of a technical nature, but the ultimate amendment can only be amended as long as it doesn't alter the substantial intent of the referred text so it is constrained by those paragraphs. The continuous business names matters are referred to not so as to define the scope of the text in the Commonwealth bill but to ensure that the constitutional power that is referred that underpins that referred text is defined. It is complex and I am struggling to try to explain it in a way that is clear, but in essence I suppose you could put the question in another way - and this was something I was looking at earlier on in terms of the ministerial agreement as well. The question is if the referral is adopted and the Commonwealth passed the tabled text and there was a need for amendment, what is the extent of the amendments that can be made by the Commonwealth for those amendments to be constitutionally valid?

My view is that there can be minor amendments. There can be substantial amendments made with the agreement of the ministerial council, and those are obviously greater than minor or technical amendments, but they cannot vary from the key policy that's defined by the initial tabled text and they cannot go beyond the powers that are defined under 'continuing business names'. In answer to your question, there is a capacity to modify the tabled text without having to come back to all of the State and Territory parliaments every time there is a change in a word, and what this bill tries to do is to contain that so there is a practical capacity to amend the bill without restraining the Commonwealth too much but without also jeopardising the constitutional authority of the States and Territories.

I suppose to give that some sort of boundaries as well the wording of the bill was drafted by the New South Wales Parliamentary Counsel and the Parliamentary Counsel's committee. It has been drafted by people whose vested interest, if you like, is the preservation of the authority of the States and Territories as opposed to the Commonwealth, although the Commonwealth is a party of that committee and in fact clearly is outnumbered by all the other States and Territories. That is the intent and I guess what I am adding to that is that the process by which the bill was drafted actually has safeguards in terms of the accuracy as they have drafted it. These things are actually very difficult to draft. They occupy many, many hours of debate amongst Parliamentary Counsels around the country and the issues that you raise are at the top of their agenda.

Mr GAFFNEY - The person who spoke to us was very good and said he believed that to make the intent of the bill even more secure, there could be an additional clause there to ensure that the Commonwealth does not have the powers that he believes it still might have the way it is worded, so there was a concern there with that. He was quite comfortable with the whole bill but he said he was just concerned primarily with that section, which meant that the intent of 5.6.2 the amendments to that he felt didn't quite follow on from 5.2, as Tony said beforehand, and that he was concerned that it possibly could be, I am not going to say abused by the Commonwealth, but it could give them a leg in to actually make changes without consulting the States.

Mr BATT - I'm not going to engage in a debate about this because I have expressed a view that the words are contained. The other thing I suppose is that the process of amending is also guided by the ministerial council agreement. The Commonwealth, without the agreement of the States, would clearly be in breach of that agreement and I think would be in breach of their own draft Commonwealth legislation initially, but also in breach of this provision if they proceeded to do that.

Mr DEAN - To amend this?

Mr BATT - No, to amend the Commonwealth act in a way that wasn't intended. So there are other safeguards around that, which even if you might argue theoretically about an amendment which was beyond what was intended were possible - and I think you can argue all of these cases from a theoretical point of view - but from a practical point of view, if there are safeguards built around particularly the ministerial council process and the decision-making process it means that that is unlikely. It is also the reason the termination provisions are there, because if the Commonwealth did move to implement a change without going through the consultation process and contrary to the wishes of the States and Territories and with a view that this was an attack on their sovereignty, we can simply repeal the whole thing in any event. There is not really a lot of practical capacity for the Commonwealth to abuse these powers even if you could theoretically argue that they are too broad.

The other thing I have mentioned in discussions around referral of powers legislation on a number of occasions is that this whole process is a merry dance between the Commonwealth and the States. To put it in another perspective, a lot of people have applied their minds to making the referral process risk-free and my view is that that is not possible. What is possible is to manage the risk so that it is minimised and this is what this bill does. It does not eliminate the sorts of risks you allude to but it tries to minimise that.

The other thing is that this is about a relationship between the Commonwealth and the States and all the Commonwealth has to do is, on one occasion, abuse that and it would mean that these relationships would be not achievable in the future. I do not believe, if you look at that relationship that underpins this whole thing, that means nobody is going to play this game, even if it were theoretically possible and even if they were able to get through all of the restraints and barriers that are there.

Mr GAFFNEY - Say if for some reason any State tried to walk away from this, has there been any discussion about what happens? What would happen to a New South Wales

business that is trading down here? What would happen if one of the States pulls the pin on it? Have they discussed that mechanically-wise? Can you answer that?

Mr BATT - I am not sure if it has been discussed in the context of this bill. It has been discussed widely in the context of the referral of powers. The constitutional view is that a referral of power can be terminated and the capacity of the Commonwealth to make future laws with respect to the referred matter ceases as at that point, but any laws which are made by the Commonwealth up to that point continue to be valid. From a practical point of view, what would happen is that the law would still be there up to the point that it is has approved by the States and Territories but the Commonwealth would not be able to amend it. It would not collapse overnight but there would clearly need to be some dialogue about how collectively things move forward.

Mr GAFFNEY - Thank you.

CHAIR - Say Tasmania terminated the reference here in clause 8 of our bill and you are saying that the laws would still apply, would Tasmania then have to go about setting up their own register again?

Mr BATT - They would still apply, so the Commonwealth laws and the registration of business names that existed at that point would still operate. But if there were any amendments that needed to be made, particularly to maintain the operation of that, the Commonwealth would be restrained and I do not know how long that would continue. But over a period of time, of course, it would become impractical because any law needs to be amended over time. In essence, if the Commonwealth ceased to be able to provide business names services for a particular reason and there would potentially be a gap then obviously the Government would have to consider registering business names. It is a fairly theoretical thing but that is also a policy question. You can imagine all sorts of dramas around the table in terms of how you would deal with that with what would clearly be a crisis, I suppose, in intergovernmental relations. It is probably a little bit difficult to speculate as to how that would pan out.

CHAIR - One of the issues that we touched on in the briefing at a previous time was names that are similar but not perhaps identical or in some circumstances are identical, Chris. For example, if you have Joe's Fish'n'Chip Shop in Kingston and Joe's Fish'n'Chip Shop in Caloundra and they are going to be staying as they are in the new arrangement, but then you have Joe's Fish'n'Chip Shop in Secret Harbour in Western Australia, but he will not get a leg-up under the new arrangements. Has there been or would there be some consideration that they would never impinge on each other's business? I know we talked about it briefly in the earlier briefing, but we are thinking you really could restrict people's business because you are not allowing that name to be used again, albeit that it will have no connection whatsoever with one in Caloundra or perhaps Kingston.

Mr BATT - Just to be clear on what the question is, if you have Joe's Fish'n'Chip Shop in Tasmania and they are registered before the changeover, they become registered.

CHAIR - Yes, so they become registered.

Mr BATT - But somebody wants to establish a Joe's Fish'n'Chip Shop in Queensland after the registration process, therefore that name is already taken. If it is identical or nearly

similar, then they would be precluded from getting that name, but I suppose the only challenge is for them to make that name just slightly different so as to create a separate identity. Essentially this is about having a national business name so there is a view that we cannot have two names that are the same. As I said, you can have Joe's Fish'n'Chip Shop in Tasmania, or some other suffix at the end to differentiate that.

CHAIR - But that is not the case when this starts up. You cannot have anything that has the first part of that name, even if it has a different suffix. Is that correct?

Mr BATT - That is as I understand it, yes. I suppose we are looking at starting off from a very small environment where we look at a smaller pool and certainly theoretically you can increase that pool to the whole population of Tasmania and then some of those names become more difficult. I suppose another way of looking at it is if you look at New South Wales, for example. I think the current population of New South Wales is six million people, so really this problem already exists in other places in Australia in the sense that you might well have Joe's Fish'n'Chip Shop in Manly and in the CBD and whatever else. New South Wales have been managing with six million people and Victoria with their five million people now for quite a while. So, yes, it expands it to the 20 million or whatever our current population is, but I don't know whether we are probably making too much of the shift in terms of its actual impact. If you considered that the impact was so big that people would really struggle to find names, if you look at New South Wales and Victoria and the fact that they are operating in a fairly large pool already then I'm not convinced that this is going to be much of a problem. I suppose you offset the detriments or the problems such as this and compare those with the benefits. If you do a cost-benefit analysis then ultimately, for business in particular, there are more benefits than losses.

CHAIR - It has been suggested, perhaps in the hairdressing industry, how many different ways can you put 'hair' and 'cut' into a name and not impinge on somebody else, yet your hairdressing salon in Kingston would have no relationships whatsoever with one in New South Wales of Northern Territory or anywhere else for that matter. These questions have been posed to the committee, so we are addressing that.

Mr BATT - I suppose these questions were also posed in the public consultations on the bill. These questions have arisen in terms of industry responses and whilst the questions have been asked I am not aware that this has been raised in the national consultations as being a significant issue. Business generally sees the benefits outweighing the costs.

CHAIR - Obviously they have been raised because that particular one related to hairdressing.

Mr BATT - And they have been raised by the States and Territories administrations as well. It has been recognised that the pool will be increased, but nobody has come up with a solution and people seem to be generally happy with the solution, notwithstanding that they recognise the problem. Recently I was in Mumbai and presumably they have a business names process in Mumbai, so I wonder how they manage with a population of 90 million, so maybe it is useful to reflect on the scale in other places as well.

Mr MULDER - I guess one of the issues is how do they manage in there. My guess would be that you are allowed to have Joe's Fish'n'Chip Shop but then you just put the suffix of the location behind it. I think our little query is that if that works fine for transition, why

can't it work fine in perpetuity? Why is it just limited to the continuing names as they move from this register to that register when it is quite clear that unless you happen to want to use the words 'Joe's Plumbing, Richmond' without specifying what State it is, then yes, that could cause confusion but calling it 'Joe's Plumbing, Howrah' when there is only one Howrah in the country or something like that means I am just trying to work out why we got fixated on saying we are now going to pull all these names off the system because someone has got them, particularly 'Joe' or 'harem' et cetera. It is just a policy issue about why we went down this track of not allowing a suffix for new registrations to differentiate what essentially would be local service delivery businesses. It can't be beyond the wit of someone to at least draft up some legislation that defines that rather than just banning.

Mr BATT - It is an important question and I know that it is one that has been debated. It is difficult to pin down all of the discussion that has happened but the reason the suffixes have been added is to preserve the identities that exist at the time, and that is self-evident. Often what looks in legislation to be a relatively simple thing, but the devil is in the detail. Drafting something to make it work is difficult. I don't think anyone would argue if we looked at fish and chip shops that those businesses are unlikely to become global enterprises and their containment in the local area is likely to be guaranteed in the long term, but if you look at some other businesses it is more difficult to predict when they start off if they are going to remain in a suburb or whether they become a business that operates across jurisdictions. In order to actually make judgments about that you would have to then have a system in the law which says that we will allow regional names for fish and chip shops but we won't allow regional names for Internet companies or whatever, so you would need some differential mechanism in the law in order to try to predict what the growth capacity of the particular name was. I think fundamentally that is the reason why in a national market we haven't gone down that track. What you are saying is perfectly legitimate and reasonable but I suppose we have shied away from creating that differential mechanism in order to deal with the problem.

Mr FARRELL - It wouldn't preclude Joe's Fish'n'Chip Shop from using Joe's Fish'n'Chip Shop Tasmania as their business registration. It does not mean that they can't do that. When it is carried over there might be a Joe's Fish'n'Chip Shop Tasmania but if there wasn't a Joe's Fish'n'Chip Shop Tasmania but there was one in Manly then he could use 'Joe's Fish'n'Chip Shop Tasmania'. Would they still be able to use the suffix?

Mr BATT - No. As Tony Mulder has mentioned it is too similar and therefore it wouldn't be permissible under the laws. It would be considered identical or a similar name, as it would be if the same name existed in Tasmania under the current rules even though the rules are slightly different.

Mr FARRELL - Some businesses do have their State in their name as a suffix already.

Mr BATT - It often relies on what the first name or couple of names are. I don't think there is any easy answer to this. As I said, the States and Territories bureaucracies debated this at length and have recognised these issues as well and for the reasons outlined. I think you could write lots of law and spend lots of time and you could probably solve it but then, of course, you would then have to have an administrative decision maker to make decisions as to which ones were permissible and which ones weren't.

Mr FARRELL - I suppose, practically, people are going to look for distinguishing names anyway and you do see that with hair salons now. They actually make up words that mean nothing.

CHAIR - Scissor Shack.

Mr FARRELL - Yes.

Mr BATT - More with the Internet rather than business names it is amazing, even with limited options, how creative people can be. When you think about the Internet you think of how many different Internet addresses people have and you think there must be a limit but they use the English language to create an almost infinite number of permutations. I think we might be underestimating people's creativity in many respects.

Mr DEAN - But there are a lot of similarities in a lot of those Internet addresses. It is a matter of getting one word wrong and you can go to the wrong place.

Mr BATT - That is true.

Mr DEAN - The decision for that will be made by the central body. Will it be electronically done or is it a body of people that will make that determination when you register your business as to whether or not that name will be registered? Is there any discussion between the business body and registration and that group or whoever makes that decision?

Mr BATT - My understanding is that the answer is both. If someone logs on and registers a name, there will be a determination engine, as they call it, a decision engine, which will determine whether the name is available on the basis of simple rules. If there is some tension around the name, if there is a similarity or if it is not available, then there is a capacity to have a dialogue around that. There is a filtering process, as I understand it. These are defined in the act in the administrative processes part of the ASIC system and I think the process is still being built. I am not aware of the precise nature but that is the process, as I understand it.

Mr DEAN - There is no appealable position that would clog it all up?

Mr BATT - There is an appealable position of all the decisions made in respect of business names. An interesting observation is that, as Commissioner for Corporate Affairs at the moment, none of my decisions to grant or not grant a business name are appealable. They are reviewable, which is an historical thing. Were we are going to continue to do that we would probably, as a matter of procedural fairness, amend our act to introduce a right of review against my decision. Under the Commonwealth Act, all of those decisions are reviewable and so a decision to grant or not grant are all reviewable decisions. That is a significant improvement

CHAIR - Chris, I will take you to a submission that we found in relation to the Australian Bankers Association and their previous access to customers' full names and addresses and that will not be available now to that particular organisation. Can you give us some background behind that decision?

Mr BATT - I am surprised the Australian Bankers Association may have been able to get extracts from various State and Territory governments. You can buy those extracts. The view about privacy and the information that should be freely available to the public is different at the Commonwealth level than it is at the State level. I think that is really the only simple answer. I cannot recall this particular discussion but I do recall discussions at a level about that because at one stage the Commonwealth seemed reluctant to give us information as well. It is one of the debates that we have had and one of the fundamental things that is in the ministerial council agreement is a requirement that the Commonwealth give to its States and Territories, for free, information that is usable for various purposes and in particular for law enforcement. As you can imagine, we like to know who is behind businesses in Consumer Affairs in respect to the investigations that the law enforcement do.

My understanding is that some people who did get access to information before will not get access to information because of the Commonwealth's view about privacy. I suppose the question is, notwithstanding what they may or may not have received before, is this in the public interest and is this a proper function of the business name register. Clearly the view is that the Commonwealth would see that as much narrower than the States have traditionally seen it. I suppose, to be fair, the business names acts were all drafted in the mid or early sixties and whilst there has been a bit of tinkering and they are largely uniform with a few minor differences, the approach to a whole lot of things like access to information has moved on quite significantly so maybe this is a bit of a catch-up, bringing people into contemporary law-making.

Mr MULDER - I don't know whether you have seen the Bankers Association submission in relation to this particular matter.

Mr BATT - I am not familiar with it.

Mr MULDER - Basically what they are saying is that under some of the legislation they operate, including the Anti-Money Laundering and Counter-Terrorism Financing Act and rules, they are required to include a procedure for the reporting entity, that's the banks or the financial institutions, to verify the minimum number of bits of information about a customer. That is their full name and either the customer's date of birth or the customer's residential address. Their concern is that their understanding of the BNR, Business Names Register, is that it will only permit matching of a business proprietor's name. With name matching only, they are concerned that they will not be able to verify the reliability of the data that they are required to report for other particular issues. I think they would like the capacity to dig down a little deeper than that so that they could get perhaps dates of birth and some other verifying information to know who it is that they are dealing with.

Mr BATT - It seems to be a fairly straightforward argument. I'm aware that there are obligations under money laundering and terrorism laws, but I am surprised that the only source by which they would verify their identity is the business names database.

Mr MULDER - What they are saying is that they currently use the State's databases where they have access, at least for most jurisdictions, to personal and other identifying information relating to the entity. They do not want to get into a situation where they look up the business name, look up the Yellow Pages and then phone them to ask them if

they are who they are if you are talking about financing a terrorist organisation. They need access and apparently access to that further identifying information is available from the current State registers, but is precluded from this draft legislation.

Mr BATT - Again I think this is only one of the measures that they use to support identification of a customer because every customer having a relationship with a bank is required to undergo a 100-point check and provide other documentation which would substantiate their identity. So I am surprised that there was ever a reliance on this. The information is restricted, so I have to say that I think they are overstating the case and they would be quite able to rely on other information. In fairness the Bankers Association, which I have had a long relationship with, are very good at writing very detailed, very obscure comments criticising the most minute detail of proposals.

Mr MULDER - I'm aware of that, but before AUSTRAC there was a thing that I was involved at some stage in the development of - the Cash Transactions Reporting Agency. That started this whole ball rolling and it morphed into AUSTRAC later on. It was a deep concern that entities that had responsibilities under a piece of legislation would have to go to multiple sources to identify and verify an entity. That was the whole idea of cash transactions reporting with those legislative provisions, because we all know that if you have to go to multiple sources you will get different information from different sources and quite often you will find that there is actually not the information related to the same entities. The idea was that if you were going to have a business names registry whose mission in life is to create a single entity that is discoverable, you could almost go and quote their business name and registration number and that would be proof positive of all the information that lay behind that. It just seems to me that we put these things onto financial institutions on the one hand and then we seem to take them away because their concerns aren't our concerns. They are not our concerns now but they were then and they will be again in the future and it just seems to me that some of this streamlining stuff could work.

I have a similar issue with why we don't link the ABN and the business names register in the application processes to enter the same thing so that the same set of data lives behind either. As you well know, you can apply for an ABN online and you could put in one lot of information for the ABN and then quote that ABN number for a business registration but with a whole different set of data. The tax office thinks this ABN means this and the Business Names Registry thinks this ABN means that. It just seems to me that we should bring some of this stuff together and here is a case where it wouldn't seem to be too difficult to give the Bankers Association and the financial industry the same access to the data below that first level that they currently enjoy with the States.

Mr BATT - I really can only speculate about the precise reasons for limitation on information, but largely this has been a policy decision driven by the Commonwealth in terms of their view. There has been engagement by the States but I have not been involved with all the minutiae of this particular bill. There was a response from the Commonwealth attached to that letter but I don't understand the Commonwealth's reason for that. I suppose in any of these processes nobody necessarily gets what they want and I can only say that the Commonwealth has a reason, whether that be good or not, for wanting to restrict the information. I suppose, in essence, if there becomes a Commonwealth business names bill, if the Commonwealth also is regulating the finance industry, then that is an administrative and practical issue that they have to deal with in

relation to the ABS. The conclusion of that is, even if we note the concerns, something that we worry about in terms of this referrable process is something we would acknowledge as a tension between the Commonwealth and the Australian Bankers Association. That is pretty well all I can offer. I don't profess to know the precise details.

Mr MULDER - We constantly in this particular committee have been told we don't understand why this position has been reached, or the Commonwealth argued for this and I don't know why that has been happening, or this is an agreement of the ministerial council and therefore perhaps we should just sign off and get on with life. The bottom line is that not even the ministers themselves are sovereign; it is the parliaments to which they report that are sovereign entities in these particular arrangements. To be told something is too hard and the committee therefore didn't think it should be done - and this is not a personal attack - but as a committee of a parliament they really are not satisfactory answers to our exercising the sovereignty and in this particular case surrendering some sovereignty.

I understand the practicalities of it and if the legislation was drafted in straightforward, simple terms that you could actually understand at the first reading and not have to go and get expert advice on to understand ourselves, then I might say yes, that is fine, I understand what is going on here, but you have double takes and clauses like 6(2) and 6(1) that are interpreted by clause 5 which seems to say things that you could say are a matter of interpretation. When you are drafting a piece of legislation we should be trying to get rid of all those sorts of things and not put them in there. It is more an observation than as a question and it is not a personal attack on you. You can't know everything that goes on around this, but you are asking us to hand over some powers - for eminently practical reasons. I don't think there is a person in this room who doesn't see the principle of getting our act together at a national level on this particular thing, particularly with international trade. We just have these little hiccoughs and concerns and someone comes along and says, 'I have great trouble meeting my legislative obligations here', and the response we get back is, 'Well, I'm sorry, but I don't know why we didn't do that, but they can find it out somewhere else anyway.' Our idea is to make this easier for people to meet their obligations, not harder.

Mr BATT - I think all of those comments are quite valid. One of the problems that Tasmania suffers from of course is that this is one of about 30 projects that I'm involved with and I do not profess be expert in the detail. I think I've been honest to the committee when I do not know the answers. There is certainly no reason why I cannot undertake to the committee to go out and find the answers if that is an issue that is significant to the committee. It would not be difficult for me to answer the questions you have asked, for example. The constitutional issues will always be debatable. I've heard over many years in dealing with these things the passionate people for plain English drafting or whatever. I think that is an aspiration which we all share but will probably never be achieved.

Mr MULDER - More of a dream than a vision.

Mr BATT - Exactly. The detail of this is important, but going back to my earlier question about a relationship and about trust, I am not saying as a State we should necessarily trust the Commonwealth, that is not really what I am saying, but at some stage in order to

progress these things there is a level of trust that does need to underpin that. Do we eliminate risk altogether or do we manage it? My view has always been that we manage it and I think that is really where the focus should be. I will not profess to say that there aren't constitutional risks here and that is consistent with the advice that the Solicitor-General has given. We never say there are no risks in anything, but the objective here is to manage the risk in the best way we can.

Mr MULDER - I am probably fully with you on managing the risks; I just have great alarm that we may be actually creating some as well as managing them.

CHAIR - Chris, can I take you back to our bill and clause 5(1)(d). I just need to understand what that actually means:

> '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.'

Mr BATT - Each of these paragraphs are often slight permutations of the same thing. We could probably come up with a big paragraph that describes all the powers, so it has been expressed in slightly different ways and there is a degree of repetition in this. My view of that paragraph is that it simply gives the Commonwealth the capacity to prevent people from using names that are not theirs. I do not think there is anything more mysterious than that in what it means. So there are two aspects to regulation. One is that it gives permission for people to use a business name and the other is that people are not to use business names that are not theirs, or names for which permission has to been given for somebody else to use them. I think that comes back to the issue about plain English drafting. It is slightly tortuous and difficult to understand.

Mr MULDER - But that is in the context of continuing business names matters. What this does is give the power to actually decide that Joe's Fish'n'Chips Shop, Rosebery, should not have the name because there is a Joe's Fish'n'Chips Shop in Richmond, New South Wales. That actually gives you that power there. On the one hand it says the Commonwealth now has this power to decide that you cannot use that name, even if it is a continuing business name, but there are other sections that say we might allow it.

Mr BATT - But you have to read both together.

Mr MULDER - You have to read both together, but in the end it becomes a judgment of someone sitting in an office somewhere, probably in Canberra, saying that the Tasmanian one goes but we will leave the New South Wales one in there.

Mr BATT - This doesn't set up an administrative discretion. This sets up the boundaries of the law that is enacted by the Commonwealth. If, for example, the Commonwealth wanted to amend the law so that it rescinded the transitional provisions with respect to those variable names, then that would be a substantive change which would require the approval of the ministerial council. I do not believe it could happen in any other way unless the Commonwealth decided that they were going to ignore the wishes of the States and Territories and go and amend the law anyway. It would be a substantial shift and would constitute a substantial breakdown in the relationship to do what is being proposed.

Mr MULDER - I am not a lawyer, but that seems to be the opposite of what it is saying. Clause 6(2) says:

> 'Each continuing business names matter is referred to the Parliament of the Commonwealth, but only to the extent of the making of laws with respect to the matter'.

Then when you look at clause 5, which defines continuing business names matters, one of those is the regulation of the use of business names to reduce the risks that arise from the entity carrying on business under a name that it is not entity's own. In other words, that relates to the transitional arrangements. We can cut out an existing name, even though everywhere else we talk about the power for transitional purposes to allow two names to have nearly identical as opposed to similar names.

Mr BATT - The transitional provisions do not expire. Those transitional provisions establish what is on the register and it goes on indefinitely.

Mr MULDER - But reading 6(2) and 5(1)(d) together would suggest there is a power to extinguish a continuing business name if it is considered similar. You can amend the legislation and we are referring the power to amend the legislation in those areas, as well as the text.

Mr BATT - But it talks about amending it in terms of the referred text. That change would be a significant shift of policy and you would reasonably argue that that would constitute the change in the terms of the referred text.

Mr MULDER - That begs the next question: why is it there if it cannot operate?

Mr BATT - Because not withstanding the referred text there is also a broad, legal and almost philosophical question as to whether the Commonwealth has sufficient breadth of power even to enact the legislation. It is really two mechanisms to achieve the one result. A national Commonwealth law needs a broader descriptive referral, which is the one we are talking about in referred business matters, and also the text as a anchor. I am not a lawyer and not an expert in this area, although I profess that I can probably understand it better than a lot of people. I can only defer to State and Territory parliamentary counsel who know a lot more about these things. They have grappled at some length with trying to manage this risk, including our own Chief Parliamentary Counsel, who shares all the concerns that we have talked about and who participates with his colleagues interstate to try to come up with words. I suspect that is the reason the words are slightly torturous and difficult for me and anyone else to understand. I am certainly not suggesting that you should simply take it on faith that we are telling that this is a good thing. But there comes a point where people do need to rely to some extent on some of the people who do have expertise in these areas - like the Solicitor-General and the Chief Parliamentary Counsel.

CHAIR - But we are not in a position to take or receive any advice from the Solicitor-General. That is the problem with this committee. We can only look outside for where we can seek some advice and some guidance in relation to this.

Mr BATT - Yes and that is a good process and I am certainly not suggesting you should not do that.

Mr MULDER - There has been some discussion around the place that maybe this is just an interesting exercise in interjurisdictional cooperation and that if the Commonwealth really wants to do this it has all the powers under the corporations power to do this and more anyway. Has that been raised in any of the discussions that you have had and do you have some comment on it?

Mr BATT - Not in relation to business names, no, but in relation to credit, yes, it has been raised. As to whether that argument has validity or not is a debate. If we were to presume that it did have validity, firstly, I think you are right there is to a large extent an exercise in intergovernmental jurisdiction. I don't think the Commonwealth actually wants to launch in and say, 'Well, we're going to do this anyway'. There was some allusion to that with respect to credit but the practical reality is that there are powers under the Corporations Act to enact regulations to do this. You would all appreciate that trying to do this by regulation is very hard and not all that sensible or practical. Yes, it is theoretically possible, I suspect, but practically it is not. This is certainly a much neater and easier way. If the Australian Bankers Association, for example, are having some difficulty dealing with some of the practical implications of this, and we accept that as a given, regulations under the Corporations Act will be much more tortuous than anything we do here.

Mr DEAN - Clause 5(1)(f) refers to the prohibition or restriction of the use of a business name by an entity because the entity has engaged in unlawful conduct. What are we talking about there? What is the unlawful conduct? Is that convicted unlawful conduct or is it simply presumed unlawful conduct?

Mr BATT - There are provisions in the bill to cancel an entity but I had not actually noticed which ones of those would result from criminal conduct.

Mr DEAN - Unlawful conduct in this case means 'criminal conduct'?

Mr BATT - Probably.

Mr DEAN - I had not picked it up either.

Mr BATT - I am referring to the Commonwealth bill because, apart from providing that power, that is something that the Commonwealth legislation with all those mechanisms we talked about could achieve. The current bill, part 5 from clause 46 on, has cancellation of the registration of a business name and those are the reasons for which cancellation occurs. I can't see in that a capacity to cancel because of engagement in criminal activity. Whilst there is a capacity in the future for the States and Territories and the Commonwealth to agree to specific powers to cancel because of criminal activity is not currently contained within the Commonwealth bill.

CHAIR - No, it is not there.

Mr DEAN - What about a company registered nationally and that company or business is then identified as involved in criminal conduct? I might use a good example - the Rebels

motorcycle gang at Youngtown. They were registered, so what is the process to have them deregistered or delisted or whatever? That is not covered either.

Mr BATT - It appears not be covered under the bill but I suppose from a practical point of view there are a lot of other laws that would prevent them from continuing operation. I suppose it is a theoretical question in the sense that whilst they might continue to have a business name - and in that particular case presumably they might not be operating a business from Risdon - the business name survives but the business name does not confer upon them any right to actually continue to operate a business. There may be provisions in here which actually make that link but I can't immediately see them.

CHAIR - I couldn't see them either.

Mr GAFFNEY - I read somewhere that, if it is proven to be unlawful, the minister can revoke the name.

Mr BATT - It certainly makes sense but I can't put my finger on it, but I'm sure you are right.

CHAIR - Chris, we really appreciate your time today.

THE WITNESS WITHDREW.

Mr MARK BOWLES, CHIEF ECONOMIST, TASMANIAN CHAMBER OF COMMERCE AND INDUSTRY, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

Mr BOWLES - Through the ASIC Regional Liaison Committee, of which the TCCI is a part, we have been aware of this proposal since September last year, so have been quite aware of the intent. I can talk about the TCCI's view and also the views of our interstate counterparts. Essentially we are all very much in support of this intent. In general, a concern of both the TCCI and indeed our interstate counterparts - and we are all on the same page on this - is that reducing red tape has been a consistent theme for the State Government, and national government in particular. This is one good example that we can encourage and really welcome when this comes through.

From our point of view the advantages are mostly for smaller businesses because it saves them the time constraints of having to register business names in different States and so on. It also saves them some registration fees. From a broader economic perspective it is also one small symbolic step towards a more seamless economy, so we are not operating so much within State boundaries. So when new businesses come on board they are immediately registered and ready to operate on a national basis. More and more that is becoming essential. We are seeing anecdotally within the Tasmanian business community that those businesses that are thriving are businesses that have at least operations, if not markets, interstate. So having that national perspective is important.

Also, many small businesses and even sole traders still operate through a corporate veil so they are used to dealing with ASIC for the registration of their companies. It means they have essentially one portal to deal with now for their company registration and business name registration and so forth and they do not have to deal with two separate levels of government for most of their business needs.

The only potential downside would be in the instances of duplicate business names across boundaries where a business is then asked to introduce a new distinguishing word to distinguish them from interstate counterparts. The downside there could be that over a period of time there might be some businesses that might have to incur some costs on letterhead and things like that. We think that cost is offset by the advantages of then also having a national business name and lower re-registration costs.

Mr DEAN - The cost could be far greater than what you are saying because a business might have their business name up in fluorescent lights. To change that whole thing could be a fairly costly exercise for some.

Mr BOWLES - Yes, that is right; there could be a few instances. They might have branded merchandise or signage on vehicles that would all need converting.

Mr DEAN - Under this act it says clearly you cannot use a name that is not registered with you.

Mr BOWLES - Yes, that is right, so there are some instances where there could be costs imposed. But we do think that the overall long-term impact of this reform outweighs those few instances.

Mr GAFFNEY - Currently they are allowed to keep their business name when it swaps over. If they go to the mainland they may not be able to keep that business name, but there is nothing to stop them opening up their franchise or their business with a slightly different name, but still keep the original name here in Tasmania, so it would not affect their Tasmanian operations. They could still open up another ABN, I would think.

Mr BOWLES - Yes. As it stands many businesses have multiple business names across different States.

Mr GAFFNEY - So it would not affect their business here; it would just be on the new stuff that they had over there.

Mr BOWLES - A lot of small businesses now are operating under the corporate veil anyway. Sometimes they do not even have a registered business name because they are just operating under the corporate name. So in that instance there would be no impact.

Mr GAFFNEY - Was there anything that came up in discussions either within the State or with your national colleagues that you were concerned about in this bill? Were there any elements that may have been brought up, or are you quite comfortable with it?

Mr BOWLES - We were quite comfortable.

CHAIR - In relation to the consultation that has been undertaken since 2007, obviously there are new people in the business world who may not know about these pending changes and maybe some of the ones from 2007 have been so busy working and have forgotten about what is happening. Everyone is going to receive a letter, but when they had the consultation it said 'in cities'. Was that just Launceston and Hobart?

Mr BOWLES - I am not aware of the 2007 consultation but I do know that at the ASIC regional conference last year it was brought up and we included some information about it in one of our newsletters to members. That goes out to 1 700 businesses. I think there is an awareness out there that this is coming on board.

CHAIR - Mark, thank you very much for coming in this afternoon.

THE WITNESS WITHDREW.