

HANSARD TRANSCRIPT
Legislative Council (Tasmania)
14 July 2011

BUSINESS NAMES (COMMONWEALTH POWERS) BILL 2011 (No. 43)

Second Reading

[12.01 p.m.]

Mr PARKINSON (Hobart - Leader of Government Business in the Legislative Council - 2R) - Madam President, I move -

That the bill be now read the second time.

The Office of Consumer Affairs and Fair Trading is responsible for administration of the Business Names Act 1962, and currently registers business names in Tasmania. The act establishes a public register from which the persons who conduct business under specific business names can be identified. A business must not use a business name unless the business name is registered. At present, about 30 000 business names are registered in Tasmania.

On 2 October 2008, the Council of Australian Governments - COAG - agreed that the Commonwealth would take over responsibility for the registration of business names. The transfer of responsibility for the registration of business names is one of the priority areas, agreed by COAG, to support a seamless national economy.

The Australian Securities and Investments Commission will administer a new, national system that is expected to commence operation on 28 May 2012.

The new national business name registration service will replace the current State/Territory systems, so that businesses only need to register their name once, which will then allow them to be registered nationally.

To help new businesses, there will be a joint online application for an Australian Business Number - ABN - and national business name, two of the most common registrations completed when starting a new business. By combining these two most common start-up registrations in a single online process, we are also making it simpler to start a new business. This new service

means that businesses will only need to complete a single online application and pay a single fee to obtain a business name that can be registered nationally. The change will mean reduced costs and a simpler process for businesses, especially for businesses that want to trade in more than one State or Territory.

Existing businesses will not need to do anything when the new national business name service is launched. Their existing State and Territory business name registration will automatically be transferred into the new national business name register.

People who are thinking of starting their own business will be able to apply to register a national business name online at any time and in most cases will receive confirmation of registration immediately. Applicants will be able to link to Australian trademark and domain name searches which may also be important to establish their business.

The new national business names system will commence after all States refer business names powers to the Commonwealth, and the Commonwealth enacts legislation to create a national business names system.

This referral bill is 'text based' which means that the only constitutional power that is referred is the text of Commonwealth bills that are tabled along with this bill. This approach presents the least risk to Tasmania's constitutional sovereignty and is supported by all other States and Territories. The Solicitor-General has examined the referral legislation and has advised that there are no significant risks in this approach.

The Business Names (Commonwealth Powers) Bill refers to two Commonwealth bills as the 'tabled text'. Specifically these are the:

- Business Names Registration Bill 2011; and
- Business Names Registration (Transitional and Consequential Provisions) Bill 2011.

The text of the two Commonwealth bills is tabled only in the first referring jurisdiction - the lead jurisdiction - and is adopted by other jurisdictions. Tasmania has agreed to be the lead jurisdiction for the referral of business names. These Commonwealth bills give legislative authority for ASIC to regulate business names on behalf of the Commonwealth. The content of these bills has been subject to extensive consultation and agreed to by all jurisdictions.

Safeguards that have been included to protect Tasmanian and other State and Territory interests include provisions that determine the means by which future amendments can be made and a process for termination of the referral.

There is some urgency to adopt this bill so that the Commonwealth can introduce their bills into the Australian Parliament. For this reason, Tasmanian transitional arrangements are still being developed to facilitate the transfer of functions to the Commonwealth and will be introduced later in this session.

States, Territories and the Australian Government have worked together to establish this new initiative that will reduce red tape, save time, and cut costs for Australian business.

Tasmania supports this innovation and is pleased to assist in the development of this reform.

This legislative reform delivers on the Tasmanian Government's obligations under the Council of Australian Governments and also its commitment to participate in the development of a national seamless economy.

Madam President, I am aware that the honourable member for Apsley wishes to refer this bill for investigation before the Government Administration Committee B of the Council. I will be opposing that move and I will argue that when the time comes. I commend the bill to the Council.

[12.10 p.m.]

Ms RATTRAY (Apsley) - Madam President, I move -

That the motion be amended by leaving out all the words after 'That' and inserting 'the Business Names (Commonwealth Powers) Bill 2011 be referred to Government Administration Committee B of the Legislative Council for further consideration and report.'

I want to also acknowledge that the honourable Leader indicated at an earlier time that he was going to oppose this motion. I appreciate the opportunity to know that before coming to the lectern this morning. I still intend to proceed with what I believe is an appropriate course for the Parliament and this House, particularly as the committee B met yesterday and discussed this specific issue in relation to this type of bill.

We know, from the second reading speech, that this is the first time Tasmania has agreed to be the lead jurisdiction in relation to the referral of business names. I believe that the bill involves the transfer of State powers, granted under the Australian Constitution, to the Commonwealth and I agree that this should not be done lightly or without proper scrutiny and consideration. I believe the committee process that has been established in this House at a previous time, is an appropriate course of action. Some might say there is not much in the bill and I have heard that a couple of times over the last couple of weeks. But that is no reason not to have a thorough look at this legislation. If it is perfect, that is what the report will reflect, that the committee could find no reason to put forward any other amendments to the bill. I think that we have an obligation and responsibility to do exactly that.

As the passage of the bill through the Legislative Council has great significance, not only for Tasmania but also for other States and Territories, I believe it is essential that we guarantee that the legislation has been properly and thoroughly examined. This bill may have serious implications for Tasmanian businesses, or it may not, but we still owe it to our constituents to ensure that there are no negative impacts.

While I and, I expect, all other members respect the work of COAG and ministerial councils, it must be remembered that they are not elected bodies, directly accountable to the people who are passing legislation, and that it is a role for this House. I do not believe that we should simply be a rubber stamp for COAG or any other government, Federal or State.

When it comes to the time imperative, I also note from the second reading speech that knowing that this is going to happen, it was agreed to by COAG on 2 October 2008. You would have to wonder and ask yourself what has been happening between 2008 and July 2011. If there is such an imperative, time wise, then what has been going on? I do not think that we should be put under that time imperative because this is an important piece of legislation and I still believe that we have that responsibility. The members of committee B support that position. The

committee will do its utmost and I believe that we will be able to bring back to the Chamber a report in a time-effective manner. I do not think there is any issue around that and I also believe that I would be in a position to say that other members of the Council will have time to scrutinise that report before it comes into the Parliament. That will be something that the committee will be very mindful of and we will take that into consideration as we organise our time frame around this initiative. I do not believe that if this has been agreed to since October 2008 there appears to be the time imperative that is indicated in the second reading speech in July 2011. I think somebody may be expecting that to happen but I do not believe that is something that should be expected of this Chamber, if this is the will of the Chamber. I urge honourable members to support not only my motion but also the will of committee B in relation to this. I trust that members might look favourably upon the motion.

Madam PRESIDENT - I warn members we are talking about the amendment and the amendment only, which is referral or otherwise. We are not talking about the principle of the bill.

[12.16 p.m.]

Mr PARKINSON (Hobart - Leader of Government Business in the Legislative Council) - Honourable members, I am not dying in a ditch over this. The sky will not fall in if this goes off to a committee and I indicated as much to the honourable member for Apsley last night when she first raised it with me. All I am saying to committee B is to pick something else. The concept here is so simple. If you are a business and you want to register a business name in Tasmania it would be great to have it registered nationally automatically, particularly if you want to practise your business in another State, whether it be a solicitor, a doctor, a brickie or a plumber operating under a business name, as you must these days. If you want a business name you must register it. It is a very simple process. You fill out a form, pay a fee and you are registered very quickly. You can do it online almost straightaway. The online procedure is great because it will tell you if somebody else has already registered and you cannot have that name so you pick another one, type it in and away you go.

There is not a business in Tasmania which would not agree that it would love to have its name registered nationally by registering in Tasmania. It is a lay-down misere; there is nothing to investigate about this. All I would ask honourable members to do this morning is not to make a decision until we have a briefing. I have my adviser here who is able to brief honourable members and to answer questions. It is my view that there is nothing in this particular case - and I accept that there will be other cases that will need to go off to a committee to investigate Tasmania's interests and make sure everything is protected and all the other arguments you can talk about when referring things off to a committee for investigation. I do not think it is a good look either but, apart from that, this is one where I believe a committee of the whole House can go off into committee room 1, have a briefing and if you then decide that it is all too complicated and needs to go off to a committee, we will do it but let us have the briefing first. I am not going to move that the debate stand adjourned for that purpose. I would like somebody else to do that, if that is the way members want to go. Alternatively, you will have the debate now and then decide. I am in your hands about the matter.

[12.19 p.m.]

Dr GOODWIN (Pembroke) - I note that we are not meant to be talking about the principle of the bill, so I will not do that. In terms of the amendment proposed, if committee B thinks there is merit in having a look at this bill, I am inclined to support that. I think as a general rule wherever we are referring powers to the Commonwealth there is merit in having a look at exactly what that means for Tasmania. It is quite a serious matter to refer powers.

Mr Parkinson - We can have a look at now, that's what I am saying.

Dr GOODWIN - We are seeing more and more of it happening and often we get bills before us and there is a hefty Commonwealth bill that is attached to it and we have to try to get across what that means for Tasmania in a relatively short period of time. I think there is merit in this new committee structure we have in having a look at some of these bills to see what it all means.

I am of a mind to support this but I would certainly be interested in a briefing if that is the mood of the Council, if they are interested in that, so I would be happy to move that -

Madam PRESIDENT - We have a motion before the Chair at the moment so if there is an indication of a briefing being beneficial, the member in charge of the amendment would have to withdraw it at this stage, and then we can take another motion as to whether or not we have a briefing. Then we would go back to that process. Are you indicating that you would look to a briefing at this time?

Dr GOODWIN - Yes, I am indicating that I would be interested in having a briefing but I am of a mind to support the motion at this stage.

Madam PRESIDENT - The member for Apsley, are you inclined to withdraw your motion at this stage for a briefing?

[12.21 p.m.]

Ms FORREST (Murchison) - Madam President, I will speak to the motion before the Council at the moment. I want to make a few broad comments about the motion and comment on what the Leader said.

Whilst we are not talking about the content of the bill at all, the Leader did say that any business in Tasmania would welcome this bill that we are looking at. That is true but, I guess, the question is whether, when we pass such a bill, it is in the best interests of business in Tasmania. Whilst we may at first glance think it looks good, we received this bill, Madam President, only last week, on Wednesday night or Thursday when it came through, in the middle of the budget session. We received this bill the week between budget Estimates and the wrap-up of the Budget this week, which is normally a week that we do not sit. In recent past years we have not sat this week. Normally we have had time to continue to look at the Budget and this week's wrap-up, but we have had no time to do that because we are too busy dealing with legislation that we had little time to look at last week.

The Commonwealth legislation was attached last week. Has anyone in this place actually read this right through and determined that it is appropriate, because who had time to do it?

This is being tabled in the Commonwealth Parliament, it has been read the first time, I understand. I think it probably will assist Tasmanian businesses. I discussed the bill with my husband because he has a business that he has recently rebranded and rebadged. It is not an easy process; just picking a name is not as easy as the Leader might suggest, because every name has been used.

Hopefully we will streamline this.

Mr Parkinson - You don't need the bill to pick a name.

Ms FORREST - I am not saying you do, but generally the intention is to make it more simple, and I accept that. But we need to be sure that what we are passing here has been looked at and well-scrutinised.

I am happy to have a briefing and I think that will be helpful. I think we should have a briefing, regardless, before this goes off to the committee process for all of us because it is relevant, it is important information to have. It will further inform the committee, absolutely.

My other point is that for this to be of benefit to a Tasmanian business, and this is what we are talking about here, it will have to go through every other jurisdiction anyway. Now are they having a winter break too? I reckon they are. So they come back when we come back at the end of August. I have not looked at the sitting schedules of every State Parliament, and perhaps I should have done, but I assume that there is going to be a period of time before every other jurisdiction can deal with it.

So let us look properly at this, let us scrutinise it under this process, so that when it goes to the other jurisdictions, if they take any notice of what Tasmania does - I know some of them are not that interested in what we do here -

Mr Parkinson - The point is they are all waiting for us because we're the lead jurisdiction.

Ms FORREST - That is right, but they would also have to be quite pleased that Tasmania has had a good look at this and then passed the bill.

Mr Parkinson - The Commonwealth can't pass theirs either until we pass ours.

Ms FORREST - I know, and they cannot pass until everyone does - that is my point - and so you have to wait for all the others to do it as well.

Mr Parkinson - No, we are the lead jurisdiction, the Commonwealth will act once we pass ours.

Ms FORREST - Yes, but for the other benefits to flow for businesses everywhere, every other State is going to have to do it, like with the national health registration with the occupational licensing. Madam President, I know you have raised this issue yourself about nationally consistent legislation, of States being asked to adopt legislation in this way, that we should have a close look at it. I know you have written to the government administration committees A and B on this matter and you have had responses from both committees saying that it is something that needs to be looked at -

Mr Parkinson - This isn't nationally consistent, this is referral of powers.

Ms FORREST - You could say the same approach should be taken when we are referring a power such as this.

In the discussion paper of the Tasmanian Parliament there was a suggestion that any nationally consistent or even referral powers could be looked at by the Subordinate Legislation Committee. Personally, I think there are some potential problems with that because the lower

House have already dealt with it often when we get it, but that is a separate issue. A motion has been put by the member for Apsley, and I did talk to the member for Apsley early this week about this. I contacted her and said that I was concerned about this. It fits under committee B's jurisdiction. I was going to move a motion myself because I thought that it was necessary.

Mr Parkinson - The idea was yours?

Ms FORREST - Yes. I was going to come and talk to you but I thought I would talk to the chair of the committee first. When whoever gets back on their feet on this bill when it comes back, it should be someone from committee B, and ideally the chair who can report back. I thought it was most appropriate to do it this way, for the chair to do that.

As I say, I flagged it with the member for Apsley because I was concerned. I flagged it with the adviser, too, on Monday, I believe, and we had a little chat about it. The adviser was aware, Madam President, even if the Leader was not. I was going down to see the Leader but I thought the member for Apsley could do that - she is quite capable of dealing with you. But anyway, Madam President, back to the motion.

Madam PRESIDENT - Yes, thank you - the amendment.

Ms FORREST - If only this whole package had been presented to us a month or so ago and we had had time to look at it and not had it dropped in the middle of a budget session when all members are flat out trying to deal with the budget reply and then the Estimates. We all know how busy Estimates week is, and we then come back to deal with legislation. It is questionable at best dealing with legislation in the middle of the budget session but anyway we did, and the Government are in control of that; they said we are sitting and we are to come. Then we are back here this week wrapping up the Budget and we are expected to deal with this as well.

I do not think it is appropriate. I have not had time to read through it and digest it all and I do not know that anyone else has. Indeed I would be happy to hear from anyone who has read the Commonwealth bill. I am not going to seek to adjourn the debate because I will be supporting it regardless, but I am happy to have a briefing at the end of the process before the committee considers it.

[12.28 p.m.]

Mr GAFFNEY (Mersey) - Madam President, I am sure that you will guide me through this. I am on committee B also and when we met we were concerned at the lack of time available to look at this bill, especially as it was a national piece of legislation. We want to make sure it is right.

I would support the committee chair withdrawing her amendment so that we could seek a briefing. Then we could come back and perhaps put the motion again so that we could then look at it in Committee.

Ms RATTRAY (Apsley) - Madam President, in the words of the member for Rosevears -

Madam PRESIDENT - There are two options here now so I think you should indicate you are either closing debate or you are looking to withdraw, and not all members have had the opportunity on their feet.

Ms RATTRAY - Madam President, I am looking to withdraw the motion. As the honourable member for Rosevears would say, I get a sense that there are members who would like to have a briefing and I think that is totally appropriate so I will take the opportunity to seek leave to withdraw the amendment.

Leave granted.

Ms RATTRAY (Apsley) - Madam President, I move -

That the debate be adjourned.

Debate adjourned.

SUSPENSION OF SITTING

Mr PARKINSON (Hobart - Leader of Government Business in the Legislative Council) - Madam President, I move -

That the sitting be suspended until the ringing of the division bells.

That is for the purpose of a briefing on this matter.

Sitting suspended from 12.31 p.m. to 2.59 p.m.

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14 July 2011

BUSINESS NAMES (COMMONWEALTH POWERS) BILL 2011 (No. 43)

Second Reading

Resumed from page 21

[3.04 p.m.]

Madam PRESIDENT - I inform members that I have taken advice and this process is restarting so that allows anybody who made a contribution before to do it again. I am presuming the member is putting forward the amendment again. You will only be speaking on the amendment at this time.

Ms RATTRAY (Apsley) - Madam President, I move -

That the motion be amended by leaving out all the words after 'That' and inserting 'the Business Names (Commonwealth Powers) Bill 2011 be referred to Government Administration Committee B of the Legislative Council for further consideration and report.'

Madam President, I want to thank the honourable Leader and also Mr Batt for the briefing that we were provided with; I felt that it was very valuable. I indicated at an earlier time that I do believe it is appropriate for this particular piece of legislation to go to the committee process. There were a number of issues that were raised through the briefing process and some answers were provided but I still remain committed to this process. I believe I have not heard from committee members to give me any direction otherwise and so I am happy to do that.

I know that the honourable Leader in his contribution said, 'Pick something else'. Madam President, I pick this and I hope that other members will pick this one as well. I do not think there is anything to add. My initial reasons remain the same, but I do acknowledge that we had a very useful briefing this morning. At that briefing it was reinforced that for this to come back to the Parliament in the next sitting session is totally appropriate.

[3.06 p.m.]

Mr GAFFNEY (Mersey) - Madam President, I support the honourable member and I think we are doing it the right way if we go down this track.

Amendment agreed to.

Motion as amended agreed to.