

BUSINESS NAMES AMENDMENT BILL 2003

EXPLANATORY MEMORANDUM

The purpose of this Amendment Bill is to re-introduce a Business Names renewal fee under the *Business Names Act 1962* (the Act).

The Department of Consumer and Employment Protection (DOCEP) has responsibility for administering the Act and maintaining a public register of Western Australian businesses.

The Act requires any person who wishes to run a business in Western Australia under a name that is not their own, or that of a company, to register that name with DOCEP for inclusion on the Business Names Register. A business name may be registered by an individual or body corporate.

The Business Names Register identifies the name and address of a business and the proprietors of a business. This information enables consumers and businesses to know who they are dealing with. The Business Names Register becomes particularly important in the event of a dispute where the parties need to be identified and located. In cases where trading names are involved, the information can assist consumers and businesses in knowing who to approach.

The Act provides that the registration of a business name is for a 3 year registration period. At the end of the 3 year registration, if a person wishes to continue to use a business name they must apply to renew the business name.

A Business Names renewal fee was in place for thirty-eight years, from the enactment of the Act in 1962 to January 2001. The fee was briefly re-instated by regulations published in the Government Gazette on 2 November 2001 and later disallowed by the Legislative Council on 20 March 2002.

The Amendment Bill authorises a renewal fee to be charged at a level that may exceed cost recovery and which would otherwise make the fee a tax. The Amendment Bill addresses the legal and constitutional issues about taxation that arise from the operation of section 46(7) of the *Constitutional Acts Amendment Act 1899*.

The key reason for the Amendment Bill is the improvement of the Business Names Register.

If a business name is on the Business Names Register, no identical names or names so similar as to be likely to cause confusion can be registered. When businesses that are not operating continue to hold a business name, these business names are "locked up" and cannot be used by businesses that are operating. A Business Names renewal fee will deter the proprietors of non-operating businesses from renewing their business name and enable more businesses to have access to their chosen business name. The renewal fee will therefore assist in the administration of the Business Names Register.

The re-introduction of a Business Names renewal fee will provide an estimated \$2.4 million per year to Consolidated Revenue. The Business Names renewal fee will recover part of the costs of Government advice and assistance provided to small business, and the costs of business regulation.

The Small Business Development Corporation (SBDC) provides independent advice and assistance to small business and stimulates small business growth. These small business development services cost over \$8.8 million per annum. The revenue gained from the re-introduction of the Business Names renewal fee would recover some of the costs of these services.

In the area of business regulation and consumer protection, DOCEP provides an important role in maintaining consumer and business confidence. DOCEP's Retail Services Branch alone costs \$1.85 million per annum to operate. The Branch assists with business names compliance inspections, processes trading hours applications, conciliates disputes between businesses and consumers and produces educational material to guide industry on retail practices. The regulation of weights and measures and product safety by DOCEP's Trading Standards Branch also makes an important contribution to business confidence and costs over \$2.2 million per annum from Consolidated Revenue.

The Government proposes that the Business Names renewal fee will be \$75.00, the same amount as in January 2001, when the renewal fee was removed. The \$75.00 is for a three year period of registration, effectively \$25.00 per year.

With the exception of the Northern Territory, all Australian States and Territories charge a Business Names renewal fee and accept that this is an appropriate charge for use by Consolidated Revenue. At \$75.00, the Western Australian Business Names renewal fee will be the second lowest in Australia amongst the fee paying jurisdictions.

An examination of the contents of the Amendment Bill on a clause-by-clause basis is outlined below.

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| <u>Clause 1</u> | Short title and citation. |
| <u>Clause 2</u> | This clause sets out the commencement provisions. The clause provides that the Act will come into operation on the day on which it receives the Royal Assent. |
| <u>Clause 3</u> | This clause provides that the amendment being made is an amendment to the <i>Business Names Act 1962</i> . |
| <u>Clause 4</u> | <p>This clause amends section 11 of the <i>Business Names Act 1962</i> to allow the business names registration renewal fee to be charged at an amount that exceeds cost recovery. The amendment addresses the legal and constitutional issues about taxation that arise from the operation of section 46(7) of the <i>Constitutional Acts Amendment Act 1899</i>.</p> <p>Section 11 of the <i>Business Names Act 1962</i> provides for the registration of a business name to remain in force for a period of 3 years. The registration may be renewed by lodging a prescribed statement with the Commissioner for Fair Trading together with the prescribed fee.</p> <p>The renewal of registration may be made at any time within the period of one month before or one month after the expiry of the registration or within such further time as the Commissioner for Fair Trading allows.</p> |

