



House of Assembly

An extract from Hansard

Wednesday 14 September 2011

SMALL BUSINESS COMMISSIONER BILL

Mr PICCOLO (Light) (16:59): I rise to indicate my support for this Small Business Commissioner Bill. First, I would like to apologise to my colleague the member for Goyder for my interjections yesterday. It is one of those issues which I feel passionately about, and I do apologise for that.

What is this bill about? Put simply, this bill is about justice. It is about justice for small business; that is the essence of this bill. Whether it is a corner deli, a farm, a newsagent or a franchisee, once this bill is in place, South Australia will become the safest place in Australia for small business to operate.

Why would the Liberal Party, which proclaims to be a supporter of small business, be opposed to this bill? Why would the Liberal Party oppose justice for small business? When debating the motion to receive the Economic and Finance Committee report into

franchising, the lead speaker for the opposition said on this matter:

I hope the parliament takes up the challenges the report recommends. A lot of work needs to be done in the future, but I sincerely believe that if we take action on it we will improve opportunities for Australians.

What did the report recommend? The report recommended alternative dispute resolution processes, good faith dealing, penalties for breaches of the code—all these recommendations are adopted in this bill. We can go further, though. The lead speaker then stated, when debating franchising, after a motion put by me in September 2009:

This motion is quite sound, and I confirm that the opposition supports it.

This is about franchising. He continued:

If the federal government were to support more small business opportunities in Australia, it would do all it could to ensure that the code of conduct which controls the relationship between the franchisee and the franchisor was improved. There is an opportunity now to do it. Reports have been done in two states and federally. Let us ensure that the recommendations from the all those reports are acted upon so that we get a vastly improved system in place as soon as possible.

It gets better, though. When we discussed that report when it was tabled in May 2008, the member for Unley said:

Franchisors in turn complained to the committee [the Economic and Finance Committee] that especially with regard to large commercial shopping centre landlords they suffer disparity of bargaining power.

That is what this bill is about—bargaining power. It is about looking after the small people in the economy. He went on to say:

I think this is a very important and fundamental problem that we need to address if we are serious about supporting small business and encouraging enterprise in South Australia.

That is what he said, the member for Unley, when we handed down the franchising report about franchising legislation, which the opposition have said today they oppose in addition to this bill. So, why have the Liberal Party cowered to the Franchise Council of Australia (FCA)? Why are the Liberal Party supporting the FCA and not small business in this state? The Liberal opposition have relied heavily, if not exclusively, on the opinions of the FCA to try to torpedo this bill. The FCA states that the Shopping Centre Council supports their view. That is what they said in their recent release which was read into *Hansard* yesterday and today by the lead speaker. This is what the Shopping Centre Council said about the FCA's campaign against this bill:

Forgive us, therefore, for being cynical about the report that the Franchise Council is preparing a retail leasing code of conduct. The FCA (while furiously resisting

moves in WA and SA to introduce legislation to further regulate the franchising industry) wants even more regulation of retail leasing in Australia.

In other words, they relied on an organisation that does not even support them. That is how much credibility the FCA has—zero credibility in this area.

There are 136,000 small business operators in South Australia, as has been mentioned by other speakers, and each one of those is important to our local economy—not just the big end of town, the small end of town. This bill looks after the small end of town. This is the area which the Liberal Party is now set to abandon. This is a space in the economy the Liberal Party is now set to abandon.

While this bill has its genesis in the recommendations made by the Economic and Finance Committee, it will be the culmination of a four-year campaign to provide franchisees with a fairer playing field, and more recently to assist farmers in their disputes with machinery manufacturers, and just as importantly for those people in the farming community who have a dispute with grain handling and storage places.

In terms of dispute resolution the report talks about looking to the government for direction, for legislation to protect farmers against those in the marketplace who wield enormous power. This morning Liberal members were saying that perhaps we need to look at more legislation, yet when we talk about small business, they

oppose it. Clearly, I must say, either farmers are not small business or they have abandoned both small business and the farming community to look after the FCA. One can only assume that they are looking after the FCA because they represent the big end of town of town, and perhaps that is where the donations are coming from. One can only speculate that that is where the donations for the party are coming from.

Minister Koutsantonis, who introduced this bill in his capacity as Minister for Small Business, was an integral part of the initial Economic and Finance Committee inquiry, which he chaired, and has led the way in forming this new legislation. I congratulate him on that. In fact, this bill is better than my private members' franchising bill, and I accept that. Once again, South Australia will lead the country in providing support for our small business sector. This bill will raise business behaviour standards, and that is another important thing. The bill provides for the creation of a small business commissioner as well as a legislative framework for prescribing mandatory codes of conduct under the South Australian Fair Trading Act.

The bill also provides for civil monetary penalties for breaches of prescribed codes of conduct under the Fair Trading Act and for civil expiation penalties, that is, infringement notices or on-the-spot fines. Once this bill is enacted in South Australia the minister will have the ability to prescribe

mandatory codes of conduct under the Fair Trading Act, including a statutory duty of good faith, as well as other standards of conduct in franchising, as well as other sectors such as farming, farm machinery, grain handling, retail leasing; you name it. Any smaller players in an industry who believe they are under threat from predatory behaviour from bigger players can come to the minister and ask for support.

This is what the Liberal Party is opposing. The Liberal Party opposes the smaller person being able to defend themselves. The Victorian Small Business Commissioner has found that their processes, which this bill is modelled on, have saved the small business sector around \$200 million since the office was created. Mum and dad business owners work incredibly long hours and often invest all their savings to set up new businesses only to be brought down by rogue franchisors and other big players in the market place. This bill and subsequent codes will go some way towards correcting the current huge power imbalance between small and big business.

The member for Norwood said that I have a bee in my bonnet about franchising, and I plead guilty to that—I really do plead guilty to that. After 4½ years and after two inquiries in this parliament, after a WA inquiry and after a federal inquiry, it all came to the same conclusion: the power imbalance in franchising leaves small business people (whom these people across

the chamber pretend to support) in a vulnerable position. I first raised this matter in February 2007, which then led to the Economic and Finance Committee inquiry, and there was also the WA and federal inquiry.

It is interesting to note that—and I stand to be corrected as I am not on the committee anymore—a recently received supplementary report by the Economic and Finance Committee did not repudiate the findings of the earlier inquiry. The member for Waite this morning and the member for Bragg this afternoon said that we on this side should listen to small business and take advice from small business in what we do in our dealings with small business. Well, I agree. Let's see what the small business sector has said.

The following small business organisations have indicated their support for this bill: the Council of Small Business Organisations of Australia, the Independent Contractors Association, the Motor Trade Association, the South Australian Farmers Federation, the Business Development Council and also, I understand, Business SA. What have these small business organisations said? It is interesting to note that not one speaker for the Liberal Party mentioned them.

All they mentioned was the FCA, the big end of town. Not one speaker from the Liberal Party today or yesterday during this debate referred to any of those organisations that speak on behalf of small business. The only organisation referred to in their

speeches was the FCA. It is disgraceful that they have abandoned small business in the state. This is what the Council of Small Business Organisations of Australia said:

This legislation [in this bill] reflects the fact that that small business is really a person with all the rights that other people have in law. We know this legislation is good and will provide fairness because the Franchise Council of Australia have objected to it.

That is why it is good. Every other small business organisation understands that, if you have the FCA on one side, all the good people are on the other side—except the Liberal Party. For some reason the Liberal Party have decided to get nice and snugly into bed with the FCA. Why? The Council of Small Business Organisations says:

The access to quality dispute resolution and the opportunity for real sanctions to be forced on unscrupulous franchisors and big businesses is welcome news and will only add to the effectiveness of the small business community and the economy.

They go on to say:

Too many small business people have become prey for unscrupulous franchisors, large businesses, large landlords and uncaring government departments. This action by the South Australian government means that we can run a business knowing that, when a fight has to be had, we have friends in high places who may not protect

us but will certainly ensure fairness prevails.

Who do the Liberal Party get into bed with? The FCA. Not the Small Business Council, but the FCA. The Independent Contractors of Australia is certainly not an organisation that you might call a natural ally of the Labor Party. They said—

The Hon. A. Koutsantonis: A hotbed of socialism.

Mr PICCOLO: That's right. The Independent Contractors of Australia said that South Australia is:

Potentially looking most attractive for small business franchisees. The SBC—

Small Business Commissioner—

...will provide voluntary, cheap mediation services for small businesses with a dispute. Importantly, the government sector and private business will be subject to the legislation. The SBC will...have powers in relation to retail tenancy. It makes sense for businesses to contact a state authority rather than a Federal one. I would have thought they (the FCA) would have welcomed an enhancement of the small business commissioner model, given that this is a good thing for small businesses.

Even the Independent Contractors association do not support the FCA; only the Liberal Party do. The South Australian Farmers Federation made the recommendation that the minister adopted through the consultation

process to introduce the provision for mandatory codes of conduct or practice. That decision was based on the feedback from the South Australian Farmers Federation, who represent all those small businesses in the farming area. Did the Liberals mention that? No, they did not. Who did they mention? The FCA. This is what Carol Vincent of SAFF said in her letter to the government:

The SAFF applauds the government initiative in developing the office of the Small Business Commissioner and will endeavour to continue to work collaboratively with government and values the support and assistance received from—

in this case, myself, modesty aside—

Tony Piccolo.

As I said, the industry code of conduct was suggested by SAFF. What did the Business Development Council have to say about this? The lead member would know that, because the Business Development Council actually wrote to him. I do not recall the letter quoted in his speech. I may be wrong, but I do not recall its comments quoted in his speech. Why would he not quote from the Business Development Council, made up of all small businesses and representing them in this state, right across the board. This is what they had to say:

The Business Development Council support the concept and intent of

the Small Business Commissioner, its roles and responsibilities.

More importantly, part of the claim by the Liberal Party has been that, if we do this, we cannot do other things. Their defence has been, 'If we do this, we cannot do something else.' This is what the Business Development Council said:

The Business Development Council is not aware of any connection between the establishment of the Office of the Small Business Commissioner and the budget cuts announced in 2010. The BDS is of the opinion that the decision not to fund new contracts for the BEC's could have happened regardless of the Small Business Commissioner project.

So, the Business Development Council of this state has basically shot down the arguments of the Liberal Party.

Mr Griffiths: No, they haven't.

Mr PICCOLO: Well, you got the same letter I got. What do the Motor Trades Association, who represent all those dealers, particularly small businesses in rural and regional Australia (machinery dealers, car dealers, etc.), have to say?

The loss of a franchise means the loss of the business and the ability to earn income to pay legal fees to fight the franchisor. It is this unfairness Mr Piccolo wants to stop by the appointment of a Commissioner...who will have real teeth and a legal system to enforce a fair and proper outcome to disputes.

That is what the Motor Trades Association says.

We come to the FCA—my friends, the FCA. The FCA opposes this bill. They claim to represent the franchise industry. Sadly, the Franchise Council does not. The Franchise Council has actually diminished the level of debate in this whole issue by making outrageous remarks and comments regarding this.

The reality is when franchises are set up, most of the risk is actually borne by the franchisees. What people do not understand is, in the marketplace, all those franchises you see in shopping centres, the fit-out is paid for, in the main, by the franchisees. We heard that evidence in the committee. It is not the franchisor; they just sell their rights. The risk is taken by the franchisees. So who does the Liberal Party side with? The FCA—the owners. This is what the Shopping Centre Council of Australia said—this is the big end of town talking about the other big end of town, the FCA:

When the FCA (which, despite its claims, represents franchisors, not franchisees)—

this is what the Shopping Centre Council said—

accepts the same level of regulation imposed on retail landlords, its lobbying might be taken seriously.

In other words, all the lobbying the FCA has done on this issue is a joke. That is what the Shopping Centre Council said. The FCA is a joke. They have no credibility in the marketplace. An interesting

thing here is that the FCA enlisted the Shopping Centre Council to support them and this is what the Shopping Centre Council said about them. They actually labelled the FCA's reaction to all this as just a media stunt.

This bill is consistent with federal law. Importantly, it complements federal law and so it deserves our support. What I would like to do now is just summarise. One more point I would like to make is that, despite what has been said, the consultation was listened to by this government. As a result of that consultation, this government amended the bill. Had we not done that, we would have been accused of just lip service. We have done that and we are accused of not consulting enough, yet the bill now reflects the consultation.

In conclusion, I would like to make the following points. The case put by the Liberals against this bill has been insipid and, at best, a rehash of old arguments. We have heard them all before. In fact, we heard the same thing eight times today. It was like watching *Days of Our Lives*. You came back in, the same place; you come back the next day, the same thing. It is like a scene from *Days of Our Lives*.

The Liberals can run from this issue but there will be nowhere for them to hide when people in the farming sector understand what they are doing in here, despite the rhetoric out there. The Liberals have sold out. They have caved in to big business. They are denying small business justice.

Why would the Liberals back the predators? Why would the Liberals deny the farmers an opportunity to have their farm machinery warranty issues addressed, as the SAFF has recommended? Why would the Liberals deny farmers an opportunity to have their disputes with grain handling addressed, like this report that came out today said?

Why would the Liberals oppose good-faith dealing, which is available in many provinces in Canada? Look at those provinces in Canada—Ontario, Alberta, Prince Edward Island and New Brunswick—which have good-faith dealing, they have franchises. In fact, they have no fewer franchises than the provinces that do not have it. So to suggest that somehow good-faith dealing will wreck our state is just a nonsense, if you look at the international situation. Importantly, America has the Uniform Commercial Code which imposes a duty of good-faith dealing.

How can we have a fairer playing field without an umpire? That is what the Liberals want us to believe. With their decision to oppose this bill, the Liberal Party has sacrificed the soul of small business on the altar of self-interest.