

News Release

148 Murray Street, Gawler, S.A., 5118.
Phone (08) 85 222 878
Fax: (08) 85 231 392



Tony Piccolo MP

State Member for Light
Member,
Economics & Finance Committee
National Convenor,
Australia – Italia MP Forum

Thursday 3rd December 2009

Franchise Bill proposes a duty to act in good faith

Parties to a franchise agreement will have a duty to deal with each other in “good faith” if a Bill introduced into the South Australian Assembly is adopted when Parliament resumes next year.

The Bill was introduced by franchise law reform advocate Labor member of Parliament Mr Tony Piccolo.

The Bill requires parties to a franchise agreement to “at all times, act in good faith”. Acting in *good faith* means to act fairly, honestly, reasonably and in a co-operative manner.

Mr Piccolo told parliament that the requirement to act in good faith “will, in my opinion, foster a more ethical approach to business in the franchise sector.”

Mr Piccolo advised the parliament that “good faith dealing” was opposed by the Franchise Council of Australia”

“The Franchise Council of Australia, despite its public statements to the contrary, continues to oppose any meaningful reform of the code, which reflects its interest in protecting the big end of town.” said Mr Piccolo.

Mr Piccolo said the FCA states that the provision would give rise to widespread litigation.

“In my view this is a complete nonsense.”

“The FCA and other critics acknowledge that the courts have already found that an 'implied duty to deal in good faith' already exists.”

Mr Piccolo pointed out that a number of Canadian provinces have good faith dealing provisions in their franchising codes without a flood of litigation occurring.

Mr Piccolo said the Manitoba Law Reform Commission in its final report on franchising in May 2008 said: 'the statutory provisions [for good faith dealing] essentially codify the common law duty of good faith in the franchise context.'

The Bill also creates a Commissioner for Franchising.

The Commissioner would have the power to mediate, conciliate and to arbitrate.

Mr Piccolo said the Commissioner of Franchises would provide an efficient, effective and low cost mechanism for parties to a franchise agreement to resolve their disputes.

“It would overcome the deficiencies in the existing mediation provision provided for by the current franchising code of conduct.”

The Commissioner will have the power to collect and publish certain information.

Mr Piccolo said “the current lack of reliable information regarding franchise disputes covers up the market failure that is occurring in the sector.”

The Bill provides for pecuniary penalties to be applied against parties who the courts find have breached the code.

Mr Piccolo said the Bill “will create in South Australia a fairer, more efficient and competitive environment for franchising to flourish in.”

Mr Piccolo said he introduced the Bill despite the fact it could no be revisited until after the election for the following reasons:

1. It honours a motion passed by this house on 10 October 2009.
2. The bill is important is because it outlines the scope of reform and legislative model available to state and territory governments to introduce reforms to franchising should they choose to do so.
3. The introduction of the bill keeps the issue of franchise law reform on the political agenda.

Mr Piccolo said the Bill will also facilitate further public debate within the sector, and feedback from various stakeholders would, in all probability, lead to a revision of the bill when it is reintroduced after the state election, should I be fortunate enough to be re-elected.

“This Bill also flags to the federal government that the states and territories are serious about franchise law reform.” said Mr Piccolo.

Mr Piccolo said when a franchise fails it is usually the franchisee who suffers.

“The human toll is at times beyond comprehension.”

Mr Piccolo said the Bill will not help those who make poor business decisions.

“It will not help those who do not exercise due diligence before signing a franchise agreement – you cannot legislate for that – however, let us promote opportunity and not opportunism. “

Mr Piccolo said the Bill overcomes constitutional restrictions by applying the Franchising Code of Conduct set out in the Trade Practices Act Regulations 1988 of the Commonwealth, as a law of South Australia.

END

