FRANCHISING BILL 2010

Second Reading

Resumed from 13 October 2010.

DR G.G. JACOBS (Eyre) [4.03 pm]: I take this opportunity, if I may, to make a few comments in the second reading stage of this private member's bill brought by the member for Southern River. Over the next few minutes I will comment on the Franchising Bill 2010 and outline the issue of franchisor–franchisee relationships and the whole concept of good faith. I am not the lead speaker for the government.

A good faith concept in legislation is not unusual. The issue of good faith concerns honesty, fairness and cooperation. Indeed, the advice sought from learned legal people—such as Mr Daryl Williams, the previous federal Attorney-General, Mr Malcolm McCusker, now our Governor of Western Australia and Mr Alan Robertson, a Federal Court of Australia judge—is that the good faith provision has precedent in legislation in the farming, mining and petroleum industries. The meaning of "good faith" in this context is along the lines of the dictionary definition, although that is not the only consideration. It was considered in this bill that the definition should include fairness, honesty and cooperation.

Members might ask: what is the magnitude of the issue in Western Australia? Mr Graeme Samuel, who was the previous director of the Australian Competition and Consumer Commission, said that franchisees made around 500 complaints a year to the ACCC and those complaints concerned the whole concept of contract renewal and unilateral changes to the agreement. Few of these complaints got to court. This private member's bill is about addressing the imbalance between franchisees and franchisors. However, a lot of franchisors have said that there is nothing to fear; franchisors who do the right thing have nothing to fear from the introduction of a clause of good faith.

What is the history of the problem and for how long has it been identified? In 2008, the federal government in its pre-election promises committed to introduce the concept of good faith under the then Minister Craig Emerson, but that did not in fact happen. The Ripoll report, a joint parliamentary committee report, then recommended that a good faith clause is included in these franchisee–franchisor agreements. The report referred to the things that go on inside the relationship. Of course, this did not happen either. In South Australia, as we speak, the Small Business Commissioner is today being established in legislation. There is also recognition in the legislation of good faith in these agreements and relationships between franchisees and franchisors. Indeed, when the member for Girrawheen was Minister for Small Business in 2008, she took this whole concept of good faith to the ministerial council to progress its inclusion in legislation, but that has not occurred. There is some history around this issue and there is the magnitude of the issue, yet a minimum standard of good faith has not been established. I see that this private member's bill does that.

As members know, a parliamentary committee from the state of Western Australia has looked at this issue. The Economics and Industry Standing Committee raised certain concerns about why it should not recommend the introduction of this good faith concept within franchisee–franchisor agreements.

Some adjustments or changes have been made to the codes and the Competition and Consumer Act, but they are generally on up-front disclosure within contracts and do not deal with the internal relationship and the agreement on foot. The changes refer to the franchisor or the franchisee disclosing any previous track records that they have in this area, but do not refer to anything about contract renewal and unilateral changes inside the relationship. That is to not to say that this bill recommends automatic renewal of a contract; it does not say that at all, but it does look at those issues in and around good faith.

There were some concerns, and the chairman raised these in his executive summary, about some of the extraterritorial issues, and that a franchisee, for instance, outside Western Australia could bring an action in Western Australia under this legislation. It has been said very clearly and reiterated by McCusker and others that this is not able to be enacted because it says the business must be substantially situated in Western Australia. That means that someone from outside the state cannot bring their complaint into Western Australia if the business is not substantially located in Western Australia.

The question was asked whether this bill would make any difference. It was in fact said to be of little deterrent; it would not do much. I was not on the Economics and Industry Standing Committee but I have read the transcripts thoroughly. One side of the argument was that the good faith clause would not do anything; it was useless and it would not make any difference. The other side of the argument was that the good faith clause would cause businesses to leave town because the sky would fall in for franchisee–franchisor relationships and for starting businesses. The impact of this legislation is not to outlaw anything, but to slow the progress of rogue behaviour

in this state. It allows a process by which we can go to mediation or to the courts, but it does allow a process. As I said before, the good faith clause mentions honesty, fairness and cooperation. A lot of the issues now between franchisees and franchisors are around unconscionable conduct. That is the only way that these matters can be brought by franchisees against franchisors. I must say that this is not about upsetting a balance, but it is restoring some balance in that franchisee–franchisor relationship. It addresses the threshold of bad behaviour and lifts the bar for good behaviour. I have to say that good franchisors in Western Australia support this legislation.

Mr T.R. Buswell: Are you saying the ones that do not support it are bad?

Dr G.G. JACOBS: No, I am not. I am saying that the major percentage of franchisors do the right thing. People who do the right thing say that they have nothing to fear: "Bring on this private member's legislation." The good faith clause does not worry them. They understand the relationship—the relationship they have with their franchisees is a good one. We need to work symbiotically here, to use a bit of a medical term. This is a partnership relationship. We need to work honestly and fairly with one another, and we need to cooperate to make both of our businesses benefit—the business of the franchisee and the franchisor.

The whole concern about the good faith issue was also about some of the issues around contract renewal and that it would make the right of renewal of a contract automatic. There was some fear out there that this would not do more than restore the balance, but put an undue weighting to the advantage of a franchisee. That is not the case and these remedies do not include an automatic right to the renewal of a contract. Indeed, in this balance relationship, things can work the other way. With the system we have in Western Australia and all the jurisdictions in Australia, if the case is lost, the losing party has to fund the court costs as well as any claim. This bill will not lead to frivolous claims and works on the franchisee as much as on the franchisor.

I read in the transcripts about the issue of retrospectivity and that all the agreements on foot would have to be rewritten; that is not the case. This legislation would be umbrella legislation. It mentions good faith, and it mentions working honestly and in a considerate and cooperative way, but that does not mean that all those people who have a franchisee–franchisor agreement today would have to rewrite all those that are on foot. Retrospectivity would only apply from the enactment of the bill, and if this bill became law, the legislation would work from then on. Therefore, it would not be the case that someone could say, "Twelve months or two years ago I reckon I got screwed"—excuse me—"by my franchisor and I want to take on this issue." It is a bit like the issue of a change in law for parking or speeding fines and saying that all people who got pinged 12 months ago will be charged the new rate of fine. In fact, the retrospectivity issue has been of some concern, but the legislation will only apply to those franchisee–franchisor agreements that take place from when the bill is enacted; it has no retrospectivity. That has been brought up a couple of times in the committee transcripts that I have seen.

Another last issue is the concern about the cost that this legislation would impose. The cost of enacting this legislation and bringing it into operation because of the introduction of a good faith cause is said to be $4.2 million over four years. That is just over $1 million a year. A lot of these cases, if they did come to court would be taken to court by the Commissioner for Consumer Protection. The Commissioner for Consumer Protection is already an agency with a staff structure to look after consumer interests. If a franchisor was taken to court and lost the case, those costs would be covered by the franchisor, and the franchisor would also pay some of the civil penalty, but also the court costs. This figure of $4.2 million may indeed be quite excessive. We would find that the number of cases would probably go down because a good faith clause, once enacted, would send a message. I think the message would be such that, after a couple of cases were taken, the industry would say it needed to comply under the good faith clause. I suggest that after a couple of cases, the number of cases taken to court would reduce. Therefore, I believe that that cost estimation is somewhat generous and the actual cost will probably be less.

In closing, I suppose the concern of some members was that this whole issue—to be very frank—came out of a commercial conflict between two stakeholders, Yum! brands and Competitive Foods Australia. This is a result of a commercial spat between those two. It has now extended into this Parliament and perhaps this Parliament should not be involved in a commercial issue between those two competing interests. Yum! KFC and the pizza issue, and, of course, Competitive Foods and Dominos Pizza. I do not want to go into the details of those proceedings, but my belief is that, despite that, we have to concede that issues other than that central issue could impact on and could be occurring with mums and dads, franchisees versus franchisors, throughout Western Australia. If we put that aside, we still have to recognise the need to address the many franchisee–franchisor relationships—mum and dad relationships, if you like—aside from this issue of commercial conflict between Yum! foods and Competitive Foods Australia. Even if this legislation were enacted, I believe that it would not make a difference to the conceded commercial spat between those two interests. This legislation has no

retrospectivity, and the proceedings of those two interests have gone well beyond this legislation. From my point of view, this legislation is not about them; it is about looking at and restoring a balance. It does not make it heavier on one side or the other, but it restores a balance, and it affects franchisees as well as franchisors. The costs are not as significant for the government to impose these provisions. It sends a message. It is about being fair and honest. The sky is not going to fall in for the franchising industry. It is what we should be standing up for. I have given much consideration to this legislation, because what I believe is obviously not an opinion or a view that is shared by everybody on this side of the house. It is one that I have had to consider for myself, and I had to read the transcripts of the committee proceedings very carefully. I think this legislation is seriously worth considering. It is about looking after not only franchisees, but also franchisors in restoring some balance in a relationship that I believe is what we should stand for.

MR W.J. JOHNSTON (Cannington) [4.22 pm]: I rise on behalf of the Labor Party to put our position in support of the Franchising Bill 2010. I think the member for Eyre has hit on a very important issue. It is one thing to read the report of the Economics and Industry Standing Committee, but it is much better to read the transcripts of evidence, because we then get a much better flavour of what actually happens in the franchising industry and the effect of this legislation. There are people who run around, such as those from the Franchise Council of Australia, saying that this legislation is, for example, retrospective when clearly it is not. They say that it will lead to additional costs in the industry when it will not. They say that it will lead to disputation in the industry when that is not the case. Let us make it clear what this legislation does. If passed, this bill will provide that good faith is required in the relationships between franchisors and franchisees. Apparently, according to most of the people who gave evidence to the inquiry, that is already a common law obligation. What will simply occur is that that common law obligation will be codified so that all parties, including mediators who, generally speaking, are used to settling disputes between franchisees and franchisors, will know how to deal with the question of good faith.

I particularly urge members to read the transcripts of evidence and to look at the submissions of the Retail Traders' Association of WA. Let us make it clear: the Retail Traders' Association, which is in fact part of the Chamber of Commerce and Industry of Western Australia, is no automatic friend of the Labor Party. On many issues we would disagree with it, so it is not as though I am trying to quote from some automatic friend of the working people. The Retail Traders' Association clearly sets out what the dramatic effect of the power imbalance in a franchisor–franchisee relationship can lead to. To properly assess this bill, we need to deal with each of the issues raised by the Retail Traders' Association. Not only that; the Retail Traders' Association debunks many of the assertions made by opponents of this bill. One of those is that this bill mandates fairness. It does not. I always say to people that if they want fairness, they have to wait till the afterlife. In this life we can deal only with the law. This law proposes that there be proper conduct in the relationship, not necessarily fairness. It was put by opponents of the bill that requiring fairness in contract negotiations is unreasonable. I do not understand why it is unreasonable to expect parties to act with good faith, one to the other. Dozens and dozens of relationships are already governed by the idea of good faith—most fundamentally, of course, the millions of employment contracts in this country that are all dealt with through the Fair Work Act, under which good faith is an underpinning of the relationship. However, I go further and point out, again drawing on the evidence of the Retail Traders' Association, the number of pieces of legislation. The example given by the RTA in its evidence was a state agreement with BHP Billiton, which requires good faith in the relationship between the state of Western Australia and that very, very large company. So this is no radical departure from the ordinary processes that this chamber deals with; this is just about extending good faith into the statute law so that people, when they are coming to deal with disputes in the industry, have clear guidance about what that means.

This legislation then goes on to ensure that simple dispute settlement arrangements continue to apply. Of course, the question of good faith was a recommendation of the Ripoll inquiry of the commonwealth Parliament. That Ripoll inquiry is considered to be the seminal report on the franchising industry. I will quote from the report of that inquiry, which states, according to the paper I have —

> **"The Committee recommends that the following new clause be inserted into the Franchising Code of Conduct:**
>
> > **"6 Standard of Conduct**
> >
> > **"Franchisors, franchises and prospective franchisees shall act in good faith in relation to all aspects of a franchise agreement."**

All this bill does is seek to include that.

Some novel enforcement and other procedures are included in part 4 of the bill. It is appropriate to ensure that there is an opportunity, in the very rare circumstances in which a person could convince a court to take action, to

give the court that power. Just because an applicant to a dispute goes to court does not mean that they will win their case. An extraordinary power is provided by part 4, and nobody in this chamber needs to tell the courts that it is an extraordinary power; they understand that, and they are going to use the power that we are granting to them only when they believe it is appropriate to do so. There is absolutely no doubt—members should just look at the case law in franchising disputes—that the courts are going to be very reluctant to use these extraordinary powers. Members can look at any of the cases in franchising disputes to see how little the courts tend to interfere in these arrangements. No-one has produced one shred of evidence to suggest that the courts will somehow go off on some frolic and intervene in contract disputes. Common law courts have been dealing with contract disputes for literally hundreds of years. The idea that passing one particular clause or another will somehow radicalise the way that common law works in Australia is ridiculous. It is unsubstantiated by any evidence that has been presented to the committee or any evidence that can be seen in the community elsewhere.

I will finish on another issue, which is that somehow or other this bill relates to the dispute between Yum! and Competitive Foods Australia—CFA. The reality is that that dispute is ongoing. Passing this legislation or not will make no difference to the dispute between those two parties. Quite frankly, I am not certain that passing the law will make any difference to that dispute. The finding of the Economics and Industry Standing Committee is that clearly this is not retrospective legislation. I agree with that finding. This is about the ongoing relationships between parties to a franchise agreement. The questions in this industry should not be seen through the prism of the dispute between one franchisor and one franchisee. This legislation should be seen through the prism of all the relationships in this sector. The evidence of the Retail Traders' Association of WA went quite strongly to the question of those relationships. It is clear this bill has been demonstrated as necessary, and that is why the Labor Party is prepared to support this bill.

If the government is opposed to this bill, it will have to clearly state what it is that it is opposing. Why is it that the government does not want to have a legislative regime requiring good faith in relationships inside franchising arrangements? Is the government saying that it wants there to be a lack of good faith? Is it saying that that is appropriate? If we look at the statistics from the Victorian Small Business Commissioner that were quoted by the Small Business Development Corporation, members will see that thousands of disputes occur in Victoria, and many of those are in the franchising sector. These disputes between the parties exist today. All this bill does is give parties to those disputes a clear procedure to try to settle those disputes. That is why the Labor Party strongly supports the legislation.

MS A.R. MITCHELL (Kingsley) [4.31 pm]: I will respond as I did when I spoke on the seventh report of the Economics and Industry Standing Committee inquiring into the Franchising Bill 2010. I really feel I must speak because I believe this bill arose out of the issues that concern small franchisees. When I became a member of the committee, I took a particular interest in the bill from that point of view. As I sat through the hearings and read the information, I learned a great deal. I said at the beginning that I learned a great deal. I also learned a lot from watching who was sitting in the back of the hearing room, who was sitting next to whom in the back of the hearing room, and all the other things that were going on in and around the hearings. Those things also influenced me a great deal, and I certainly mentioned that in my speech before. As I said, the basis for deciding how I would go through with this investigation was what was raised by the small franchisees at the very beginning. I will stay with that, because they are critical to this whole bill. The small franchisees were seen to be in a position of not having a voice or a place to go and they were in a spot. What I have learned through this investigation has come through listening and watching, and, like other members, through receiving emails from many people who have been through some very unfortunate situations as franchisees. As I said when I spoke on the committee's report, this bill does absolutely nothing for that small franchisee. If I stand here and say that I support a bill that people will think will help small franchisees, I am not doing my job as a member of Parliament. The small franchisees are looking for support and help. This bill does not provide that. That came through loudly and clearly. I am not saying that the little franchisee does not need some help. That franchisee absolutely does need help, and there are steps in place to assist the franchisee, but not through this bill.

As I said early on, one of the things that really surprised me—I will refer to some notes on that—was that 49 per cent of people who sign up for a franchise do not get legal advice before entering into a contract. That independent legal advice is so important. I know what it is like when someone is going into something: they are keen and passionate and they just want to get into it and get going, so they think it will be all right and it should be fine and they trust people. One thing I have learned in life as I get a little older is that trust is something I value and do not give away too easily. People will mortgage their house, incur liabilities and put their future in jeopardy, but they do not undertake pre-entry training into any sort of business; they do not seek legal and financial advice. Some of them have never run a business at all, so they are going into something that they do not know anything about and they are relying on some fantastic sales pitch. Yes, some of it is great, and it seems like

a safe way to go into business when one has not had much business experience, but people did not do that first bit of research and investigation. That staggered me, I will be very honest. I did not realise that the numbers were so high. I will say again that this legislation does not help that. This legislation does not give any support for a small franchisee—for a person who might live in my street. It does not give that support.

What I learnt is that the federal Franchising Code of Conduct is actually doing something. Even though it has not solved everything straightaway, people took note of the things that were brought up in that first review and amendments are being made to the Franchising Code. Those things are now available to a person intending to go into a franchise; they are able to get disclosure material. We all heard about the Bakers Delight people in Fremantle who could not get that information, but a person now going into a franchise can get that information, and they should get that information. This bill does not make sure of that. Those things are important to a person, a mum and dad or a couple of people going into a franchise. They can go and get those things; they can get more information. That is contained in the federal code. Amendments to that code are brought in regularly and the code will be reviewed in 2013. Why would we bring something in on top of that and let other people think that the Western Australian Parliament has made a difference to what a small franchisee is going into when it will not make a difference? I could not stand here and honestly feel comfortable if people were to think that this bill will help them. They still will not go through the process and get legal advice or those other things because they believe—I am not sure why they believe that, but I have this funny feeling—that this bill will help them. That does concern me, because then we have not done our job properly.

Another issue that came through loudly and clearly was that when a problem does arise, which it will, particularly if a person has not gone through that pre-entry, real investigation—problems do arise; that is what happens—this bill will not provide anything for the franchisee. What the government has done is establish the Small Business Commissioner, which will be underway fairly soon. That will help franchisees, because that will offer them a low-cost, efficient and quick way of dealing with conflicts. It is not a piece of legislation that has to go through a major court proceeding to get precedents and whatever else. This bill will not do that; the bill establishing the Small Business Commissioner will. I will say it again: that bill will provide that valuable, low-cost, effective and efficient mediation for a franchisee. It is very simple and very effective. The Victorian Small Business Commissioner has proven that. I say again to the franchisees out there, who are why this whole bill exists, that this bill as presented does not meet that need. What we will have in place with the Small Business Commissioner and through changes in the federal Franchising Code will help small franchisees. Some of these things are really important, but we have to keep this in perspective because, as I said, I went into this investigation as a result of the number of people I heard from who had had very unfortunate experiences as franchisees. I know that a lot of others have not had these experiences but we always come back to the few who have had a problem. Often that is when we try to come up with some legislation.

I am not going to say that franchisors are perfect and I am not going to say that having a federal code and making these amendments along the way is perfect either. I will not pretend that we have solved the problem but I do not believe that we will solve the problem through this piece of legislation. That is where I am at the moment. I think we need to give the small business commissioner a chance to work through this. We know that they will have a few cases. We do not need another bureaucracy dealing with some conflicts that have occurred through a piece of legislation. We will have a small business commissioner who will deal effectively and at low cost for our franchisees. We also have an opportunity for amendments to the federal Franchising Code to become effective and to also be evaluated. Believe it or not, 2013 is not that far away. I think we will see a large impact in those situations by then.

I turn to the other thing that does not surprise me, if that is the right expression, and what I learnt as I was going through this process. What messages are we sending to the franchise industry by this legislation? If I supported a piece of legislation that I did not think was as effective as some people think it is, that is the wrong message to be sending. That concerns me greatly because the message is that this Parliament has helped, but, in fact, it has not. It might look like we have done something. We might have satisfied a couple of people or a couple of organisations but I cannot say that this Parliament has helped in the franchising business at this stage, not through this piece of legislation, though it has through the others. I think it sends a message and I think many people will come to learn that it has probably supported some franchisors but not so much the franchisees.

As I said, I did a lot of watching. I love watching people's reactions on their faces and how they interact with what is going on. I sense that this debate was influenced most unfortunately. Yes, we always take evidence but it is absolutely critical that it is an independent assessment and evaluation. Sometimes I had to question whether that was the case. I know that happens periodically. I do not believe that it is appropriate when we are talking about people's lives and their livelihoods and their whole business structure. I sense that the message that may go from this Parliament is not the right message that we should be sending. I certainly believe there is work to be

done in the franchising industry. There is certainly work to be done in that whole space. I do not believe that this piece of legislation makes any improvement; certainly not in the short term, and not in the long term because other things need to be done at a much more basic level, if that is the right expression—at a simple level, not a complicated level and certainly not in a court of law. That is what these people are looking for, not another legal case down the track. We do not want all those other things that take ages before we get any precedence. We have some things on the ground that make a difference for franchisees. We need to support them. Let us go back to the beginning. We need to ensure that when they go into any contractual arrangement, they know where they are going and they know the pitfalls and the strengths. At the same time we need an easy support system for them through the Small Business Development Corporation and soon the small business commissioner, who can support and guide them. I am totally in favour of that. I am totally in favour of supporting the franchise industry but I do not believe that this piece of legislation is the mechanism to do that. I will be very, very disappointed if the people of Western Australia see that this piece of legislation does that because it is certainly not what it is doing.

MR T.R. BUSWELL (Vasse — Minister for Transport) [4.45 pm]: I am representing the Minister for Commerce on the Franchising Bill 2010. I will be the government's main respondent, although there are probably other members who are more technically au fait with this matter, including the member for Riverton, who will follow, and the member for Kingsley, who preceded me. I start my contribution by stating upfront that the government is and always will be keen to embrace change that benefits small business. That is a very important principle. I do not think that anyone participating in this debate wants to embrace change that will be bad for small business. Everybody in Western Australia knows that small business is facing a range of challenges and hurdles, largely challenges and hurdles brought about by a collapse of consumer confidence. That is my personal view. That is borne out in a range of statistics, including changes in savings rates in Western Australia, which I understand are higher than changes in savings rates in other states. There are a range of reasons that we do not need to go into as part of this discourse as to why people are uncertain. I looked at the news yesterday afternoon: London was burning and the stock market was bouncing around everywhere. We have a resources tax in WA, we have a carbon tax threatening the nation and people are uncertain. Interest rates are moving in ways difficult for people to predict. I sense that people are not consuming to the extent that they would normally. That is affecting a range of businesses. The sad reality is that whether we are in a franchise arrangement or a standalone small business operating outside of the franchise framework, some businesses will go broke. It is a fact of life.

The member for Kingsley hit the nail on the head. This bill and the people who support this bill have promised to deliver a lot in franchise reform. When a franchisee is aggrieved, under the framework that will be introduced by this bill, not much will change. We will be effectively promising the world and delivering an atlas. All we will end up with is a whole lot of very disgruntled people. They will be disgruntled at this Parliament and angry at each of us individually because by our actions we will have promised something knowing that we will not deliver it. That is a simple fact. I will work through a range of inquiries. I will go back to the Bothams inquiry, which the member for Girrawheen instigated. I will also briefly talk about the Ripoll commonwealth inquiry and also a great body of work that was completed for the former Minister for Small Business, Dr Emerson. Because he was an economist, I always found him to be a very engaging and intellectually challenging individual.

Ms M.M. Quirk: Like the Prime Minister.

Mr T.R. BUSWELL: We do not like to canvass those issues in this place.

"Strengthening statutory unconscionable conduct and the Franchising Code of Conduct" is a very, very good report. I will refer to it in some detail later. I have an hour so I expect to use a fair bit of it going through that report. It was written by Professor Bryan Horrigan, Mr David Lieberman and Mr Ray Steinwall. I will refer to it because it brings out a number of points that the member for Kingsley has touched on.

I want to start with an historic perspective. All members who have spoken, including the members for Cannington, Eyre and Kingsley, have either directly or indirectly referred to a dispute that I think was first raised in this house by the member for Warnbro relating to Yum! Restaurants International and Competitive Foods Australia. The member for Cannington and the member for Eyre made the point that this has nothing to do with that commercial dispute. I suppose the facts are that if it has nothing to do with the commercial dispute, why is Competitive Foods paying for the legal advice? I do not know. Why is Competitive Foods paying for a lobbyist or an intermediary, a Mr Plowman, to arrange dinners at Rockpool, attended perhaps by the member for Rockingham and the member for Victoria Park?

Mr M. McGowan interjected.

Mr T.R. BUSWELL: I do not know; I am just asking.

Mr M. McGowan: Don't be verballing people.

Mr T.R. BUSWELL: I was just asking.

Mr P. Papalia: He wasn't there.

Mr T.R. BUSWELL: Okay; I said perhaps. I did not say he was there.

Mr M. McGowan: Maybe you were there.

Mr T.R. BUSWELL: I was not. If I was there, I would have known the member for Rockingham was there.

Mr M.P. Whitely: I was there.

Mr T.R. BUSWELL: Let us clarify the facts; exactly who was there?

Mr P. Papalia: Don Randall was there and Judi Moylan was there.

Mr M.P. Whitely: All captives of shoppies just like me.

Mr T.R. BUSWELL: I am not saying that. The member for Bassendean is not a captive of a shoppie and, unfortunately, he will not be saved by the shoppies. He is not a captive and he will not be saved, unfortunately. I say "unfortunately" because I will miss him! Others may say fortunate, but that is a matter for others to determine.

The point I am trying to make is that this bill is clearly reflective of a commercial dispute. If it was not, why would a commercial party be paying for it? I do not know how many tens of thousands of dollars Competitive Foods Australia Ltd has spent on this latest attempt to have this brought in. I cannot imagine that this was out of the benevolence of Mr Cowin's heart. I cannot imagine that for days on end a team of lawyers and Mr Plowman, lobbyist extraordinaire, working out of offices in Parliament House, were trying to ply their trade. I cannot imagine that Mr Plowman would not be now trying to boost his hourly rate around town by claiming he has certain members of Parliament firmly in his pocket—a claim, put to me, that he is making around town to boost his hourly rate. These are not activities undertaken in a non-commercial environment. These are activities undertaken by business to deliver certain outcomes. I do not have a problem with that. That is what business is entitled to do. But what we have here in my view is a piece of legislation that has been purchased by an individual who has, unfortunately, through a whole range of mechanisms, convinced people in this place that they are doing the right thing. I am not disputing the intent of those individuals; their naivety, yes, but their intent, no. There is no doubt in my mind that this legislation is in this place because of a person's deep pockets and considerable influence—full stop.

I reflect on my time as Minister for Commerce. We were elected late in 2008 and one of the first meetings I had was with a representative of Competitive Foods, whose name, I think, was Mr Morton, a lawyer. He put to me that we should be entertaining changes to state legislation which, miraculously, are very similar to some of the changes within this bill. Perhaps it is just a fluke, but that is what happened. I met with Mr Morton —

Mr P. Abetz: That is what was recommended.

Mr T.R. BUSWELL: The member should run out and ask some of the others.

I read what Mr Morton wanted to do. He presented some arguments to me, in particular, member for Rockingham, in relation to a KFC outlet in the member's electorate. He also made certain comments about why the State Administrative Tribunal had not supported an application by Yum! Restaurants Australia Pty Ltd. I checked the finding of SAT. I must have been early in the ministry; I did not have a lot to do!

Mr C.J. Barnett: We soon made you very busy quickly enough!

Mr T.R. BUSWELL: Not busy enough, apparently, Premier!

Mr C.J. Barnett: We are still working on it.

Mr T.R. BUSWELL: I am suffering now, though. The Premier's comments have thrown me. Here I am trying to be nice and polite, as instructed!

Mr M. McGowan: I thought we were the only ones who cracked those jokes!

Mr T.R. BUSWELL: It is universal and I happily take it. I have never been one to step down from a good laugh at my own expense, and I have given myself enough ammunition!

Back to the case in point, Mr Sam Morton explained to me that SAT had made findings for a range of reasons. I checked, and it was not true. In fact I struggled to find a lot in SAT's finding that reflected what Mr Morton had

told me. That immediately raised my hackles and my concern about his intent. He lobbied me very hard to get this government to adopt some changes to—I cannot remember which; perhaps someone will remind me—a piece of state legislation. During those conversations I became aware that he had lobbied the former minister, the now member for Girrawheen. To her credit, I think she gave him about the same treatment I gave him; that was, to polish her shoe on his backside! Maybe not; maybe she was wearing a sandal that day!

Ms M.M. Quirk: I didn't know I was so athletic!

Mr T.R. BUSWELL: It could have come up from a long run!

That did not progress. Of course, there was considerable lobbying within government for that to progress but it did not.

Then there was an attempt from the commonwealth with Mr Randall et al to get things happening with the Ripoll—have I got it right now?—inquiry and subsequent information. I will get to that in a minute. Again, that was a dead end. One of the things we often do when we do not get our own way and what we want does not deserve support, is find a whole lot of other victims to attach ourselves to. I think what has happened here is that, rather cunningly, Competitive Foods—Mr Plowman in particular, who I notice is not slinking around the halls of Parliament this time—has taken good advice no doubt from some people in this place and cleared off. Competitive Foods has found some other victims to attach its argument to, to make it easier for us to support. That support is under this umbrella of giving franchisees a fair go. It is under this umbrella of introducing this good faith provision. But there is another kicker in this bill in and around clause 14, which gives people about six years to go back and deal with matters around a contract. That is the Competitive Foods kicker.

I have to say to the house that I am astounded when I look back at this process. Competitive Foods has not given up; it is still going. As I said, some members, naively, I think, but well intended, introduced this bill. I am astounded that the house is being misused in this way. I am astounded that we are here seeking to deliver legislation for people such as Mr Plowman, who have deep pockets and the capacity to employ people. He is someone who, in a previous life with a lobbying and consulting firm, had the uncanny knack of turning a good medium-sized business into a small business.

Mr P. Abetz: Have you read any of the submissions?

Mr T.R. BUSWELL: I have not got to that yet, member for Southern River; I am merely outlining my view, as I am perfectly entitled to do so.

Mr M.P. Whitely: Wasn't he a former Liberal Party staffer?

Mr T.R. BUSWELL: No; not that I am aware of.

Mr P. Abetz: He was.

Mr T.R. BUSWELL: Mr Plowman has never been a Liberal Party staffer.

Mr P. Abetz interjected.

Mr T.R. BUSWELL: He worked for the Government Media Office. Let me go back. I have had the opportunity to see that this is a second bite at the cherry. I am telling members what I believe has happened. I think the member for Kingsley alluded to that and I am pretty sure the member for Riverton will allude to that. I think it is unfortunate that the proper processes of government are being subverted and the Parliament is being misused in this way to deliver legislation to people with deep pockets and influence. It is a point that is very important to make and I may make it again as I progress through this debate. I have 48 minutes to go so there is plenty of time to reflect on that, member for Mandurah. I can see him looking on excitedly!

Before I conclude, it is important to understand the nature of the dispute between Yum! Restaurants and Competitive Foods. I am searching through my notes. Not a lot of people know the nature of the dispute. Evidence was taken by the commonwealth Joint Committee on Corporations and Financial Services, which the member for Cannington referred to earlier, as part of the Ripoll review. Evidence was given by Yum! Restaurants. The question was asked—I am paraphrasing—of Yum!: why have they not renewed Competitive Foods' contract? On page CFS 74 of Friday, 17 October 2008 when Yum! gave evidence—I am not sure what city it was in—Yum! basically said, "There has been an irreparable breakdown in trust", and it went on to say, "There was an agreement in 1999 …" The agreement was principally that the principal, Mr Cowin, and others —

> …would not own pizza businesses that competed with our brand, Pizza Hut. We subsequently discovered that, through a complex trust arrangement, members of the principal's family did in fact retain a 75 per cent interest in Domino's Pizza, the largest chain in Australia".

Talking about the breakdown of trust, the evidence states further on —

> … there is a long trail of communication where there was clearly hiding of the facts and it took four or five years of digging into that until the truth came out. This led to a breach of trust.

Yum! has said that it has got to the end of the period. It no longer has trust and confidence in its franchisee, and it will terminate the agreement. I will not go into the rest of the detailed submissions made by Mr Baladi to that committee, but it is fair to say that there was a breakdown in trust. The reason that Competitive Foods contracts are no longer being renewed is that Yum! quite simply does not want to do business with it. Is that a matter we should be legislating to provide remedy to? I personally do not think so. I do not think I am the only one who does not have that view. It certainly was the view of Craig Emerson, which I will deal with in a second.

I want to look at some of these reviews—as I said, I would like to talk about three in particular—and then have a look at this bill and in particular the excellent work done by the committee in opposing this bill. On Thursday, 25 October 2007, the member for Warnbro raised an issue in a grievance motion in this house. He must have been a new pup here then. He used to wear a wetsuit under his suit.

Mr P. Papalia: I was elected in February.

Mr T.R. BUSWELL: It takes a while to settle in. Actually, I remember the day of your by-election. It was a helluva hot day. Remember that? It was a corker.

Mr P. Papalia: I remember that. A one per cent swing!

Mr T.R. BUSWELL: That was one of those things where you have an expectation which you do not meet—that is, on our side in terms of our vote. The member raised a grievance in relation to this matter. Specifically, it was related to the Rockingham KFC restaurant. Then Premier, Hon Alan Carpenter, said "Yes, we are going to get onto it. We are going to appoint Mr Bothams to carry out this review." He went on to say some nice things about Mr Bothams. He said —

> The Minister for Small Business has advised me—I thank the minister, who is in the chamber, for her cooperation—that she will take action to initiate an inquiry into the operation of franchised businesses in WA that will report back by 31 March 2008. We have been fortunate in securing Mr Chris Bothams at short notice to chair this inquiry. He is the manager of the Small Business Centre in Gosnells and is a very well known and accomplished franchisee. He has twice won the WA Franchisee of the Year award, and in 2002 he won the national Franchisee of the Year award. In 2004 the Australian Publishers Association voted Chris's Dymocks bookshop at Westfield Carousel the WA Bookshop of the Year. Chris has also written a masters thesis on the secrets of successful businesspeople in the franchising industry.

The reason I read that out is to highlight to the house that Mr Bothams was an eminently qualified individual to conduct a review into franchising. He subsequently conducted that review. Not unusually it was entitled, "Inquiry into the Operation of Franchise Businesses in Western Australia". It was finalised in April 2008. It became known generically as the Bothams review. It was a very good review. The Bothams review made 20 recommendations, give or take. Those recommendations are around a whole range of things. A lot of the things were issues that the member for Eyre alluded to, and quite rightly so. A lot of them are issues that the member for Cannington and the member for Kingsley alluded to. I am sure, not that I have read his comments in *Hansard* recently, that the member for Southern River also perhaps alluded to them. Those 20 recommendations dealt with things such as education. They dealt with issues such as disclosure and due diligence. They dealt with issues such as the end-of-agreement arrangements, dispute resolution, enforcement and so on. Importantly, in the last paragraph of the chairman's letter to the minister, he says —

> The Inquiry recognises that franchising is of national importance and deals with Australian brands. Importantly, it does not recommend separate stand alone state regulation. Consequently, the majority of the recommendations are framed in such a way that the Western Australian Government has the opportunity to provide national leadership by requesting the Commonwealth Government take a certain course of action.

It specifically recommends against separate, state-based, stand-alone legislation. He highlighted a whole range of reasons, particularly relating to the fact that franchisees and in some cases franchisors operate right across the nation, and it would create undue, complicated and costly confusion.

The then government, the now opposition, by and large adopted that view. In fact I do not think there was dispute with any of the recommendations of Mr Bothams. My recollection, although I do not have the *Hansard* to support it, is that the minister eventually took those recommendations to the commonwealth via the Small

Business Ministerial Council or whatever that body is now referred to as. That was done; it went off to the commonwealth. An important point to note is that Mr Bothams was of a very strong view that the best form of regulation would be a national form of regulation of franchising. It is also important to note—contributors to this debate have made this point—that he also highlighted that, by and large, franchising in Western Australia was working well. Yes, there are a few bad apples; there are a few bad apples anywhere. However, I think his advice to us was, "Don't throw the baby out with the bathwater when it comes to regulation of franchises".

We move on to the commonwealth's reaction. We had people such as one of the confirmed attendees at the famous Rockpool dinner, the federal member for Canning, who has long pushed this. I think he encouraged me as the state minister to adopt state laws. My advice to him was that, if his argument is so compelling, he should do what he should do and focus on commonwealth laws and change those. In fact it is probably a discussion that is worth having in this place, because the arguments are not that compelling. To my understanding, the federal Liberal Party certainly in government and certainly in opposition has not said a lot in relation to franchising and in particular to the course of action outlined by Minister Emerson. I am sure it said more than when it was in government, but it is always easier to say more in opposition than it is in government, as I have learnt. I am often reminded in quotes I have made previously in *Hansard*.

The commonwealth set up the Ripoll inquiry, which looked at the issues around franchising. It recommended a range of changes. I want to work through some of those. One of the issues it pointed out, and members have been accurate, was the need to introduce a good faith requirement. That was not the view of the minister, Craig Emerson, and it was not the view of the commonwealth government of the day. The commonwealth then made some changes, recommended by Ripoll, to what is now the Australian Consumer Law, which I will talk about in a minute, and also to the framework that franchisors operate within.

The other thing that the federal minister did was to establish the expert panel that I mentioned earlier, specifically to look at issues of unconscionable conduct and the Franchising Code of Conduct. I just want to share with the house some of the observations of the committee. I will work through them slowly and methodically, if I can. Firstly, that committee acknowledged that some changes had been made in particular to the code of conduct and also to other federal legislation. The member for Kingsley indicated that occasionally we just have to sit back and understand what impact the changes that are made are having. That is exactly what this expert panel recommended. I am referring to page xiv in the foreword, section 4.4. It states —

> There should be more research (particularly empirical research) carried out concerning the interests of small business, particularly with respect to the effectiveness of the legal frameworks of the TPA and Franchising Code in protecting these interests. Such research is necessary in order to inform an evidence-based platform for review.
>
> …
>
> The impact of the changes the Government has already announced —

These are the ones that I was talking about before —

> concerning unconscionable conduct and the Franchising Code, and any changes arising out of this report, should be a particular focus of this research framework.

It then goes on to state —

> A period of three to five years would provide sufficient time to evaluate evidence of the effectiveness of these changes.

In other words, a commonwealth expert panel has said that changes have been made to the code of conduct and around unconscionable conduct and certain actions that may or may not be taken, and that the best thing to do is to see what impact those changes will have on the industry.

Mr P. Papalia: What year is that?

Mr T.R. BUSWELL: It was presented in February 2010. It is the most recent body of work that I can find instigated by government or Parliament.

I now talk about what the expert panel was asked to do by the minister. The panel was asked to do some more work on unconscionable conduct and to look at changes that could be made to the Franchising Code of Conduct that would prohibit specific behaviours, with particular reference to five behaviours, that may be inappropriate in a franchising agreement. In other words, rather than the introduction of the good faith clause, it said there is perhaps another way—that is, by identifying the key areas in which issues arise and trying to deal with those specifically. Those five behaviours included unilateral contract variation, which is, I am sure, an issue of concern

to a number of franchisees; unforeseen capital expenditure; franchisor-initiated changes to franchise agreements in which a franchisee is trying to sell the business; attribution of legal costs, which I think was mentioned by the member for Eyre; and confidentiality agreements.

Dealing specifically with the issue of good faith, the report states —

> 'Good faith' is a concept of relevance to unconscionable conduct and franchising relationships. The Government has decided —

This is the commonwealth government and Minister Emerson —

> not to introduce a general good faith obligation into the Franchising Code. The Government has also decided to deal with the actual concerns which have been raised in the franchising sector about business conduct by addressing them directly in the Code …

That is the five behaviours that I outlined earlier. The report goes on to state —

> Many small business disputes in fact fall outside the bounds of the TPA and the Franchising Code, and would be better dealt with as business disputes and not as breaches of the law which require regulatory action. Jurisdictions should look at ways to develop and harmonise early intervention dispute resolution mechanisms for small business.

Well, guess what? That is happening now in WA with the introduction of —

Mr P. Papalia: It did not happen at KFC at Rockingham. There were 40 employees when I made my grievance and now the shop is shut.

Mr T.R. BUSWELL: Yes. The reason the shop shut was a dispute between two private businesses, neither of which could be described as small.

Mr P. Papalia: Ultimately that was the outcome. I know you like to overlook that, but that was what drove the grievance.

Mr T.R. BUSWELL: No; I am not overlooking it.

Mr P. Papalia: You are trying to infer that other things were going on, but that is what drove the grievance.

Mr T.R. BUSWELL: I understand that. However, let us not forget that other KFCs have opened in WA following the closure of some that had historically been operated by Competitive Foods. I think that is a separate commercial dispute between two businesses, Yum! and Competitive Foods, neither of which I imagine would qualify to go before the Small Business Commissioner. I hope they do not! The point made by this panel of experts specific to franchisors is that there needs to be a better, less legalistic mechanism to deal with many of these things, and that is exactly what the Small Business Commissioner is. That is why we were so supportive of the role of the Small Business Commissioner. The member for Cannington mentioned that the Victorian Small Business Commissioner is very successful. I met with the Victorian Small Business Commissioner. It is a great model. I do not think that we have done enough to sell the value of the Small Business Commissioner to small business. Disputes, be they property related or, as in this case, with a franchisee, can have a huge impact on small business. The member for Cannington highlighted the great success of the Victorian Small Business Commissioner in dealing with these types of issues. The Victorian commission operates within a legal framework in which there is no state-based legislation governing the franchise relationship. There is no need for state-based legislation to govern the franchise relationship. The Victorian Small Business Commissioner still operates and is still able in a non-legalistic, relatively simple and relatively cost-effective way deliver on these matters. I wanted to highlight that because it is important to note that that was stated in 2010, and we were of course straight onto it—one could say, almost instantaneously, member for South Perth.

This report refers to a couple of other things, especially in relation to good faith. I again want to read from page 84 of the report. I think it is chapter 4 of the report. It makes the same point as the member for Cannington. The report states —

> Recommendation 8 of the Joint Committee inquiry —

That is the Ripoll inquiry —

> into franchising concerned the introduction of a general good faith obligation into the Franchising Code. In response, the Government agreed with the intent behind the good faith recommendation 244, but chose not to pursue a general obligation.
>
> Instead, the Government committed to pursuing 'more certain and targeted' improvements to the regulation of franchising.

That is a reference to the five behavioural traits I discussed earlier.

Dr G.G. Jacobs: With all those, if you added on to that good faith, how would that be detrimental? I mean, it would certainly add to those good things, wouldn't it? They wouldn't be negative.

Mr T.R. BUSWELL: The advice is that it will not do anything. This is the whole issue; the issue that we made at the start: this legislation does nothing for franchisees but does everything in relation to the application of one clause and one clause only; namely, clause 14, "Redress orders". The bill does nothing for franchisees unless they are caught up in the legal scenario covered by clause 14(1)(b), which is of course the legal dispute between Yum! and Competitive Foods. Member for Eyre, no-one has been able to provide me with an adequate answer to my next question. If that is not the case, why is Competitive Foods funding legal advice and the services of Mr Plowman to work around Parliament to try to convince members that he is right? Competitive Foods would not be doing that notwithstanding the obvious benevolence of Mr Cowin who was a long-time sponsor of the mighty West Coast Eagles.

Dr A.D. Buti interjected.

Mr T.R. BUSWELL: He obviously has some positive traits.

Mr P. Papalia: He can't be all bad.

Mr T.R. BUSWELL: I think he has been rolled, but that is not the point. Perhaps he will use this as well.

Several members interjected.

Mr T.R. BUSWELL: Members have taken me off the track. I was talking about good faith. The report further reads —

> Instead, the Government committed to pursuing 'more certain and targeted' improvements to the regulation of franchising.

Part of this approach was in chapter 3, which I have talked about.

The content of this bill is not required and it is certainly not supported by the commonwealth's expert panel. Perhaps we can stop to reflect on some of the things that have happened subsequent to the Ripoll report with further commonwealth deliberations, as there have been some changes. As I have already said, the commonwealth government has amended the Franchising Code of Conduct in a number of ways. Let us not forget that the code of conduct is a part of the framework within which the relationship between franchisor and franchisee is defined. It has clarified that nothing in the code of conduct limits any common law requirement of good faith in relation to a franchising agreement and, as I have said before, it has addressed eight issues of concern relating to a lack of information in franchising agreements. Specifically, the eight areas of concern are end-of-term arrangements, information on dispute resolution costs, unforeseen significant capital expenditure, unilateral variations to agreements, changes to franchise agreements when a franchisee is trying to transfer the franchise, foreseeable reoccurring or isolated payments prospective franchisees may incur, the scope of confidentiality obligations, and proposals by the franchisor to amend the scope of an agreement.

As an interesting aside, when we reflect on the changes that we made when the Commercial Tenancy (Retail Shops) Agreements Amendment Bill 2011 went through the house, we can see that a lot of the outcomes that bill was designed to deliver were very similar to the sorts of outcomes that these changes to the code are designed to deliver. I think that is an acknowledgement that all was not well in Camelot and that it was probably time to change some of those things.

We have made changes to the relationship between tenant and landlord, which is a very, very important part of any business relationship. The commonwealth has rightly made changes to the nature of the relationship between franchisee and franchisor. I will share some examples of the changes the commonwealth has made. For example, for end-of-term agreements, the code now requires franchisors to provide information to franchisees about their intention to renew a franchise agreement at the end of the agreement's term. This must now be provided at least six months before the end of the term or, for contracts of less than six months, one month before the end of the term. That is a positive step forward. People also have to provide specific details of the process that will apply in determining arrangements to apply at the end of the franchise agreement, including—I am assuming not limited to—options for renewing or extending agreements, the determination of exit payments and entitlements, particularly details relating to payments for unpaid stock, marketing material, equipment and other assets purchased by the franchisee when the agreement was entered into. This reflects the fact that the Bothams inquiry stated that this is best done at the commonwealth level, acknowledging there were about 20 areas within which changes had to be made. Therefore, I think it would be fair to say that the former Minister for Small Business, the member for Girrawheen, was quite successful. She is not often held up as a great reformer, but I think that in

this area we have to take our hats off to her. She has led from the front and pushed a reform agenda that has largely gone unnoticed by the vast majority—or perhaps everyone except me—of people in Australia. I take my hat off to her.

Dr A.D. Buti: It is a shame that she is not here.

Mr T.R. BUSWELL: That is all right; I will send her the *Hansard* with a bill! I do not make the point lightly of course; I am not one to waste praise. A lot of these changes were identified in the Bothams inquiry. The process started by the member for Warnbro and championed so valiantly by the member for Girrawheen steamrolled through the system. It has borne fruit.

Dr G.G. Jacobs: She wanted to progress good faith at the ministerial council too.

Mr T.R. BUSWELL: Well, I was not there.

Dr G.G. Jacobs: In 2008 that is what she wanted to do.

Mr T.R. BUSWELL: That may well be the case. I have just outlined why the commonwealth chose not do that. But, member for Eyre, the member for Girrawheen wanted good faith to be progressed by the commonwealth; she did not want good faith to be progressed by the state. I think that is the case in point. The member is not here to defend herself against that scurrilous accusation or attempt to take her off the reform agenda, but if it is the case that that is her view, I am sure that she said that these matters should be dealt with by the commonwealth and legislated for or regulated for by the commonwealth because, as Bothams said, the best way to deliver a framework for franchisees and franchisors is at a commonwealth level. I support that. If the commonwealth government is of a view that this should happen—which it is clearly not; I have not heard our federal colleagues, except for a couple who were at the Ripoll inquiry, say that it should—that is for it to move forward on.

Dr G.G. Jacobs: South Australia's giving them a nudge too.

Mr T.R. BUSWELL: South Australia's an interesting case in point.

The Trade Practices Act brought the second set of changes. The Trade Practices Act has also been amended to give the Australian Competition and Consumer Commission a range of new enforcement powers and increase the pecuniary penalties that will apply to franchisors or franchisees who engage in unconscionable conduct or make false or misleading representations in their dealings with each other. There are changes to not only the Franchising Code of Conduct, but also the TPA, which gives the ACCC more teeth to deal with franchising issues. Under the new enforcement powers, the ACCC can do a number of things. It can conduct random audits and take on matters for franchisees when franchisors fail to comply with the new requirements.

The Small Business Commissioner in Victoria shared with me a very interesting case of a group of tenants in Melbourne who were basically being, for want of a more polite term, done over by their landlord. They were all Mandarin-speaking tenants who had very little grasp of English, and they had literally been screwed to the ground by the landlord. The ACCC, with the encouragement of the Victorian Small Business Commissioner, acted on the tenants' behalf and was successful. That is exactly what they are saying can happen here with issues that may arise with franchisees. Under its new enforcement powers, the ACCC will also be able to conduct random audits and take on matters for franchisees, which we have talked about, and use its public warning power to alert the public to rogue or unscrupulous franchisors.

Lastly, according to this advice on the TPA, additional amendments are proposed that will require unconscionable conduct provisions to have —

> a list of interpretative principles and to unify the consumer and business-related provisions prohibiting unconscionable conduct.

My recollection—I have not read it lately—is that sections 51AB and 51AC deal with business and consumers. The argument is that we have to let some case law build up so that we can establish some principles. We might give it a hand when we can and then we will go from there.

The point I am trying to make is that a number of changes have been made to the federal framework. Those changes alter the Franchising Code of Conduct and other bits of legislation, which more greatly empowers the ACCC to act to protect franchisees. Our contention is that that is where we should be directing our best efforts in government to try to assist in this relationship. Without labouring the point, our great fear here is that we will embrace a system that will promise the world and deliver very little.

In the last snippet of time available to me I want to quickly deal with issues concerning the bill before us. As I said, in my view, this bill will lead the Parliament to deliver legislation purely designed to deliver commercial gain to an individual. This matter was looked into by the Economics and Industry Standing Committee. I am

interested to see how the member for Collie–Preston votes on this matter. He voted to support the recommendations of the committee. There was one dissenting voice—that of the member for Cannington. I am not disputing the member's right to have a dissenting voice, nor am I disputing, begrudgingly, his capacity to think through the issues around this bill. I say "begrudgingly"; please note that is with a capital "b". Good luck to the member for Cannington. However, the member for Collie–Preston, a good member of the metalworkers' left union, was not swayed by the member for Cannington's arguments.

Mr P. Papalia: Do you want to get into factions in parties not supporting or supporting this legislation? Is that what you want to talk about?

Mr T.R. BUSWELL: Given that the member for Warnbro is not in a faction and given that when he tried to get a number of members of the Labor Party to coalesce around him, and he failed to get past seven, it is not probably an issue —

Mr P. Papalia: I was going to reflect on your own party, minister. I thought that maybe we could talk about how many factions support this legislation and how many do not.

Mr T.R. BUSWELL: We do not have factions. We simply follow the glorious leader! We have one faction with one leader and we are very happy to be in that situation. I am a fan of the Labor Party—not its politics, but its history.

Mr W.J. Johnston interjected.

Mr T.R. BUSWELL: We may occasionally have subfactions, but they are splinter factions, and like splinters they can cause the odd bit of grief! Often when one removes the irritation, one does things to it that are perhaps best not described in this house. However, they are all part of the broad church that is the Liberal Party. I have always admired the factional arrangements of the Labor Party; I have told members opposite that. When I was at uni, I misguidedly joined the university ALP. I digress for a second —

Mr P. Papalia: How many different factions were you in?

Mr T.R. BUSWELL: I was in two. I started off in the right with a fellow called Michael Martindale. He was hopeless; I was attracted by his Doc Martens and his record collection. I then moved on to the centre-right, which was a splinter group —

Mr W.J. Johnston: Centre-left.

Mr T.R. BUSWELL: I mean, centre-left, which was a splinter group of the left.

Mr W.J. Johnston: That is Kevin Reynolds' faction!

Mr T.R. BUSWELL: Beautiful! Back then it was Peter Cook—he established it. They had a big split down here in the missos building. "Chuck" Bonzas was there, having consumed a bit of his mum's wine trifle, and he was very colourful! They were halcyon days; that is when we could have a decent debate.

Dr A.D. Buti: Just to correct you, minister —

Mr T.R. BUSWELL: The member does not have to put his hand up.

Dr A.D. Buti: — it wasn't a splinter of the left; it was actually people from the right and the left who formed the new group.

Mr T.R. BUSWELL: It was the freethinkers; they were the ones who drank wine out of bottles!

I have to get back on track.

Mr P. Papalia: I would like you to give an explanation of the different factions that you're talking about—your subfactions.

Mr T.R. BUSWELL: I will; thank you. The member for Collie–Preston is a member of the metalworkers' left. The member for Cannington is a member of the shoppies—generally referred to as the shoppies' right.

Ms L.L. Baker: Is this going to be balanced discussion, because you need to go through your side, too.

Mr T.R. BUSWELL: I was going to make the point that I think if I dug a bit —

Mr W.J. Johnston: Minister, are you saying you are in the same faction as the Minister for Police?

Mr T.R. BUSWELL: We are one broad church!

Several members interjected.

Mr T.R. BUSWELL: If I dug a little bit, I would find that there are probably some close ties between Competitive Foods and the shoppies.

Mr W.J. Johnston: Are you suggesting that I have been in any way —

Mr T.R. BUSWELL: Absolutely not, member for Cannington; I am not suggesting that all.

Mr W.J. Johnston: You'd better not be.

Mr T.R. BUSWELL: As I would reflect on, and as I said before, I do not think that the member for Cannington would let that sort of influence impact the way he would consider things in the committee. I have said that on the record. However, I would not be surprised if the member for Collie–Preston got a phone call from the shoppies—I did not suggest the member for Cannington did—and that they said, "Come on, Mick", and I would not be surprised if he said, "Nick off", because I do not think that he has those links. I am not saying that that definitely did happen, but it would not surprise me if it did. I am just reflecting on how the Labor Party works. Is the member for Cannington saying that that definitely did not happen?

Mr W.J. Johnston: Absolutely.

Mr T.R. BUSWELL: Is the member for Cannington saying that there is absolutely no way that the member for Collie–Preston had a phone call from the doyen of the right, Joe Bullock, who I saw out running last week? Is the member sure? Okay; that is fine then. That puts that one to bed. It is an important point to make. I was going to make the point that if the member for Collie–Preston supported this legislation at the standing committee stage, surely he has to support it in the house. I cannot see how he cannot support it. If he does not support the legislation in the house, he might even have to abstain from voting or consider his position on the committee. I do not see how he could have changed his view. He should have joined with the member for Cannington in his minority report; that is just my humble view.

Mr W.J. Johnston: They should have all joined with me; they should have all done that!

Mr T.R. BUSWELL: We do not think the member for Cannington was right. We respect his right to have an alternative view, but we do not think he was right.

Getting back to the work of the Economics and Industry Standing Committee —

Mr W.J. Johnston: So, everybody on your side who has publicly said that the legislation should be supported will vote in favour of the bill—is that what you are saying?

Mr T.R. BUSWELL: The vote will be when the vote is taken. We will move through the second reading debate and we may even have an opportunity to tease out some of the issues around the bill in consideration in detail. We are quite happy to go to that stage.

Mr W.J. Johnston: So, the Premier is not calling people in and asking them to change their votes?

Mr T.R. BUSWELL: No. He does not work like that; I call them!

Mr W.J. Johnston: Now you are doing it?

Mr T.R. BUSWELL: No, I do not. I occasionally have phone calls.

The member for Cannington is putting me off. I want to quickly talk about the excellent Economics and Industry Standing Committee report on the Franchising Bill 2010. I think Parliament was right to refer the bill to the committee. It will be interesting to hear from the chairman of the committee as he reflects on his findings. I will quickly reflect on them before I close, but, again, it begs the question of how the member for Collie–Preston will vote, because he supported the committee. He should have joined the member for Cannington in the minority report. An opportunity was available to him, but he did not take it up. The Economics and Industry Standing Committee made a whole pile of recommendations. I still think that some of the best work of the committee was done around its consideration of the Competitive Foods clause—clause 14(1)(b), the redress clause. As I said, in my view, this clause is only in the bill for the commercial advantage of a couple of people. I want to read a couple of things from the report. The committee was aghast at the prospect of these clauses applying. Let us not forget that the principal recommendation is to not support the bill, but the report states that if the house is of the view to support the bill—that is a big if—the house should effectively amend clause 13(2). In relation to clause 14(1)(b), the report states —

> The Committee recommends that, if the Franchising Bill 2010 is to proceed, clause 14(1)(b) … should be removed.

That is reflective of a commentary that the report makes about clause 14(1)(b). Paragraph 272 of the report states —

> It is this power to make a renewal order, at clause 14(1)(b), that is most under dispute in this section. A large number of contributors to the Inquiry claim that it subverts the freedom to contract that underpins Australian commercial law and will result in a perpetual right of renewal for franchisees in Western Australia. There are also concerns that clause 14(4), which provides that an application may be made up to six years after the act or omission occurs, will have extensive economic implications for franchisors.

We have to remember that the vast majority of franchisors are good operators and the vast majority of franchisees are good operators; there will always be a couple of problematic situations. It is in everyone's interests for franchisees to be successful. The vast majority of issues raised are in relation to that particular clause.

Let me raise some hypothetical situations. What happens, for example, if a franchisee takes action under this clause when the franchise was terminated perhaps five years ago? What happens if there is no property to lease? How is a contract set up when there is no premise? That is an issue. How is a contract set up if that franchise has been reassigned in that area to another person? Time dependent, because time, of course, in this place is always limited, we will probably see fit to move into consideration in detail, because we would not mind having a chat about some of these issues. As we move through those issues—I am sure that there will be a very thorough examination of the member and his advisers, if he has any, in relation to this bill—that the legislation will be exposed in a number of areas and in a way that reflects the findings of the Economics and Industry Standing Committee. A range of other issues need to be considered, and we will do that during consideration in detail.

However, again, I want to congratulate the chair and all of the committee members on their findings. There are 21 findings and nine recommendations. If we cast a historic perspective over reviews of franchising in Australia, the findings are not dissimilar to those resulting from other reviews and inquiries. That would lead us to conclude that we have a pretty good system. Does the pretty good system need to be made better? Of course it does. The issue here is the mechanism by which we make it better. Our very strong contention, as was the contention of the former government, is that the mechanism for making it better is indeed in the federal sphere. The mechanism for making it better is changes to the Franchising Code of Conduct and changes to other legislation, in particular legislation that enables or empowers the Australian Competition and Consumer Commission to act to protect franchisees. We are happy to work through consideration in detail to enable the house to convince itself, as I have been convinced, that the findings of the Economics and Industry Standing Committee are right.

I will perhaps conclude where I started; that is, firstly, with the comments made by the member for Kingsley—comments supported by the strengthening of statutory unconscionable conduct and by the Franchising Code of Conduct review—that changes have been made. We need a few years to understand the extent of the impact of those changes on the relationship between franchisee and franchisor. At that time we can do the work which we need to do and which, to quote again, "is necessary in order to inform an evidence-based platform for review". That is very, very important. Secondly, we have to make sure that we do not promise the world and deliver an atlas. We must not create an expectation with franchisees around Western Australia that we can solve all their problems, because that is what they are looking for. When I talk to them, I find that that is what they think is going to happen. The member for Southern River may shake his head. I speak to people. I am entitled to listen to what they say. Unfortunately, the member is not privy to every conversation I have. When he is privy, he can shake his head. I know that he might get around a bit, but not quite that much. The issue here is that people think we are going to solve every problem in the world, and we are not going to. The people they will blame for that are not in the commonwealth government, and probably not even in the state government; it will be each and every one of us individually for promising something that we cannot deliver.

Mr Deputy Speaker—I thought you had nodded off; just checking!—there is one other thing that I want to talk about. The former government established a process by which legislation and regulation should be reviewed in this state. It is called the regulatory gatekeeping unit. Members of Parliament should always build a proper analysis of how their change to legislation will affect business by developing a proper regulatory impact statement. It is the way that mature Parliaments pass laws. It should be that way that mature MPs go about their business. Very few pieces of legislation are passed by the commonwealth without a regulatory impact statement. Of course, there is no way of understanding the impacts, either intended or unintended, of this bill on costs of business and the nature of business relationships in WA. To pass this bill without a regulatory impact statement and to bring it to the Parliament without a regulatory impact statement, in my view, is grossly negligent, because it clearly has the capacity to add costs to government, and it clearly has the capacity to add cost and complexity to doing business. The reason we have regulatory impact statements is to stop well-intentioned activity having a range of unintended consequences that can cost business—business is both a franchisee and a franchisor—a lot of money that no-one ever intended. At the very, very least, this legislation should be subject to a regulatory

impact statement, because I cannot tell what the impact will be, and no-one else can tell, until we have done the work. I am sure, notwithstanding his deep pockets, that Mr Cowin did not choose to fund a regulatory impact statement. Maybe if I had raised this earlier, he would have. He could have paid Mr Plowman some more money to run off and fund a regulatory impact statement. It should have been done. In government, the current opposition put the framework in place because it is sensible and it is good. In government, we formalised it, and we now use it diligently as we assess every bit of legislation and/or regulation that could have an impact on the cost of business. So not only will this legislation not deliver what it promises, but also it could impose a range of costs and consequences on business that have not been considered. As I said, if time permits, we may get to consideration in detail, and we will work through this very diligently.

DR M.D. NAHAN (Riverton) [5.44 pm]: I will make a few comments on the Franchising Bill 2010 and try to not duplicate too much of what the Minister for Transport has said. As the minister indicated, I am the Chairman of the Economics and Industry Standing Committee and we undertook a review of the bill that is under consideration. The committee was asked to do that by Parliament. We submitted our report to Parliament during the last sitting. We have yet to get a response from Parliament. It is very hard for Parliament to give a response collectively, but that is the usual process. As the Minister for Transport indicated, we made the —

Point of Order

Mr W.J. JOHNSTON: I draw your attention to the clock, Mr Deputy Speaker.

The DEPUTY SPEAKER: The clock is not going.

Debate Resumed

Dr M.D. NAHAN: As the Minister for Transport indicated, we made a range of recommendations with respect to the bill. I have never been involved in a franchising issue before. I was not lobbied by Yum! foods or Competitive Foods Australia. I came to this issue as a kind of cleanskin. The committee's view is that some of the reasons for the legislation that has evolved in the commonwealth and the state and for the numerous reviews over the last 20 years are still relevant. One is that there are clearly issues regarding access by franchisees to adjudication and dispute resolution, and they are ongoing issues, in my mind. Secondly, as the member for Cannington rightly stated, there is an almost necessary power imbalance between particularly the small franchisees and the franchisors. A franchise arrangement is a bit like a marriage. Franchisees and franchisors have to work together. They are actually the joint owners of the business structure. The franchisors—this is a generalisation—also have overriding rights. For instance, on a national basis, franchisors have responsibility for marketing across nations and have to allocate marketing expenditure. They are responsible for brand name development, maintenance and defence. They are responsible for a lot of collective activity. That gives the franchisors quite a bit of sway over the activities and expenditure of the franchisees. It is a necessary part of the business. Thirdly, franchisees often, but not always, are small scale, and get into small business because it is easier with a franchise than buying a business. Often they are highly geared and use their house as leverage. So they are vulnerable. If they are in a marriage, it gives one party a bit more power over them, and there are all sorts of difficult disputes.

I congratulate the member for Southern River for raising these types of issues because they are relevant. They are still relevant even though we have had 20 years of reviews and studies. My view—I am not speaking on behalf of the committee now—is that there is further to go on this issue. As the Minister for Transport stated quite clearly, small businesses around Australia are generally doing it tough. The economy is not good out there, particularly in the retail sector.

However, I think the bill had a couple of major flaws that led to fundamental flaws. First, it did not go through appropriate process; that is, it did not go through the usual channels. It did not go through the bureaucracy, which has history in, and knowledge of, this issue and has had carriage of the issues for a long time. It did not go through a cabinet process; it did not go through a regulatory review. I think the Parliament improved the legislation by sending it to the committee for review, but because it was sent there by the Parliament rather than by a minister, it was not incumbent on the Parliament to respond to the committee's findings, which often are fundamental. So it was not put through the appropriate process of development, argument, adjudication and review.

As the Minister for Transport indicated, this thing has had, quite clearly, an origin in a commercial interest between Yum! foods and Competitive Foods Australia. The committee saw that; it was quite obvious. The team for Competitive Foods was in the public gallery most of the time, and, clearly, expenditure was being committed. It was clear to me that Competitive Foods was helping with drafting, promoting, arguing and lobbying, and was very instrumental in that. It is Competitive Foods' right to do so, but given the failure of the bill to go through

the process that is designed to add balance to the review so that the views of all sides are put, and checks and balances against undue influence are put together, it was open to the excessive influence of a commercial entity. This commercial entity was not representing small franchisees; Mr Cowin is one of the largest and most successful franchisees and franchisors in Australia, and good on him. He also made it clear on 6PR that he supported the bill because he thought the inclusion of a good faith clause in a state bill and the associated redress would help him in his commercial dispute with Yum! brands. That is what Mr Cowin stated. He was promoting the bill to advance his commercial aim. He also thought that it might have collateral benefits to small franchisees, which is what I would like to go through.

One of the problems that I have, and which the Minister for Transport raised a number of times, is that small franchisees have a lot of issues that are ongoing and severe that can lead to a great deal of pain and damage to individuals, families and businesses. They are real. The various proponents of this bill have put together a submission that was made separately to me and to the Economics and Industry Standing Committee about the franchise medium. This is publicly available on the committee's website. Basically, they give assessments, most of which are media reports and some reports from business journals, stating some of the problems. I am not in any way disputing the reality, the pain or the arguments of either party—I am not in a position to do so—but it is absolutely misleading to say that this bill will in any way address the problems highlighted in this submission. Most of the problems arise from a franchisor going bankrupt—going bust for whatever reasons. This bill will do nothing for that; in fact, 75 per cent of these examples deal with bankruptcy. A number of them deal with franchisees getting into difficult financial positions and not being able to meet their requirements under the franchise agreement. Another issue is when the franchisor's business goes bankrupt and they walk away, or it is the inability to comply with marketing and brand name requirements. This bill will not help in those circumstances. As the Minister for Transport indicated quite clearly, we are gilding the lily badly, and it will be incumbent on us, when the franchisees go forth and the proponents of the bill say they have produced a bill that modernises franchising and gives redress to franchisees for all sorts of things, including the stories included in this submission. We are misleading people and we will be held accountable for that. I want to express my strong view that this bill misleads and it will not deliver as promised or very much at all, and there are better ways for the pursuit of this.

One of the other issues is that the proponents of the bill have said that WA is not alone in this and that South Australia is pursuing a similar route. Tony Piccolo, the member for Light, who is now Parliamentary Secretary to the Premier, right before the last South Australian election —

Mr M. McGowan: Which Premier?

Dr M.D. NAHAN: The current one; he has not changed. I think they change on 20 October, which is a few days before his tenth anniversary as Premier, and he is a bit despondent about that.

I will get back to the issue. Piccolo is in the position that the bill he had carriage of was caught by the prorogation of Parliament before the last South Australian election. South Australia has had the powers, the time, the inclination and the commitment to put together a similar bill and it has decided not to do so.

Mr P. Abetz: It was introduced.

Dr M.D. NAHAN: They have gone forward and used it to establish a Small Business Development Commission along the lines of the Victorian model. With the advice of the ex-Victorian Small Business Development Commissioner, now retired, that bill is picking up some issues that we should consider in our own commission. In my view, that would be a better route. The reason South Australia is doing this is the same reason that the Economics and Industry Standing Committee gave: it thought it was best to do it at the commonwealth level. The commonwealth is committed to a review of all its legislation in 2013, and, in its report, the Economics and Industry Standing Committee saw no problem with the commonwealth putting in a good faith clause in its own Franchising Code of Conduct. If we are going to lobby, it is agreed that national legislation is the best way. The commonwealth has committed to a review in 2013. A consensus is developing that a good faith clause could be included. Graeme Samuel, who was the Chairman of the Australian Competition and Consumer Commission, was against this for various reasons—I am not criticising him. He has left and there is a new chairman, Mr Sims, and the ACCC is the place to do it. That is the way to do it if we want clean legislation. Putting in a good faith clause is not earth shattering. As the member for Cannington said, it has been included in many other bills. I actually think I support the member for Cannington. I cannot think why the Minister for Trade, Hon Dr Craig Emerson—who by the way is an old friend of mine; we did our PhDs together—resisted so much.

Mr T.R. Buswell: Did you go to any parties with him?

Dr M.D. NAHAN: Yes; he liked to party.

South Australia is not following the same route. It has often been said by the people supporting the bill that the commonwealth has not acted. It has not acted on good faith and it did not put penalties in the code, no doubt, and that is, essentially, what this bill proposes to do, but to say that the commonwealth has not acted is not understanding the huge increase in changes designed to facilitate the problems associated with franchisees in this country over the past 15 years. The commonwealth has changed the code repeatedly. It has totally changed Australian consumer law, which just recently came into place and which addresses many of the issues. It changed the Competition and Consumer Act and the trade practices legislation, all in part designed to improve access of small franchisees to the law. It has also beefed up the ACCC's enforcement power and its penalties powers. One of the complaints has been that the ACCC has failed to act. I think that the ACCC has not given this top priority, but to say it has failed to act is simply not true. It has looked at many things and many times it has acted. It has looked at issues and could not substantiate the claims. Like all, let us say, regulatory bodies, the ACCC has to look at the case and find out whether it has a reasonable prospect of getting a conviction and also that the case it is pursuing sets a precedent. The ACCC has had two recent cases. One is Allphones, which is a phone franchisee that got into some problems in the early 2000s, and the ACCC finally got an indictment on unconscionable conduct and the fine, from memory was $3 million, against Allphones. By the way, it took nine years and many millions of dollars to achieve that. The ACCC pursued a couple of other cases. The ACCC is doing things, although not enough, and it has expanded its powers. I might add that one of the findings that disrupted me so much as a member of the committee is that this bill proposes to shift the responsibility for enforcement in WA of the Franchising Code of Conduct, a commonwealth code adopted by the states, from the ACCC and the commonwealth to the state. If the bill does not do that, then it does nothing. If there is no enforcement under this bill by the franchisees, either on their own behalf or by the state, nothing will happen; it will do nothing. The bill proposes a shift of regulatory responsibility from the ACCC to the state, and a shift of cost from the commonwealth to the state. Quite honestly, there is a cost involved. Many of the proponents say it is not costly; it is cost-free. It is not; it cannot be. If it is cost-free, we are doing nothing and therefore the bill achieves nothing. Personally, I do not think the bodies that will be in charge of enforcing this bill, whether it is the Commissioner for Consumer Protection or the Small Business Commissioner, will have any more ability, expertise or resources than the ACCC.

I might add that I think all the evidence we had pointed to the fact that the real problem that small franchisees face is access to justice, decision making and adjudication. This bill will still require them to front up and take an action against the franchisor in the courts at great cost. Hundreds of thousands of dollars will be required. Small franchisees cannot afford that. They need low-cost adjudication. That is what the various departments advised the committee. That is what they should have been listening to in the formation of the bill. The Commissioner for Consumer Protection advised the committee of her concerns about the potential number of cases. We essentially asked her whether this will make a difference. Depending on the resources given, she said that she would be constrained by the number of cases that she could take up. Consumer protection locally has a reputation that generally we try to conciliate, educate and deal with every single matter that is presented to us as a formal complaint. It tries to deal with them all. Obviously from time to time it has to act in the public interest. If we put this on the commissioner, she would have to take her resources away from addressing everybody at a low cost to running expensive long-winded test cases. The report states —

> *It could be argued that the Franchising Bill could potentially provide grounds for these franchisees to bring action against the franchisors.*

It could provide a mechanism for franchisees to take franchisors on. It continues —

> *However … it could be argued that these issues appear prima facie to relate to misrepresentation …*

It is very difficult for franchisees to utilise this bill because they would still be incurring very large cost imposts. Indeed, the conclusion of the majority of the committee was that the bill would not address the primary problems facing franchisees. We asked officers of the department how much it would cost, and they said, "How much do you want us to do? That is an executive decision. How much are you going to give us?" They came up with an estimate of about $4 million. If they wanted to do it more expeditiously over more cases, it would cost more. They also said that when there is a clause of good faith, there is the problem of having to define it. Having developed case law, there is a problem of defining it. There is a lot of case law defining good faith and unconscionable conduct provisions but we were advised that it is uncertain whether that is transferable. The bill has a narrow definition of good faith and it would have to develop case law to redefine that. It would not only impose a cost bearer to take action but also create uncertainty, and the development of a precedent would take a great deal of time.

There are a couple of issues that we will deal with during consideration in detail relating to the recommendation of the committee. The committee has a number of recommendations. If Parliament was to agree to the bill, it

would make changes and amendments. We did not vote on those individually, at least in the report, but some of them need to be addressed now. The first is the good faith clause. This bill has a very narrow—indeed, unique—good faith clause. I am no expert on it. We had a large degree of disagreement on this but with the consensus of lawyers—let us say the lawyers who were not hired by other participants or people with arguments in the debate—we were generally of the opinion that that is a very narrow definition. They were uncertain about how judges would interpret it. The general conclusion was that if we are going to put one in, we should have a general undefined one and allow the judges to decide—to tease the issue. The issue was put to regulators that good faith depends on the context of the case. Issues such as being cooperative and honest are open to a great deal of debate and might not even reduce the amount of debate time by lawyers. A series of remedies were put forward in the bill. The Minister for Transport mentioned the redress order.

Standing Orders Suspension — Motion

MR M. McGOWAN (Rockingham) [6.05 pm] — without notice: I move —

> That so much of the standing orders be suspended as is necessary to enable the Franchising Bill 2010 to proceed through all stages without delay between the stages and to take priority over all other notices of motion and orders of the day until it is finally dealt with.

For the information of the house, we have been considering the Franchising Bill 2010 since 4.00 pm. We commenced consideration of this bill when the member for Southern River read the second reading speech on 13 October 2010. In the meantime, we have had a parliamentary committee inquiry. We have had a report presented to the house from that inquiry by members of the economics and industry —

The ACTING SPEAKER (Mr P.B. Watson): Members, if you are going to have a meeting, could you have it at the back, please.

Mr M. McGOWAN: We have seen a report in the house by members of the Economics and Industry Standing Committee, a considered report in which they examined the issues contained within the bill. All in all, we have had nearly a year of consideration of this issue —

The ACTING SPEAKER: Members!

Mr M. McGOWAN: — whilst this bill has been sitting on the notice paper of the house. Prior to that, the member for Warnbro, in 2007, commenced the process of considering this issue. He raised a grievance. There was an inquiry by an individual with experience in the area of franchising, who presented a report. There has been a federal inquiry. This issue has been considered in a range of ways. That is the background in a nutshell. Since 2007, this bill has been subject to considerable examination by the Parliament by inquiry after inquiry. The bill has been on the notice paper available for members to examine over the course of a year and it has culminated in coming before the house today.

The ACTING SPEAKER: Members! I have warned certain members in the house about having meetings here. If you want to talk and have discussions, you can go outside the chamber. We have a member on his feet.

Mr M. McGOWAN: We have seen this issue raised over three years. The bill has been before the house for a year. As I indicated, it was examined by a parliamentary committee in some depth. That committee report has been available since before the winter break for members to examine.

In that context, the opposition allowed its one period of time during the parliamentary sitting week to be available to members of the Liberal Party to move a private members' bill. We allowed our one segment of time to members of the Liberal Party to move and debate their bill.

The ACTING SPEAKER: Member for Riverton, I call you to order for the first time.

Mr M. McGOWAN: If the government was to allow government time for the consideration and debate of that bill, there would not be an issue. We have allowed our three hours of private members' time this week, in which we would have had important issues of our own to debate, for members of the Liberal Party to raise their issues. My view is that we should not allow any further opposition time to the Liberal Party for its legislation next week, the week after, or the week after that. It is my view that it is not for the Labor Party to allow its time to be used —

Several members interjected.

Mr M. McGOWAN: Am I able to speak, Mr Acting Speaker? I am not doing anything aggressively; I am just doing this in a factual way.

We have allowed our three hours this week for consideration of this legislation; we expected that the house could have decided upon this bill within that time. We do not believe that further time of the state opposition should be available to members of the Liberal Party to debate its legislation. What we will offer to the government and members of the Liberal Party is this —

Dr K.D. Hames interjected.

Mr M. McGOWAN: This is the opposite of a gag motion.

We are offering to members of the Liberal Party, members of the National Party, the Independents and the Greens the opportunity to allow this legislation—which members of the Liberal Party obviously regard as some of its most important legislation—to continue considering this evening —

Several members interjected.

Mr M. McGOWAN: Please just listen.

We are offering the opportunity for this legislation to continue to be considered this evening, or to continue to be considered tomorrow, during government time. We are more than happy to allow for that opportunity to be available —

Several members interjected.

Mr M. McGOWAN: We are more than happy for those Liberal, Independent, National and Greens members who might think that this legislation is important to come with us and vote for it to have consideration this evening and tomorrow. We are more than happy to make that offer, and that is what this offer is. If the government does not take this offer of voting for this suspension—the government and the Minister for Transport have indicated to me in conversations that there is so much consideration in detail to go—it is quite obvious what will take place.

Mr T.R. Buswell interjected.

The ACTING SPEAKER (Mr P.B. Watson): Member for Vasse, I call you to order for the first time.

Mr M. McGOWAN: If we allow this legislation to come back before the house next Wednesday evening at four o'clock, during opposition time, once again this legislation will be talked out for the entirety of that three-hour period. If we allow it to come back the following week and the house sits during our three-hour component, we will once again be talked out for the three-hour period, and it will never get to a vote. Members opposite are smiling because they all know it is true. They all know that that is exactly what they will do; they will filibuster this bill so that it never gets to a vote. That way they will avoid the embarrassment of a split in their ranks, and avoid the sight of members of the Liberal Party crossing the floor to vote with members of the Labor Party. That way the government will avoid the embarrassment of a defeat on the floor, simply by using up time. I am not prepared to let the government do that. What we are saying to the government is: this is the government's opportunity to have this legislation come to a vote in this house. It does not have to be rushed, but we will use government time and not opposition time for that debate. That is our offer to the government.

Mr C.J. Barnett interjected.

Mr M. McGOWAN: The Premier does not have a choice, because there will be a vote. That is where we will see who supports this legislation and who does not. The Premier does not have a choice; he may think he is the emperor, but he does not control everything.

We will have a vote in which members of the Liberal Party, the National Party, the Independents and the Greens can decide whether they want this legislation to continue being considered by the house. However, there is one alternative: if the Leader of the House and the Premier were to indicate to the opposition—they can do it across the house—that they would be prepared to give government time for this legislation tomorrow or next week to allow it to be concluded at a time of the government's convenience, I would take them on their word and we would not need to put this matter to a vote. I think that is a fair offer.

Several members interjected.

The ACTING SPEAKER: Member for Vasse, I call you to order for the second time.

Mr M. McGOWAN: If the government says to the opposition that this legislation is important and it allows government time to be used over the next few weeks so that it can be considered and the house can decide on a matter that has now sat on the notice paper for nearly a year at the behest of the member for Southern River, we will take the government at its word. I think that that is more than fair, and that is the way the Parliament should work—working together across the chamber. I will call this motion off, and members opposite will not have to

vote on it tonight, but over the next few weeks we would like to see the legislation come back and be considered and decided on by the house, whether the house decides to support it or not.

The alternative is that members of the house will this evening need to put on record whether they are prepared to allow this matter to be properly debated tonight, tomorrow and next week until such time as it is finally decided. I think that is reasonable. Franchisees around Western Australia would like to have an outcome for this legislation, rather than have it sit on the notice paper, never decided and never voted upon, because the government cannot agree on what it wants to do. Franchisees want an answer; I think the public needs an answer on whether this matter is important to the government and whether there will be an outcome on this matter during the course of sittings over the rest of this year. I think it is reasonable to request that. Otherwise, the government could give me an assurance across the chamber that it will deal with it over the next few weeks, or this year. But I do not think it is prepared to do that because, as we all know, all the government wants to do is sit there and avoid that division and avoid disappointing franchisees. That is all it will do if it does not support the suspension of standing orders that is before the house this evening.

MR R.F. JOHNSON (Hillarys — Leader of the House) [6.17 pm]: The government will not support this motion to suspend standing orders. The manager of opposition business is saying that this legislation is so important to the Labor Party that it wants to make sure that we give up government time when there is extremely important legislation that we need to get through this house. We saw the opposition filibuster last night on one of our bills; it had about 11 speakers on it. It was something quite extraordinary, and we wasted the whole evening.

Several members interjected.

Mr R.F. JOHNSON: Yes, we did. We saw the opposition filibuster. There is no question about it: this is one of the most frustrating oppositions I have ever come across—far more than we were when in opposition. We had about two or three speakers on bills. As I understand it, the member for Southern River is not supportive of the opposition's action; it did not even talk to him about it. He wants people to have a fair chance to talk on this bill. The member for Rockingham is so arrogant that he did not even go and talk to the member for Southern River. What absolute arrogance! He is a disgrace!

Mr M. McGowan: Will he say that in the house?

Mr R.F. JOHNSON: Yes, he will, so it is going to backfire on you, my friend, and it is going to show your arrogance.

Several members interjected.

Mr R.F. JOHNSON: No, it will not backfire on us, I can assure members.

Several members interjected.

The ACTING SPEAKER: Members!

Mr R.F. JOHNSON: This is nothing but a grubby little move by somebody acting in a grubby little way, and we have seen it before. If the opposition has such conviction over this bill, it should devote all of private members' time to it this week and, if necessary, all of private members' time next week, and I reckon we could come to a conclusion, if this bill is so important to the opposition. It is not interested in the bill, it is not interested in the franchisees; it is interested in trying to score political points and divide members on this side of the house. It will not achieve it by this sort of grubby little move, I can assure members—not at all. If the member thinks that, as Leader of the House, I would agree to allow all of tomorrow to be spent on this particular bill, then he is living in cloud-cuckoo-land, and he knows that. We have to get through other important legislation as a government. This is important legislation, certainly for the member for Southern River, who has a particular commitment to this.

Mr P. Papalia interjected.

Mr R.F. JOHNSON: We will stay late next week. I will let members know now that we will stay late next Tuesday night and Wednesday night, and we can spend some extra time then if we need to. You do not want to do that, do you? You never do. But if you are going to waste the time of this house —

THE ACTING SPEAKER (Mr P.B. Watson): Leader of the House, I am sure you will get back to the motion of the standing orders being suspended.

Mr R.F. JOHNSON: Yes; I am trying to explain why I do not agree with the motion to suspend standing orders. I just state for the record that I have had two minutes. It is now three minutes, but most of that has been by interjection. I am not going to waste the time of the house. We are happy for this to go to a vote, and I am confident that members on this side will vote against the motion to suspend standing orders, because they see

what a grubby, dirty, little move has been made. The member has shown himself up for being the arrogant person that he is. I am going to sit down, because I know that the member for Southern River wants to have a word on this motion. I am confident that he supports the government in opposing the attempt of the member to stop members on this side of the house from speaking on this very important bill.

MR P. ABETZ (Southern River) [6.21 pm]: I regret that the member for Rockingham got to his feet. I was just about to jump to my feet when he got up, because my understanding is that those on our side had actually completed contributions on the second reading debate, and I was ready to do the summing-up. I was disappointed that that happened, because it kind of changes the whole focus of what is happening here. I would much rather have had the time to sum up the arguments that were presented against the bill and be able to move on to consideration in detail.

Mr D.A. Templeman interjected.

The ACTING SPEAKER: Member for Mandurah, I call you to order for the second time. It is a shame it is not the fifth, but it is only the second. Members, as this motion without notice to suspend standing orders will need an absolute majority in order to succeed, if I hear a dissenting voice, I will be required to divide the Assembly.

Question put and a division taken with the following result —

Ayes (23)

Ms L.L. Baker	Mr J.C. Kobelke	Ms M.M. Quirk	Mr A.J. Waddell
Dr A.D. Buti	Mr M. McGowan	Mr E.S. Ripper	Mr P.B. Watson
Mr R.H. Cook	Mr M.P. Murray	Mrs M.H. Roberts	Mr M.P. Whitely
Ms J.M. Freeman	Mr A.P. O'Gorman	Ms R. Saffioti	Mr B.S. Wyatt
Mr J.N. Hyde	Mr P. Papalia	Mr C.J. Tallentire	Mr D.A. Templeman *(Teller)*
Mr W.J. Johnston	Mr J.R. Quigley	Mr P.C. Tinley	

Noes (26)

Mr P. Abetz	Mr G.M. Castrilli	Mr A.P. Jacob	Dr M.D. Nahan
Mr F.A. Alban	Dr E. Constable	Dr G.G. Jacobs	Mr C.C. Porter
Mr C.J. Barnett	Mr M.J. Cowper	Mr R.F. Johnson	Mr D.T. Redman
Mr I.C. Blayney	Mr J.H.D. Day	Mr A. Krsticevic	Mr T.K. Waldron
Mr I.M. Britza	Mr J.M. Francis	Mr W.R. Marmion	Mr A.J. Simpson *(Teller)*
Mr T.R. Buswell	Mr B.J. Grylls	Mr P.T. Miles	
Ms A.S. Carles	Dr K.D. Hames	Ms A.R. Mitchell	

Pairs

Mrs C.A. Martin	Mrs L.M. Harvey
Mr T.G. Stephens	Mr V.A. Catania
Mr F.M. Logan	Mr J.E. McGrath

Question thus negatived.

Second Reading Resumed

MR P. ABETZ (Southern River) [6.27 pm] — in reply: Mr Deputy Speaker—sorry, Mr Acting Speaker—

The ACTING SPEAKER (Mr P.B. Watson): Call me what you like.

Mr P. ABETZ: Do not give me that option.

The ACTING SPEAKER: I withdraw that remark.

Mr P. ABETZ: One thing that has come through in the various contributions to the debate this evening is that everybody, including myself, agrees that the ideal would be for the federal government to act on this manner. There is no question about that whatsoever; everyone agrees on that. The point, though, is that the federal government has made it very clear that it will not act on this matter. It has not said that it will review the good faith issue, but it has agreed that it will look at the things that were introduced on 31 July this year. A number of changes were brought into the franchising code, which is basically nine of the 11 recommendations that the Ripoll inquiry made. The ones that were implemented were the ones about disclosure and those types of issues. The federal government did not act upon two of the recommendations—recommendations 8 and 9 of the bipartisan Ripoll inquiry. As has been pointed out, the issue did not arise as a result of a dispute between Yum! and Consolidated Foods. Various inquiries go way beyond that in history. There have been umpteen different inquiries into franchising, and the point is that all of the inquiries have called for some clause in the franchising code that relates to conduct. All the different rules about what they have to do can be made, but the reality is that, just like in a marriage, all the rules can be made but there must be trust and people have to act in good faith or

the relationship simply will not work. The reality is that franchising is not a normal contract between two businesspeople, because the contract is such that the franchisor has all the power and the franchisee has virtually no power at all. That keeps coming through in all the inquiries and reports that have been done.

As has been pointed out, the previous Labor government's Minister for Small Business took the issue to the small business ministers at the Council of Australian Governments, and they unanimously agreed, as a result of the Bothams inquiry, that it should be done. It then went to the federal arena, after unanimous agreement among the states that it should be done. It was even an election promise by both federal Labor and the Liberals that they would do this, and guess what? Craig Emerson piked out; he did not do it! He told that expert committee to not even consider that matter. Therefore, anybody who has high hopes that the federal government will do this should forget it. It is not going to happen, and everybody knows it.

That is also why the South Australian government has picked up what is often referred to as the "Piccolo bill" that fell off the table when the South Australian Parliament was prorogued. The Labor government picked that bill up and incorporated its provisions into its Small Business Commissioner legislation. In fact, that bill was read into the South Australian Parliament last Thursday. My eyes almost popped out when I read about the tremendous power it gives the Minister for Small Business. They are not just including the Franchising Code of Conduct, but all industry codes can become mandatory, and their Small Business Commissioner will have the power to prosecute people for breaches of those codes. At the moment, we have a Franchising Code of Conduct that tells people what they are supposed to do; however, if they do not do any of those things, it will not matter because nothing is going to happen. That is the problem. It is like having a problem with hoons and bringing in hoon legislation, and then telling everybody, "Well, if you've got a problem with hoons, it's your job to go to a lawyer and sue the person doing the hooning. If you can afford the $100 000-plus legal fees, then you can take action", and the reality is that hoons know nothing is going to happen. That is the continuous story of franchising.

I take great exception—great exception—to the suggestion that this bill has its roots in the Yum! KFC–Consolidated Foods dispute. That is absolute nonsense. This bill has its roots in what is happening in franchising. Professor Frank Zumbo from the University of New South Wales is the engineer of this bill. He drafted this bill long before Yum! and Consolidated Foods were in dispute with one another, so let us get that history right. The bill I have brought to this Parliament had the benefit of Parliamentary Counsel and various expert lawyers working on it, and the very fact that a Labor government in South Australia has introduced this legislation is a clear indication that it knows that its own federal counterparts will not do it. Why would it introduce it if it reckoned that it will be fixed by its federal counterparts? I have spoken with some of my federal colleagues. Hon Bruce Billson, shadow Minister for Small Business, is fully supportive of this legislation. He says it should be done. He was actually prepared to fly over here to argue for it. Let us just get those things right.

What I have found interesting is that those who spoke against the bill, with the exception of the member for Riverton, all said that this bill will do nothing for little franchisees. Please, read the legislation! The bill basically does two things: it provides the good faith provision that franchisors and franchisees need to act towards one another in good faith; and the other thing is that it gives that teeth, because the Commissioner for Consumer Protection will have the power to launch prosecutions for breaches of the code. In other words, if little mum-and-dad franchisees are getting screwed by a franchisor and they do not have any money to launch a prosecution or sue them, they can go to the commissioner and state their case. If the commissioner can see that this is not right, and if the franchisor does not desist and change the situation, the commissioner can launch the prosecution.

The interesting thing was about the costs. We are told there are hardly any problems in franchising, yet the Department of Commerce has said this measure will cost it bucketloads because it will have to do at least 20 prosecutions a year—that is one a fortnight! That means we have a massive problem. If we have such a massive problem, to spend $1.2 million a year on cleaning up the industry hardly seems like excessive funding.

The member for Vasse went on at great length about Yum! KFC. I have already explained that what he claimed was simply factually incorrect. Although I certainly agree it should be done federally—there is no question about that—the reality is that —

Mr D.A. Templeman: We would support a censure motion!

Mr P. ABETZ: Pardon?

Mr D.A. Templeman: We would support a censure motion on the Minister for Housing!

Mr P. ABETZ: The member for Kingsley mentioned that the Small Business Commissioner was the way to go, but the Small Business Commissioner does not have the right to prosecute anybody. The Small Business

Commission is a great vehicle when people genuinely want to sort things out. A lot of disputes in franchising are through ignorance; there is no question about that. If people want to do the right thing, the Small Business Commissioner model works wonderfully well; in fact, I think 84 per cent of disputes are resolved very quickly when they are taken to the Victorian Small Business Commissioner. That indicates that most people in business, once they are told the facts, want to do the right thing, and do it. Nevertheless, there are recalcitrant franchisors who simply have a legacy of doing the wrong thing. Since I took an interest in the franchising issue, I have a whole list of what I would call rogue franchisors. We have a franchisor that has sent 70 per cent of anybody who has ever bought one of their franchises bankrupt in Australia—in New Zealand the figure is 80 per cent—and that has been going on for years. Something is drastically wrong, and it needs attention. Some of that will be addressed by the changes that were introduced to the code, but the issue still is that good faith needs to be included.

I suggest to save private members' time in this chamber—because the opposition has kindly granted me that time for my bill—that we as a house simply vote this bill through to the upper house, where the Minister for Small Business resides, and let the upper house deal with the amendments that the committee suggested. I certainly do not support all of those amendments, but I support some of them, and those small issues can be addressed there.

I very quickly put on the record that I certainly have no difficulty with recommendations 2, 3 and 9. It is very pertinent that Hon Daryl Williams, QC, and Mr Leo Tsaknis, in their legal opinion, stated —

> In our opinion the Bill fills a gap in the Franchising Code of Conduct by affording a measure of protection to franchisees and thereby addressing the disparity in power between franchisors and franchisees, as well as providing specific forms of relief appropriate to the franchising industry. The Bill requires both franchisor and franchisee to deal with each other in good faith.

I want very briefly to refer to members' comments that franchisees expect this bill to solve all their problems. I have spoken to that many bankrupted franchisees, that it is not funny. And not one of them expects this bill to solve all the problems of franchising. Of course they do not; they are not that stupid!

Mr C.J. Barnett: Did you want to rephrase that?

Mr P. ABETZ: I had better rephrase that! They certainly do not have that expectation, if I may put it that way. Let us be very clear that this is simply one small and very inexpensive step that we as a state government can take to protect franchisees in this state until such time as the federal government gets its act together and acts on the recommendations of the many inquiries, including the Ripoll inquiry in 2008. I commend this bill to the house.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

The ACTING SPEAKER (Mr P.B. Watson): Does the member have any advisers?

Mr P. ABETZ: I would like to invite Mr Wayne Spencer, the executive director of the Retail Traders' Association. My other adviser does not appear to have arrived as yet, but I am happy to proceed.

Clause 1: Short title —

Point of Order

Mr T.R. BUSWELL: Although not strictly related to clause 1, I seek your guidance Mr Acting Speaker in relation to the nature of advisers who are not necessarily members of the public service in Western Australia. I have been in this house only a brief period of time, albeit some may say it seems like an eternity. In my time here, I am not aware, as I reflect on the number of bills that have gone through consideration in detail, of a circumstance in which an adviser who is not a member of the public service has been brought to the table. I am not saying that is inappropriate, however —

Several members interjected.

The ACTING SPEAKER (Mr P.B. Watson): Members, I will make that decision, please.

Mr T.R. BUSWELL: I am merely reflecting on my experience in the house. I am the first to acknowledge, Mr Acting Speaker, that I am not always here for consideration in detail on every single bill.

Mrs M.H. Roberts: Why don't you sit down and the Acting Speaker can give his ruling?

Mr T.R. BUSWELL: Member for Midland, when I have finished making my point, I will sit down.

Mrs M.H. Roberts interjected.

The ACTING SPEAKER: Order, member for Midland!

Mr T.R. BUSWELL: The member for Midland —

Mrs M.H. Roberts: I thought that you would know the answer to a question like that; it is pretty easy.

The ACTING SPEAKER: Minister, please continue.

Mr T.R. BUSWELL: I am trying, Mr Acting Speaker. I am being —

The ACTING SPEAKER: If it is a point of order —

Mr T.R. BUSWELL: No; I am seeking your guidance.

The ACTING SPEAKER: — I have an opinion to give you.

Mr T.R. BUSWELL: I was trying to make a point before I was interrupted by the member for Midland and taken off on a tangent. I hope it does not happen a lot as we work through this bill because when it comes to tangential arguments I find them quite offensive. However, I will try to keep to the point in seeking your guidance, Mr Acting Speaker.

Ruling by Acting Speaker

THE ACTING SPEAKER (Mr P.B. Watson): The member can have whichever adviser he wants, as long as he correctly announces to the chamber who the person is.

Point of Order

Mr C.J. BARNETT: Further to your ruling, Mr Acting Speaker, I seek a further clarification under this clause and it follows on from the point the minister has raised. In my experience, there have been occasions when advisers other than public servants have been in the house. I think it is very rare, but it has happened on a couple of occasions. Although I am not referring to the adviser currently in the house, the issue I think the Parliament needs to address is if an adviser is on the floor of the house providing advice and that adviser has or represents a commercial interest, is that proper? This is an issue that I have raised with the member for Southern River. I think it is an important issue for Parliament. An adviser with a commercial interest or who is in any way a paid representative of a commercial interest must be declared and the interest explained. I question whether anyone with a commercial interest should be allowed to appear on the floor of the house. I think that if they wish to provide advice, it could perhaps be done from the rear of the chamber.

Mrs M.H. Roberts interjected.

Mr C.J. BARNETT: Members opposite do not seem to understand the seriousness of this issue, or a least one does not.

Mr P. Papalia: This is not question time; come on!

The ACTING SPEAKER: Excuse me, please; I will make the decision.

Mr C.J. BARNETT: The member does not seem to comprehend! Mr Acting Speaker, I will conclude. I think this is a serious point and I want to raise it now before this debate begins and before we perhaps get into conflict of interest issues. I think it requires some determination from the Chair.

The ACTING SPEAKER: Premier, I have been advised that so long as the adviser only advises the member and not the rest of the house, it is not a problem. I have been advised by the Clerk.

Mr T.R. BUSWELL: Can I just seek a further clarification?

The ACTING SPEAKER: You are testing my patience, minister.

Mr T.R. BUSWELL: The clarification I am seeking is in relation to the legislation. I am keen to understand whether the adviser played a role in the drafting of the legislation. We are going to be going through what I think is very important flawed legislation line by line and, quite possibly, word by word. I think it is important that the adviser's bona fides is established. The member for Southern River has indicated that he will be joined by a further adviser and we will deal with that person when they arrive. I am aware of Mr Spencer's public role. I am aware of comments that he has made publicly in his position in relation to supporting this legislation as the executive director of the Retail Traders' Association of WA—an arm or part of the Chamber of Commerce and

Industry of Western Australia. I am not here to waste the time of the house, but I reflect on my time as minister in the chair when I always brought to the table people who have experience in dealing with legislation. Generally, the people who were involved in drafting the legislation —

Several members interjected.

Mr T.R. BUSWELL: Pardon?

Mr M. McGowan: This is a farce.

Mr T.R. BUSWELL: It is not a farce, member for Rockingham.

Mr M. McGowan: He is your member. Sort it out before coming into the chamber.

The ACTING SPEAKER: Order, members! This is not a laughing matter. The member is making a valid point and the Chair will make a decision. I am sure the minister will get to the point very quickly.

Mr T.R. BUSWELL: I will, Mr Acting Speaker. I appreciate your frustration, but I am entitled—as members opposite have put to me many times when they debate the short title of the bill, which I am not doing, and the commencement date, which I may do—to seek your guidance in relation to this matter. The point I was making before I was rudely interrupted by the member for Warnbro, who is on three strikes today, is this: my reflection on normal practice is that when I come to the table to discuss legislation and answer questions—I always try to answer questions truthfully and as accurately as possible—I look to the advice of the people around me.

Mr M.P. Whitely interjected.

Mr T.R. BUSWELL: I am sorry?

Mr M.P. Whitely interjected.

The ACTING SPEAKER: Members!

Mr T.R. BUSWELL: No, no. I am happy to be distracted by the member for Bassendean. I have got 10 more minutes.

Mr P. Papalia: But you're in a point of order!

The ACTING SPEAKER (**Mr P.B. Watson**): No, the member for Vasse does not have 10 minutes. Get to the point and sit down, please.

Mr T.R. BUSWELL: I am trying to make it, Mr Acting Speaker. I am continually being interrupted by the member for Bassendean making his normal inane comments. The point I am trying to make is that I would like to know from the member for Southern River the extent to which the individual he has assisting him at the table was involved with the drafting of the legislation, because I want to ask a range of questions.

Mrs M.H. Roberts: I think this is called playing the man, not the ball.

Mr C.J. Barnett: No, it's not; it's fundamental to the Parliament.

The ACTING SPEAKER: Just keep going, member.

Mr T.R. BUSWELL: I am sorry, Mr Acting Speaker, I was again distracted—by the member for Midland this time—but, Mr Acting Speaker, here is the question. The question is: what role —

Mrs M.H. Roberts: It gets sillier all the time.

Mr D.A. TEMPLEMAN: Point of order, Mr Acting Speaker.

Mr R.F. Johnson: There's a point of order going on at the moment. If you just sit quietly, we will get to it. The member for Southern River wants to get up and answer the question.

The ACTING SPEAKER: The member for Vasse can ask the question of the member, but what does the point of order involve?

Mr T.R. BUSWELL: I did not raise a point of order.

The ACTING SPEAKER: What is the member raising?

Mr T.R. BUSWELL: I stood up subsequent to the question asked by the Premier just by way of clarification.

Mr P. Papalia: The clock should have been running.

The ACTING SPEAKER: Members, just leave it, will you?

Mr T.R. BUSWELL: Mr Acting Speaker, my reflection is—perhaps I will seek your clarification and guidance—that I did not request a point of order. I simply rose, following your response to the Premier, to seek

further guidance. Let me repeat: that was further guidance to understand the extent to which Mr Spencer—not reflecting on Mr Spencer personally; I agree with a lot of what Mr Spencer talks about in relation to retail trading in Western Australia—was involved in the drafting of the bill so that I can have confidence, when I ask questions about the bill, that the person providing those answers has a suitable legal background and suitable legal detail about the bill.

The ACTING SPEAKER: Member; sit down, please.

Mr E.S. RIPPER: Mr Acting Speaker, on this issue I think the tradition of the house is that the member takes responsibility. No conflict of interest arises unless the person against whom that is alleged has a vote in the house. A member is entitled to have whomever they want as an adviser. We never question public servants about whether they have directly, personally had any involvement in the drafting of the bill. In the end, the member handling the bill has to take responsibility for whatever is said to the house, and I think these points of order should be dismissed.

Mr T.R. Buswell: Mr Acting Speaker —

The ACTING SPEAKER: No, I am not taking any more. I have made a decision. The member has brought this person into the house. It is his responsibility. He can bring any adviser he likes into the house. We have other people come through who do bills and are advisers, so I cannot see the difference.

Mr P. ABETZ: Mr Acting Speaker, I just want to say that Mr Spencer has not had any involvement whatsoever in the drafting of this bill. He became aware of the bill after it was happening.

Consideration in Detail Resumed

The ACTING SPEAKER: Thank you, member. The question is —

Mr T.R. Buswell: Mr Acting Speaker —

The ACTING SPEAKER: No, I am not taking any more. The question is that clause 1 stand as printed. All those in favour say "aye".

A government member interjected.

The ACTING SPEAKER: Yes, I know he can. I have just put the clause.

Mr T.R. BUSWELL: Mr Acting Speaker, again in relation to clause 1, I wish to ask you and perhaps also the member for Southern River: how can we be relying on advice provided to the member by an adviser who has had absolutely no involvement in the drafting of the bill?

Point of Order

Mr E.S. RIPPER: Mr Acting Speaker, the member is not speaking to clause 1; he is attempting to re-run points of order that you have already ruled on.

The ACTING SPEAKER: There is no point of order, member.

Debate Resumed

Mr C.J. BARNETT: Clause 1, the title of the bill, always allows some broader discussion. Mr Acting Speaker, I do not question your ruling, but I do want to make the observation—from someone who has been a member of this chamber for 20 years; some may say too long—that this is an absolutely fundamental issue for this Parliament about the nature of advisers or of strangers who are in the house —

Mr E.S. RIPPER: Point of order, Mr Acting Speaker.

Mr C.J. BARNETT: I am speaking.

Mr E.S. RIPPER: And I am taking a point of order.

The ACTING SPEAKER: No, sit down. Was the Premier's point a point of order or is he talking to the bill?

Mr C.J. BARNETT: I am talking to clause 1.

The ACTING SPEAKER: There is a point of order, Premier.

Point of Order

Mr E.S. RIPPER: What the Premier is doing, Mr Acting Speaker, is canvassing your ruling. You have ruled on this issue and I think the government should accept that ruling and get on with the debate.

The ACTING SPEAKER: I accept your point —

Mr T.R. Buswell: A further point of order.

The ACTING SPEAKER: No; just let me give my ruling on that point of order. I have made a decision that the adviser can stay, so can we just get on with the bill?

Debate Resumed

Mr C.J. BARNETT: I am speaking to clause 1, Mr Acting Speaker. I am not canvassing your ruling that the member handling the bill can have whomever he wishes. I do not canvass that at all. I accept and I agree with that ruling. I think the issue will arise—I would much prefer that we get a determination on this—that if an adviser before the house has had or has a pecuniary interest in the matter before the house, should that stranger be allowed on the floor of the chamber? In my view, the answer is clearly no.

Mr D.A. Templeman: Think about what you're doing.

Mr C.J. BARNETT: I know exactly what I am doing.

Several members interjected.

The ACTING SPEAKER: Members!

Mr C.J. BARNETT: Mr Acting Speaker, I have raised this issue with the member for Southern River and I do not think he finds any embarrassment at all. I just simply make the point on the first clause of this bill, before we go into debate, that this is a most unusual situation. I think the only time in my memory that I can remember non-public servants appearing before the house was probably in the abortion debate. I think it happened on that occasion. I am struggling to think of another occasion.

Mr R.H. Cook: Tobacco.

Mr C.J. BARNETT: Yes, maybe; I forgot that one. It is a very rare event, but in this case we are talking about a piece of legislation, as titled in clause 1, that has, as members have said during the debate, a very strong but divergent commercial interest. If this house is to determine this bill, those commercial interests have been and will be part of this debate. I think it is incumbent upon the procedures of this house and the integrity of the debate that should an adviser be in the chamber—I am not saying they cannot be allowed—they must declare any interest in this matter, in my view; otherwise, they should not be on the floor of the chamber. I do not mind people having commercial interests, but I have to say that, from nearly 21 years in this Parliament, I would feel extraordinarily uncomfortable and I would feel unsure of the integrity of this Parliament if advisers with commercial interests were on the floor of the house.

The ACTING SPEAKER: Premier, you cannot have a general debate on clause 1; I have been advised you cannot.

Mr C.J. BARNETT: I accept that, Mr Acting Speaker, but we have a number of points to make on the title of the bill.

Mr T.R. Buswell: Mr Acting Speaker —

The ACTING SPEAKER: Just on what the Premier is saying, a pecuniary interest affects only members. It is standing order 128, and a pecuniary interest affects only members; it is not for advisers.

Mr T.R. BUSWELL: I wish to ask a question about clause 1, the title of the bill, "Franchising Act 2010". I am sure the member for Southern River can get advice from his adviser who knows nothing about the legislation, because he was not involved in the drafting of it, but my question is this: there is no definition in this bill as to what "franchising" means. Therefore, I wonder whether the member for Southern River or his adviser, who has no knowledge of the bill, a person who has come in here —

Point of Order

Mr W.J. JOHNSTON: Mr Acting Speaker, as I understand it, the adviser is not advising the Parliament; he is in fact advising the member for Southern River. I am not quite sure what the constant reference to the issue about the adviser is in the contribution of the minister, given that the adviser is not advising the Parliament on any matter. I seek your clarification on that.

The ACTING SPEAKER: I have already brought that issue up, member.

Mr E.S. Ripper: It is a deliberate attempt to embarrass Mr Spencer out of this chamber.

Mr C.J. Barnett: No, it is not related to him at all.

Mr E.S. Ripper: It is oppressive.

Mr T.R. Buswell interjected.

The ACTING SPEAKER: Member for Vasse!

Several members interjected.

The ACTING SPEAKER: Members!

Mr E.S. Ripper: It's bullying!

The ACTING SPEAKER: There will be bullying in a minute! Just everybody behave over there, please. The member for Vasse is going to talk to clause 1.

Debate Resumed

Mr T.R. BUSWELL: I am, Mr Acting Speaker, but before I do that, I have just had —

The ACTING SPEAKER: No; you will talk to clause 1.

Mr T.R. BUSWELL: Then I will ask a further question in relation to standing order 187, Mr Acting Speaker, as a point of order.

A government member: Take a point of order.

Mr T.R. BUSWELL: I will, but I will deal with this first. I was not insinuating that Mr Spencer was here to advise the house; he is clearly here to advise the member. I simply made the point —

Mr E.S. Ripper: You are bullies and you want him out of the chamber!

Mr T.R. BUSWELL: No, I do not want him out of the chamber. I am very happy for him to stay there. I cannot see that he can add in any way to this debate because the debate is about legislation that he was not involved with anyhow.

Several members interjected.

The ACTING SPEAKER: Members!

Mr T.R. BUSWELL: The short title is "Franchising Bill 2010". I have just looked at the terms and the definitions. I cannot find a definition for "franchising". Therefore, I wonder whether the member for Southern River can provide a definition. No, we will talk about the definition later. What I want the member to explain to me, firstly, is how he can draft legislation that does not have a definition for the very intent of the legislation.

Mr P. ABETZ: If the member looks at clause 3(1), he will see that it reads —

> If a term is given a meaning in the Franchising Code of Conduct (WA), it has the same meaning in this Act, unless the contrary intention appears.

Mr E.S. Ripper: There's your answer. Game, set and match! Well done, member! Good on you! You've stood up to them!

Several members interjected.

Mr T.R. Buswell: Mr Acting Speaker —

The ACTING SPEAKER: The member for Vasse can sit down now. Members, according to standing order 61, this business is interrupted and adjourned to a later stage of this day's sitting.

Debate adjourned, pursuant to standing orders.