

FRANCHISE AGREEMENTS BILL 2011

Introduction and First Reading

Bill introduced, on motion by **Hon Ljiljanna Ravlich**, and read a first time.

Second Reading

HON LJILJANNA RAVLICH (East Metropolitan) [10.11 am]: I move —

That the bill be now read a second time.

Honourable members will be aware that a bill seeking to protect franchisees in Western Australia was debated in the other place. The Franchise Agreements Bill 2011 has developed as a result of feedback from a variety of stakeholders and sources, including feedback provided by the Legislative Assembly Economics and Industry Standing Committee. One major addition has been the requirement for an annual review and report by the Small Business Development Corporation of the current issues, trends and major areas of concern with franchising in Western Australia. This bill is a clear acknowledgement by the opposition that franchisees in Western Australia need some protection.

Although most franchisors are reputable and helpful to their franchisees and negotiate and operate in a professional and ethical manner, there are some unscrupulous operators in our state, and it is these franchisors that need to be required to conduct their dealings with franchisees in good faith. There are thousands of franchisees in Western Australia and most work with their franchisors in professional circumstances. Members may then ask: why is there a need for protection? The answer is that when a franchisor does engage in a predatory or opportunistic manner, sending a franchisee out of business, the consequences for the franchisees are often far more devastating than they are for many other businesses. Franchisees are often in a business of their own for the first time. They may have chosen a franchise because of the apparent protection offered by an existing brand and the business support services and equipment offered by a franchise. They may also be attracted by the expectation of trust in the franchisor–franchisee relationship. In addition to this inexperience in the business world, many first-time franchisees, because of the expense of franchises, will take on a heavy debt burden, sometimes mortgaging their family home, all in the expectation that the franchise will, over a number of years, generate the income to service that debt and pay them a wage. In many cases they are correct, but when a franchisor engages in “churning”, whereby a franchisor terminates an agreement for trivial or no reasons and then resells it to a new franchisee, or when a franchisor refuses to renew contracts for no good reason or engages in other predatory behaviour, those small investors—those family franchisees—who usually have no funds to engage lawyers for any length of time, need protection. In reality, they also need protection before the fact while the initial negotiations are taking place. The franchisors that do not negotiate in good faith need to know that there is the full force of the law to ensure that their failure to act in good faith after the contract is signed will be pursued. In this way, strong legislation protecting Western Australian franchisees will gradually weed out these unscrupulous operators and protect Western Australian small businesses.

There have been many inquiries into franchising in Australia, including the federal parliamentary report titled “Opportunity not opportunism: improving conduct in Australian franchising” and the Bothams report titled “Inquiry into the Operation of Franchise Businesses in Western Australia: Report to the Western Australian Minister for Small Business”. I will not go into the detail of those reports today. Suffice it to say that those and other reports have detailed the sorts of unprofessional conduct engaged in by some franchisors and recommended greater protection for franchisees.

The Franchise Agreements Bill 2011 seeks to legislate the conduct expected of those engaging in negotiating and entering into franchise agreements. The bill specifies and defines the term “good faith” and specifies that negotiating and entering into franchise agreements must be conducted in good faith. This is the core of the bill—that all parties to franchise contracts act fairly, honestly, reasonably and cooperatively. The bill will allow for the prosecution of parties who contravene the Franchising Code of Conduct and who do not comply with the behaviour specified in this bill. The bill does not override any federal law; and, if the federal government eventually passes Australia-wide protection legislation for franchisees, it will not override that law. But we cannot sit back and wait for any future Australia-wide legislation; we must protect this significant section of small business in Western Australia now.

The opposition reiterates its support for a vulnerable section of our small business community. I sincerely hope that the government also will show support for Western Australia’s small businesses by supporting the Franchise Agreements Bill 2011. I commend the bill to the house.

Debate adjourned, pursuant to standing orders.

Point of Order

Hon NORMAN MOORE: I understand that this bill may be identical or very similar to a bill already defeated in the other house. I seek your advice, Mr President, about the issue of the same question and whether that applies in this particular case.

Ruling by President

The PRESIDENT: The Leader of the House would be referring to standing order 170, which refers to the same question. But that standing order refers to the same question in this house. We do not take any notice effectively of proceedings that might have occurred in another place. The matter is relevant to proceedings in this house and nowhere else. So there is no point of order.