

SMALL BUSINESS COMMISSIONER BILL

Adjourned debate on second reading. 13 September 2011

(Continued from 28 July 2011.)

Mr GRIFFITHS (Goyder) (17:22): It is indeed a pleasure for me to rise to make a contribution on the Small Business Commissioner Bill 2011. I will be lead speaker for the opposition on this bill; however, I do flag the fact that there are some eight or so members of the opposition who intend to speak, and I have no doubt that there will also be some members from the crossbenches who will speak on the bill.

This bill was introduced by the minister on 28 July. I must admit I expected that to have occurred some time before that. The consultation occurred in the first quarter of 2011, and the minister spoke to people about it late in 2010; indeed, my understanding at that early stage was that it was intended that two bills be introduced, one dealing solely with the Commissioner and one dealing with franchising. Be that as it may, we got it on 28 July, which was an opportune time because it allowed for consultation to occur during the break.

I do have some level of frustration, though. Under an FOI application I had to wait three months to get the 57 submissions received by the minister's office as part of the consultation draft that was out there, and they arrived only Monday of last week. That was a bit of a shame because even though structural changes had occurred significantly, because the consultation draft was a very different bill to the one that has now been introduced by the minister, the comments received as part of that were quite good in the feedback that I was able to put together.

Because I got those comments just in time, they formed part of the discussion that the opposition joint party room had, when it came to its consideration of the bill, and I do think it is fair that I put on the record that the discussion in our room was quite vibrant (if I can use that word). That came from the fact that there are many people on this side who have a lot of experience in small business; operating it, working it, being part of second and third generation businesses. I certainly understand the impact of small business on the economy and I also have a great feel for where the level of government support needs to come from when it comes to small business activities.

I note that a briefing was provided. The minister's office contacted my staff quite quickly after the introduction of the bill offering a briefing opportunity. The only slight delay was as a result of mixing the diary appointments that I had in place with Professor Frank Zumbo, who is the minister's principal adviser on this bill. However, I was grateful that a briefing was able to take place on 10 August with Mr Mike Sinkunas, the Project Director for the small business commissioner, and Mr John Trezias, who is from the minister's office, I believe. We had a good conversation about lots of different things for about an hour and a quarter.

I must admit that the fact that I had been involved in the Economic and Finance Committee inquiry into franchising assisted my knowledge of the issue to some degree, and it certainly helped me in preparing the briefing paper that I put together for the joint party of the opposition. The minister has been questioning me today on the opposition's position on the bill. I was debating when to declare our hand, but I will confirm that after very serious consideration the opposition has decided to not support the bill.

I will outline the reasons for that. Indeed, it is still my very strong desire to ensure that questioning takes place on a lot of the clauses within the bill on the basis that I understand the numbers that exist within this room. You will certainly win the debate here, but it will be interesting to see what occurs in the other chamber. The fact that the opposition does not support the bill should in no way be construed as a lack of support for small business. If anything, it is actually the opposite.

Mr Piccolo interjecting:

Mr GRIFFITHS: No; it is the opposite. The member for Light, I am sure, will have a contribution and I know the minister will have a contribution. No doubt, I will sit here and take a pummelling, but there will be other members who will make contributions because it is an important issue. All of us here understand the importance of the role that small business plays in the economy. I quote it and the member for Norwood, because of his own experience, quotes the fact that small business involves some 136,000 separate entities.

As an economic driver in our state, small business can never be disregarded. Indeed, we have to consider: what is the best use of available resources by government when it comes to the support of

small business? My great concern has always been that the introduction of the Small Business Commissioner Bill appears to be a reactive response to a problem which exists within an industry, or within a business relationship, that creates the need for an umpire to come in.

My position would certainly be that those services are available to some degree by other facilitators, and we will talk about that in a bit more detail as we go along. As I have expressed to the minister during the estimates debate, my desire would always be that government support needs to be there at the start or in the early mentoring period, or in the family generational transfer between small business operators. That is where my great concern is. Indeed, if you look at the program that exists within the budget devoted to small business, it is only in the range of about \$1.9 million. For 136,000 different small business operators, that equates to a fraction under \$14 per small business.

I recognise that the introduction of this bill is a commitment of between \$1.1 million and \$1.5 million. I think that was the briefing figure provided to me on what the recurrent cost would be for the operation of the small business commissioner. The apparent lack of respect towards small business as a prime driver of the economy and the level of direct allocation contained within the budget papers is of great concern to me.

Minister, I understand your family comes from a small business background. My family comes from a small business background—small operators in hotels and farming. There are many hurdles put in people's way. There are also many areas where assistance is required. I suppose it is for that reason that I have expressed concern during estimates and questioning in other areas about the decision to withdraw funding from the business enterprise centres, for example, from 1 July this year.

There are those in this chamber who might say it is relatively small dollars, \$150,000 per organisation, a collective figure of \$1.35 million; but, indeed, the business enterprise centres are a service that operates from a collection of funds from state, local and federal governments and, indeed, private enterprise which it supports, that has some 70,000 contacts per year.

So I know that the minister will constantly criticise the fact that we are not supporting the bill, but there needs to be the counter argument put that there needs to be an indication from government of the support that exists for small business in every possible way and not just that it is to be involved in a situation where there is a debate that is occurring about a failed relationship, the slow payment of an account, a disagreement about the conditions of a contract or whatever the situation might be that the proposed small business commissioner would actually deal with; and there needs to be a lot more support at the front end of the organisation, too.

I know there are shakings of heads and there are different philosophical viewpoints that come into this but, to me, there is tremendous opportunity to grow business and, by that, grow the economy and, by that, grow employment opportunities. It is that upfront support that will make the difference—as, indeed, will some level of support to sort out disputes that arise. That is where I say I am aware there are associations out there, and I believe one is the Housing Industry Association, that have a mediation service to be involved in dispute resolution.

There are other mediation services. Some, on my understanding, operate with some level of government support to sort out concerns and disagreements, too. We are going to talk about this for a while. Indeed, when it comes to support for small business, I also look at the decision made in recent budgets about CITCSA, the Council for International Trade and Commerce of South Australia. Mr Barry Salter is its executive officer.

There are 43 or 45—about that number—chambers of commerce from different nationalities where there are opportunities for South Australian companies to develop relationships with those countries to develop export opportunities. I know the minister wants to see an increase in our export dollars and whenever there is a poor result there is a message that comes from this side and when there is a positive result there are messages that come from that side.

There are always counter arguments flowing. But, as a bipartisan approach to this, we need to ensure that we create opportunities for our businesses to export their products or services. That is why I know there are many in the community and in this chamber who were frustrated by the decision to withdraw I think in the range of \$200,000 from CITCSA.

The Hon. A. Koutsantonis interjecting:

Mr GRIFFITHS: The minister says \$80,000. We will see. I am sure the minister will come back and correct me if I was wrong. It is that sort of thing that frustrates many people in the community, and

they are vibrant associations of people who have business ideas. They have a relationship with another country, certainly either by birth or by their parents' birth. They want to ensure that the place they are now residing in, South Australia and Australia, has economic opportunity across those nations, and that is where I am disappointed by that.

As part of the submissions received by the minister and which we got on Monday of last week, there was a notation that previously a position of small business ombudsman had existed, which was removed I think in about 2006 or thereabouts; it might have been 2005. You could argue, indeed, that a small business ombudsman would take on a relatively similar role to what a small business commissioner is going to do.

You could argue, indeed, as the member for Norwood pointed out to me, that there was a small business advocate role that has existed within government structures which is no longer there, either. So it appears as though there has been a continual drawdown by government of resources devoted to positions and programs designed to support small business until, finally, the recognition has come from minister Koutsantonis that he wants to put out the small business commissioner there based on what has occurred in Victoria since 2003, I think when they established their position.

I think that small business in South Australia is a bit like the home ownership dream that exists around Australia and the world. For us to have a population of 1.6 million but to have 136,000 small businesses indicates to me, stronger than anything possibly can, that that is what people's dream is. They want to be in charge of themselves, they want to work hard and get a reward for that effort, they want to be able to provide for themselves and their family and grow the economy that they themselves benefit from and that the community they operate in benefits from. They understand that there will be a lot of challenges and they know that they are going to need assistance sometimes, and that is why they do look to government for a variety of resources to ensure that they have the best possible opportunity of success.

That is where I come back to the Business Enterprise Centres in regional areas. There is the Regional Development Australia organisation, there was the small business ombudsman who used to operate and the small business advocate who used to operate but, sadly, now it appears to me that the focus has fallen on the small business commissioner as the panacea for the issues that small businesses are dealing with, and that that will be the best fit for the dollars that the minister has been able to make available in the budget to get the best possible result.

My understanding is that the Victorian commissioner between 2003 and 2010 dealt with some 6,800 cases. My understanding from the briefing was that the budget provision that has been set for the proposed South Australian commissioner is in the vicinity of 30 per cent of what the operational costs were. Yes? I am getting a bit of a nod from the advisers to the minister.

Based on those numbers, if it is 6,800 and you bring that down to what the number would therefore be in South Australia, about 290, I think, complaints per year potentially have been budgeted for within South Australia, that is, if you look at similar numbers as they flow across. I am not denying that 290 complaints are not important—I never would do that. Every complaint, every issue, every poor relationship and every breakdown of a contract is important.

However, there are other services that are already available to some degree to actually help resolve those without the need to go to a court situation. There will be a difference in the philosophical viewpoint on that, but we just need to put those to the chamber. It is also important to say—and reports in recent days actually highlight this—that business confidence is challenged at the moment. People are concerned about what they see occurring around the world.

They are concerned with a possibility of interest rate rises, they are concerned about the fact that retail spending is down and they are concerned about the fact that people are so consumed by their level of debt that they are pulling back on their discretionary spending because they want to make sure that they can pay their bills. By doing that they help themselves, but what is the net effect upon business activity within South Australia?

It is that level of concern about small business, as well as looking at the taxation regime that is in place and the level of red tape, and I do acknowledge that there is a red tape reduction plan. I think that it has been ordered to achieve some \$150 million in savings. That was the last figure that I saw. However, that creates a great challenge to ensure that the best possible system is put in place for the dollars that the state has available to make it work.

I have talked about the commissioner's role; I will talk about franchising now. Again, I will just put some numbers to the chamber so that everyone has a scope for it. I am grateful for minister Koutsantonis confirming with me during the briefing that approximately \$180 billion nationally is devoted to franchise expenditure, but the numbers are actually amazing. There are 1,270 different franchise operations existing in Australia, and 670 of those operate in South Australia alone.

Nationally, franchising employs 775,000 people. I have not done the sums for what that might work out for South Australia but it would be enormous numbers if you base it on 7.2 per cent of the population, or thereabouts.

The Hon. A. Koutsantonis interjecting:

Mr GRIFFITHS: Yes, very significant. Again, it is an example of people seeing franchising as an opportunity for them to be in charge of their own future. Having been a member of the Economic and Finance Committee I listened to the representations put before us and it was impossible not to be moved by it, and I do acknowledge that. The overwhelming majority of people who came to present before the committee (of which the minister was then the chair and of which the member for Light was then a member) related sad stories.

They were people who were committed to working as hard as they could but, for whatever the reasons, the circumstances put in front of them made it bloody impossible for them to succeed, and they deserved better than that. We also know (and if we look at it objectively) that franchising is a system that works overwhelmingly well around the world. There are tremendous operators out there—master franchisors and franchisors who recognise that their greatest value is held in a strong relationship with the franchisee, which ensures that the business works.

The Hon. A. Koutsantonis: Good ones.

Mr GRIFFITHS: The minister makes the point, 'good ones,' and I agree entirely with him on that. There would be a lot of independent assessments out there about what the level of poor franchisor compared to good franchisor would be. My hope would be that the number of good franchisors would be in the high nineties. The facts are and human nature is such that, whenever any level of inquiry is undertaken—and I recognise that Western Australia also had an inquiry on this—the majority of cases put to any parliamentary inquiry will be on the poor experiences, and those people deserve to have protections in place. I would never say that they do not deserve that. But that is what the national code of conduct exists for.

The Hon. A. Koutsantonis interjecting:

Mr GRIFFITHS: Yes, but the national code of conduct is a compulsory code that is in place, and the member for Light nods his head and acknowledges that.

An honourable member interjecting:

Mr GRIFFITHS: That is the frustrating part of this; we talk separately, but I would rather have the debate across the table as we each made a point. The franchisors that are out there, who seemingly get their jollies from churning over businesses, deserve to be run out. Whenever I have had discussions with the Franchise Council of Australia—and, I must admit, it has been quite a few times in the last 18 months—they have told me that they totally agree with that.

An honourable member interjecting:

Mr GRIFFITHS: Well, that is the position they put to me. The member for Light has made a note about that comment, I think. That is the position that the Franchise Council has put to me. They want the industry to be strong, too, so that it actually attracts people to it. I am not brainwashed on this, minister, I am telling you.

The Hon. A. Koutsantonis interjecting:

Mr GRIFFITHS: We'll see.

The Hon. A. Koutsantonis: Because you are a decent, honourable man.

Mr GRIFFITHS: Honesty is always the best policy, minister.

The Hon. A. Koutsantonis: It certainly is.

Mr GRIFFITHS: It allows me to sleep at night.

The Hon. A. Koutsantonis: It certainly does.

Mr GRIFFITHS: I also respect that the eventual report submitted by the Economic and Finance Committee was a unanimous one. There were no dissenting voices. I think it made some 14 or so recommendations, and my recollection is they were directed more towards changes that could be made federally.

Members interjecting:

Mr GRIFFITHS: The minister says yes; the member for Light is not quite so sure. Anyway, I am sure that they will clarify that, but my recollection is that the recommendations were for changes to be made federally. I can only presume that that was the position because it was felt at that time by the minister, who was then the chair, and the member for Light that having changes created federally was the best way to go, because it creates a consistent approach to franchising around Australia.

The counter argument to that is that, if South Australia is to bring in provisions that allow for state-based legislation and therefore additional codes of conduct come in—and I will openly put that the Franchise Council of Australia are the ones that have said this to me, but so have other independent franchisors also—you create a system where South Australia is seen as being a place not to invest. I do not want that, the minister does not want that and the member for Light does not want that. We always want to ensure that South Australia is seen as an attractive option for people to come and invest their hard-earned dollars, to commit their lives and to have the greatest possible chance of being successful. I am stating to the minister the positions that have been put to me.

Mr Piccolo interjecting:

Mr GRIFFITHS: As I said, the FCA and other independent franchisors too, who probably are members of the Franchise Council of Australia. I will respect that. The Franchise Council of Australia does have representation from both sides of the equation though. The franchisees are low in number—I will state that. I am pleased to see there are a few smiles appearing across the chamber. It will be interesting to see what the morning radio is like, but we will face that when it comes.

I was not surprised, therefore, given the report that was prepared by the Economic and Finance Committee and then the eventual private member's bill that the member for Light submitted I think on the last sitting day before the parliament rose in 2009—and then all the stars aligned when the minister became the Minister for Small Business.

Mr Piccolo: You lost the election.

Mr GRIFFITHS: Yes. You can say that; I won't. The member for Light got re-elected too.

An honourable member interjecting:

Mr GRIFFITHS: He did, in a hard-fought contest. When those stars aligned in that way, it was not a surprise to me that eventually we were going to receive a bill. The concern for me in relation to a small commissioner position had always been about the ability to mediate, not arbitrate. We will talk about that a little later, but the great issue for me was the amalgamation of the aspects of what I thought was going to be two bills.

The Hon. A. Koutsantonis interjecting:

Mr GRIFFITHS: No, don't. Mediation is what I am after, minister. It was the fact that the bill that went out for consultation was based around the commissioner's role itself and then, all of a sudden, there were significant changes made to the bill that has eventually been submitted to parliament.

The Hon. A. Koutsantonis interjecting:

Mr GRIFFITHS: Minister, it is also fair to say that when a bill comes before the parliament, and when you want to focus on the consultation that occurs with the community, you give the bill in its closest possible form to what is going to come to the parliament to the community for consultation.

The Hon. A. Koutsantonis interjecting:

Mr GRIFFITHS: I would expect you to, indeed—if you have 57—

The Hon. A. Koutsantonis interjecting:

The DEPUTY SPEAKER: Order! Gentlemen, the saddest thing about this interchange is that I actually just cannot hear it. You are having some sort of intimate chat.

Mr GRIFFITHS: You can hear my bit.

The DEPUTY SPEAKER: Well no, all I can hear is you saying, 'Yes, yes, yes, but...'

Mr GRIFFITHS: Well then I correct the record, Madam Deputy Speaker.

The DEPUTY SPEAKER: If the minister wishes—

Mr GRIFFITHS: I still apologise.

The DEPUTY SPEAKER: Yes, it is not just you; if the minister wishes to interject, of course, he could at least use the microphone.

Mr GRIFFITHS: Madam Deputy Speaker, you are correct. The seriousness of this bill deserves a debate to occur. I understand that we have been a bit familiar about this—

The DEPUTY SPEAKER: That's okay.

Mr GRIFFITHS: —and I will try to keep it more structured. Now, eventually the bill does come in, in a considerably revised form, and I intend to put on the record some comments that I have received from the Franchise Council of Australia today.

Mr Piccolo interjecting:

Mr GRIFFITHS: No.

The DEPUTY SPEAKER: Member for Light.

Mr GRIFFITHS: The member for Light asked me if I am an agent for the FCA, Madam Deputy Speaker, and that is not correct.

The DEPUTY SPEAKER: For the STA? The State Transport Authority?

Members interjecting:

The DEPUTY SPEAKER: The member for Light should stop interjecting. Having said that, the member for Goyder should know that he cannot respond to interjections, because you know that when you respond, it makes them go into *Hansard*, and then you just validate their speeches.

Mr GRIFFITHS: It confuses the whole issue, doesn't it, Madam Deputy Speaker?

The DEPUTY SPEAKER: It is entirely up to you, member for Goyder, quite frankly.

Mr GRIFFITHS: I will try not to do it any more then.

The DEPUTY SPEAKER: Whatever you need.

Mr GRIFFITHS: I now come back to the primary focus. I am sure the minister might hold an alternative position on this, but my belief is that we structured the 14 recommendations from that report to go to the federal people for them to look at—and I know that the member for Light actually presented to a federal parliamentary committee on this. I also know that the member for Light had a lot of frustration with his federal colleagues about the fact that they were not prepared to make changes. That is where the dispute lies between you and your colleagues in Canberra, who should—

The Hon. A. Koutsantonis interjecting:

Mr GRIFFITHS: No. I hope not. There is no dispute.

Mr Piccolo interjecting:

Mr GRIFFITHS: I am trying to be—

Mr Piccolo interjecting:

Mr GRIFFITHS: The member for Light is bothering me now.

The DEPUTY SPEAKER: Member for Goyder, does that mean that you are requesting my protection in this matter?

Mr GRIFFITHS: I am; I feel threatened.

The DEPUTY SPEAKER: All right, well, I am sure the member for Light will pull back from his outrageous behaviours—

Mr Piccolo interjecting:

The DEPUTY SPEAKER: No, no, there is no argument here. This is what I say, so it goes. The member for Goyder will just carry on and get on with it.

Mr GRIFFITHS: It is also fair to say that questions have been raised about the term 'in good faith'. I will ask questions about that when we actually come to that section of the bill, but it has been put to me. I read—

Mr Piccolo: By who?

Mr GRIFFITHS: I read—

Mr Piccolo: By who?

Mr GRIFFITHS: —one interpretation of it, and then the words of the minister, and I thought, 'Okay—'

Mr Piccolo interjecting:

The DEPUTY SPEAKER: Member for Light!

Mr Piccolo: I just want to clarify.

The DEPUTY SPEAKER: No! No clarification needed. None. Quiet times. Member for Goyder.

Mr GRIFFITHS: I do want to enforce the fact that the concern for us comes about by the fact of the great fear that by creating, potentially, two sets of rules (one that exists in South Australia and one that might exist in every other state in the nation), because I am not aware of any other state that has actually flagged its intention to put this sort of legislation before the chamber—

Mr Piccolo interjecting:

The DEPUTY SPEAKER: Member for Light, what has overtaken you?

Mr GRIFFITHS: Again, I need your protection, Madam Deputy Speaker.

The DEPUTY SPEAKER: No, member for Goyder, you keep responding to the member for Light.

Mr GRIFFITHS: I wasn't then. I was waiting for you to tell him to be quiet.

The DEPUTY SPEAKER: So you do require my protection? Okay, just checking.

Mr GRIFFITHS: On occasion.

Mrs Geraghty: Just throw them all out, and we can go home.

The DEPUTY SPEAKER: I haven't actually ever thrown anyone out, and the member for Torrens suggests that I throw everyone out.

Mr GRIFFITHS: Madam Deputy Speaker, if I may just comment. The member for Light, from across the chamber, has talked about Western Australia.

Mr Piccolo interjecting:

The DEPUTY SPEAKER: Member for Light, that does not mean you respond!

Mr GRIFFITHS: And I know what the answer is, too.

Mr Piccolo interjecting:

The DEPUTY SPEAKER: Member for Light, I am not joking anymore. Stop it! Member for Goyder.

Mr GRIFFITHS: Peter Abetz, who is a member of the Liberal Party in the Western Australian parliament, has submitted a private member's bill that deals with franchising. My understanding is that it will not be supported within the chamber. We will talk about this at length, there is no doubt about it. The primary reason for the Liberal opposition not to support the franchising issues as they relate to this bill is the concern about the effect upon the South Australian economy: it is a very serious one.

I respect the fact that the minister and his people in cabinet have introduced this on the basis that they feel it offers a level of protection for franchising. The opposition comes from the viewpoint of the great fear that it will be seen by whoever looks at franchising opportunities around the nation as an opportunity to say, 'Don't go to South Australia,' and that would be the worst possible result.

The Hon. A. Koutsantonis interjecting:

Mr GRIFFITHS: No, I am talking about franchising at the moment, minister. We need the economy to expand. We need successful franchisees and franchisors to base themselves within this state. That is why we formed the opinion that changes, when required—and code of conduct changes on the federal level occurred in July last year in 2010—are brought in on a national basis and are the result of discussion and negotiation.

The Hon. A. Koutsantonis interjecting:

Mr GRIFFITHS: In this case, I am a supporter of a national approach to rules. In this case I am a supporter of a national approach to controls because I believe that in this case it works best. I say that in all honesty to the minister. It had been put to me as an opportunity for an amendment that we might give consideration to—to suggest to you that there be some sort of time restriction in place whereby, as a flag to your federal colleagues, you say that South Australia has available to it legislation that creates an opportunity to bring in code of conduct changes of its own volition if the federal government does not get it right within 18 months. The member for Light does not like that, and the minister has not indicated his thoughts on it, but it is not the amendment I intend to flag anyway.

That is the level of feedback I have received from talking to people who operate within the industry. That is why I come from the viewpoint—and I will continue to talk about this fact—that that when change occurs (and I say this with my hand on my heart) it needs to occur at a federal level so that there is a consistent approach across all the states to ensure that the way in which franchising operates in Australia is done uniformly so that there is a common approach to it and there can be surety for people when they look to invest, no matter what state they look to invest in, that the rules under which they will operate, the code of conduct provisions which will control the way in which they operate, are consistently applied.

I appreciate the fact that there has been an open discussion here, but some submissions were received today that I want to put on the record. The first one is from the Local Government Association of South Australia, which I believe was also sent to the minister. The LGA seeks to have the following issues addressed:

The Commissioner will have an important role in the mediation of disputes that may involve the local Government Sector—the LGA seeks an assurance that Councils are engaged early in the dispute resolution process and given the opportunity to respond to issues before any formal action is taken by the Commissioner. This is particularly relevant given the resource implications of taking this course of action.

Point 2 from the Local Government Association states:

There is a lack of clarity on the role of the Commission versus the Ombudsman—

I intend to certainly ask questions about that later on, too, and in relation to the Commissioner for Consumer and Business Affairs—

and the LGA is keen to ensure that there is no 'bouncing back and forth' between the two in respect to any dispute.

I notice that in one clause in the bill there is the option of the Commissioner for Consumer Affairs or the Commissioner for Small Business that it says the word 'or' in between and, to me, that creates a level of uncertainty. Point 3 from the LGA states:

There is a lack of definition in terms of 'small business'—the LGA seeks that the Bill be amended to provide clarity as to the range of businesses it is intended to assist.

From my review of the 57 submissions the minister received, that was raised by quite a few people because there is uncertainty as to what size is a small business. Is the commissioner there only to support small business against small business? I do note, of course, that the second reading contribution from the minister talks about the availability of the commissioner to assist small business in local, state and federal government relationships also. But is it there to support small business versus big business disputes that might arise, too? The fourth point from the Local Government Association states:

There is a lack of clarity around the role of the Commission will have in terms of advice on government policy, particularly in relation to planning policy which may impact on small business operations, and we seek that the Bill be amended to remove any ambiguity.

I do not know whether the minister's office has had a chance to review that. I had intended to ask questions about whether the commissioner is there to provide policy advice to the minister. Indeed, I had not considered the issue about planning advice, but the LGA raises that issue, so I bring it to the attention of the chamber.

I also put on the record comments received from Mr Stephen Giles, who is well known to some members of this chamber and who is the Chairman of the Franchise Council of Australia. I put this on the record purely to say that this is an email I received. It is my understanding that all electorate offices and members of the Legislative Council also received a copy of the email. I quote the email purely to bring it into the debate. Mr Giles understands that the bill is to be debated to day. The email states:

Dear Honorary Members,

This bill does not have the support of the Franchise Council of Australia in its present form. I also understand that the Shopping Centre Council of Australia does not support the bill. This is disappointing as the FCA supported the concept of a Small Business Commissioner, based on the Victorian model. However, the minister has dramatically amended the initial version of the bill circulated for public comment.

Notwithstanding the extent of the changes, no further version of the bill was circulated for public comment and the current bill goes well beyond the Victorian model and therefore cannot be supported. The FCA is concerned to ensure parliament is not misled as to the minister's consultative process or the level of support for the bill. The FCA believes that many of the organisations that supported in principle the original concept of the Small Business Commissioner, based on the Victorian model, would not support the bill in its current form.

I seek leave to continue my remarks.

Leave granted; debate adjourned.

Adjourned debate on second reading.

(Continued from 13 September 2011.)

Mr GRIFFITHS (Goyder) (12:06): I indicate that I am in the final stages of my comments on the Small Business Commissioner Bill, having to my surprise discovered that I had been on my feet for some 38 minutes yesterday evening talking about this. At the time of the adjournment yesterday I was in the process of putting before the house a copy of the words from an email received by me, and indeed all the members of this chamber and of the Legislative Council, from Mr Stephen Giles, who is the chairman of the Franchise Council of Australia. I was part way through that, so I—

The Hon. A. Koutsantonis interjecting:

Mr GRIFFITHS: The minister's presence is noted all the time. I was part way through that, so I will continue that before making some closing remarks. Mr Giles says:

In addition to the FCA and the SSCA, the Law Council of Australia has expressed concerns when alerted to the differences between the initial version of the Bill and the Bill currently before Parliament.

Specifically the Bill currently being debated contains the following additional sections, neither of which was contained in the version of the Bill circulated for public comment—

earlier this year—

- a completely new section enabling the enactment by regulation of an 'industry code' and the declaration that contravention of an industry code is to be subject to a civil penalty; and
- a new and draconian penalty regime that goes well beyond current powers in the SA Fair Trading Act or the Federal Competition and Consumer Act.

The Hon. A. Koutsantonis interjecting:

Mr GRIFFITHS: I am only repeating someone else's words, minister. He continues:

It is not appropriate that these provisions should be enacted. It is even less appropriate that these provisions should be introduced without the opportunity for proper industry consultation and extensive debate. The FCA is gravely concerned that Parliament may be misled as to the current level of support for the Bill.

The Hon. A. Koutsantonis interjecting:

Mr GRIFFITHS: Minister, I would be surprised if you have not actually also received this email. Mr Giles' email continues:

There are other concerns that have been raised when similar legislation was proposed in Western Australia, and which led to the WA Government to decide not to proceed. Not least was the estimated cost of not less than \$4m over 4 years. The FCA's concerns have been raised in detailed submissions to the SA inquiry into franchising—

I point out that there has been an extension to the initial inquiry that the minister was chairing, and the Economics and Finance Committee is about to submit to this chamber a report detailing the results of that supplementary inquiry into franchising and the impact of the code changes that occurred in July

of last year, which were sought by the member for Light and myself when we were still both members of that committee. The Franchise Council of Australia's concerns have been raised in detailed submissions to the SA inquiry into franchising, and they remain current and valid. Continuing on from Mr Giles:

The FCA is concerned to see the small business sector in South Australia prosper. This bill, if enacted, will have exactly the opposite effect, and will see South Australia isolated from the rest of the country. The enactment of a bill based on the Victorian model could be supported under the COAG harmonisation process, but this bill goes far beyond that model and directly overlaps with the existing comprehensive federal regulatory regime. The substantial amendments from the initial draft noted above are clearly intended to introduce state-based franchising legislation via the back door, in a non-transparent and totally inappropriate way. Substantive law should be introduced transparently, with due consultation and in legislation that is subject to appropriate parliamentary debate. This bill, assuming it is constitutionally sound, will enable the introduction of substantive legislation by regulation. That is contrary to proper parliamentary process.

The [Franchise Council of Australia] calls upon the parliament of South Australia to oppose the bill. At the very least it should be withdrawn for proper consultation with the small business sector. In an amended form it would be likely to gain significant support.

Interesting words.

The Hon. A. Koutsantonis: Are you going to read out the Farmers Federation submission as well?

Mr GRIFFITHS: No; I am just updating the house. You got the opportunity to talk about the 57 submissions. I want to finalise this with a few words, and reinforce the fact—as I expressed last night—that franchising changes should occur by way of changes to the national code, not on state-by-state-based opportunities. I have a great fear that that would create a situation in which South Australia would be seen as not being a place to invest. I certainly do not want that to occur, and the opposition does not want that to occur.

It is important to highlight a few things. The Liberal Party, by virtue of many of its members, and not just parliamentary members but lay members, has a significant small-business background. Many members in this chamber operated small businesses or have family associations with small businesses, going back several generations in some cases. They are committed to the success of small business and would never propose or support legislation that would in any way have a negative impact on small business. We see ourselves very clearly as a party that will do all in its power to support small business opportunities in South Australia and ensure its greatest possible level of success.

The minister quoted himself in estimates earlier this year. I believe the words were, 'It is not the government's job to make business succeed.' I respect that business has the sole responsibility to work as hard as it can in the best possible way to provide quality service and product, but there is a role for government to support success. The minister nods his head in acknowledgement. There is obviously a role for the government to support success.

Supporting success comes in many different ways, though. It can be focused—as you have done—on assisting with a mediation service or middle person (which, as I see it, is what the commissioner will be) to help in resolving issues. It can be at the front end of small business, with small-business initiatives—start-up businesses, generational transfer, economic challenges that are occurring around the world—where that level of support is needed. It is in that area that I am quite fearful that the support that does not exist is what small-business truly needs. It is for that reason that the Liberal Party has chosen not to support this piece of legislation.

There will be a lot of debate about individual clauses of the bill, and I again reinforce the fact that I understand how the numbers work in this chamber. It is my role to ensure that I seek clarification on quite a significant number of points. I do admit that some of those were provided at the briefings, but I want to make sure that the minister puts the issues on the record as well, because it is important that there is scrutiny of any piece of legislation.

We have not taken the decision on this bill lightly, and I do respect that a level of criticism may come from people who are uninformed on the reasons behind the position we have taken. However, we have taken the decision not to support this bill because of two things. First, we are very concerned about the franchising aspects and how that will impact upon how South Australia is viewed and investment opportunities that will come down; and, secondly, that small business needs support in a different field to what the minister has proposed.

I am grateful, in fact, that there is \$1.5 million in support being put towards small business, which is on top of a very small level that is in direct programs from within the budget. But, again, I enforce on

behalf of the Liberal Party—and no doubt other members will take up similar issues—that it is the wrong end of the spectrum. There are opportunities for small business to grow. It needs government support, it needs government mentoring, it needs programs in place, it needs people available to assist them to grow, to help with a vision, and to help make that vision a reality.

There are services already available from associations in a commercial sense that can help with mediation for issues and resolve disputes, and that, sadly, seems to be the total focus of the role. For those many reasons that we have espoused over the last 45 minutes or so, I confirm on behalf of the Liberal Party that we cannot support the bill in its current form.