

FRANCHISE ARRANGEMENTS

Grievance

Mr P. PAPALIA (Peel) [9.49 am]: My grievance this morning is to the Premier and Minister for Federal-State Relations. I wish to speak on my concerns about the fairness of franchise arrangements. Recently I became aware of a situation in Rockingham - one of which I believe the member for Rockingham is also aware. It concerns the imminent closure of the local KFC outlet. This KFC outlet is one of the closest KFC branches to my electorate and it represents a convenient -

Dr S.C. Thomas: The previous member for Peel was always in there!

Mr P. PAPALIA: Yes, I try to avoid doing that, but it is very convenient to many of my constituents who enjoy the occasional KFC lunch or dinner. I understand that this KFC branch has operated successfully and has attracted a very good and loyal customer base. Indeed, I know that this branch has operated for more than two decades - even longer than I have been travelling to Garden Island. The Rockingham KFC outlet employs around 40 people, including some with nearly 20 years of service. I am advised that the workforce includes at least two people with disabilities and a veteran. In many ways, the branch represents a key part of the local landscape. It provides local jobs and quick and easy food for customers on the run in the surrounding area.

Competitive Foods Australia Pty Ltd has run the KFC franchise business for 38 years. However, the parent KFC brand has recently been purchased by Yum Restaurants International (Pty) Ltd - a multi-national company based in the United States of America. In an effort to take back the business, Yum International has recently notified Competitive Foods that it will not renew Western Australian KFC outlet licences as they fall due. In so doing, Yum International has offered to purchase Competitive Foods' 50 KFC outlets at a price that Competitive Foods claims does not recognise 38 years of goodwill and is therefore significantly below market value. I reiterate that the Rockingham business has been building goodwill for a number of decades. As a result of this assault on its business, Competitive Foods is left with little choice but to deny Yum International access to its lease sites in an effort to prevent the same tactic being employed against its entire stable of businesses. Competitive Foods intends to fight this with the only means at its disposal, and that is to shut down individual outlets as their franchise agreements fall due. The Rockingham agreement is the first of these in Western Australia to expire, on 19 November 2007, and this will lead to the loss of 40 jobs - a distressing outcome for 40 people.

However, this issue has wider implications. Franchise arrangements are increasingly popular, with many Western Australians who go into small business opting for the franchise path and seeing it as a more secure and supportive environment. Nationally, the franchise sector is currently turning over \$128 billion a year - a very good indication of how large and influential franchising is. It is one of the fastest growing sectors in the economy, with an impressive average growth rate of 17.4 per cent over the past four years. The franchising sector contributes some 14 per cent of Australia's gross domestic product and is a major employer in Australia, whether that be through providing part-time positions and casual work for students, or broader career opportunities. Franchising employs an astonishing 700 000 Australians in 72 000 workplaces, and is obviously growing year after year.

According to a recent survey conducted by Griffith University, in 2006 there were around 960 business format franchise systems in Australia, representing an increase of 13 per cent since 2004. Western Australia is the perfect business environment in which to run and grow a franchise. We have an excellent economy and a growing population with more discretionary dollars to spend. Because Western Australians are busier, older and have more money in their pockets to spend, businesses that now do what people once did for themselves are thriving. This trend is evident in the range of franchises that are proving most popular today, including those in retail; property and business services; retail trade; food; and personal and business services. In addition, fitness centres, coffee shops, home cleaning and maintenance businesses are all experiencing good growth, with many of these businesses run as family businesses. I know from Small Business Development Corporation figures that franchises are popular with business migrants. I can also speak from personal experience. When my wife and I first considered embarking on running a small business, we considered very deeply a number of different franchise options, although we did not follow that path. This point is also illustrated by an encounter I had on the weekend at the World's Biggest Barbecue at Secret Harbour. An old Navy colleague, Darren Dyball, introduced me to a younger Navy man by the name of Scott Gallon. In preparing to leave the service, Scott and his wife, Rebecca, have purchased two Muffin Break franchise outlets. They are great examples of novice entrepreneurs who choose franchising as a safer means of entering the small business sector.

Franchising is definitely a growth sector in the retail market. However, my concern is that existing franchise arrangements in Australia may not offer sufficient protection or information to franchise operators who may find themselves in a similar situation to the one facing the owners of the Rockingham KFC franchise. It seems that the franchisor can use its right to not renew a franchise agreement and potentially deny the franchisee the

economic benefits of building a strong and successful business. While I recognise that this may ultimately be a matter for the federal government to address under the Trade Practices Act, I ask the Premier: can the state government initiate an inquiry not only into whether existing legislative provisions for franchise arrangements at both the state and federal level are adequate, but also into whether state or federal legislation needs to go further to ensure a sufficient level of disclosure in franchise arrangements to prevent any unconscionable conduct in those arrangements?

MR A.J. CARPENTER (Willagee - Premier) [9.56 am]: I thank the member for Peel for his grievance. There appears to be an important principle at stake here - the principle of fairness to the franchisee. This case has significant ramifications, as the member alluded to, because there are many franchise arrangements in our economy. Thousands and thousands of people are involved in this rapidly growing sector of the economy. I think this matter is extremely serious. Other people have raised the Rockingham case with me in the past few days, so it is obviously a hot topic in Rockingham - acknowledging that some 40 people's employment may be at stake and that this long-standing business has built up a lot of goodwill over the period of time that it has been operating.

Franchise arrangements are becoming increasingly popular. The member for Peel gave the figures supporting the significance of franchise businesses in our economy, which have turned over \$128 billion nationally and enjoyed a growth rate of something like 17 per cent over the past four years. As the member has outlined, the incomes of thousands of people in the retail sector, property and business services, retail trade food, and personal and business service markets are dependent upon franchise arrangements. At both a national and state level, governments need to ensure that small business owners are treated fairly and given fair opportunity to compete in the market place. Most significantly, governments need to ensure a fair and competitive environment to safeguard the interests both of business arrangements and of the public.

I am yet to be provided with the full details of this case. I have sought advice from the relevant ministers and departments about franchise arrangements; however, this area of business regulation is quite complex and involves considerable oversight by the federal government. Franchise agreements in Australia are regulated by the Trade Practices (Industry Codes - Franchising) Regulations 1998 - commonwealth regulations that establish the Franchising Code of Conduct. Clause 4 of that code provides a formal definition of a franchise agreement.

In October 2006, a review of the disclosure provisions of the Franchising Code of Conduct was completed by a committee that reported to the federal Minister for Small Business and Tourism. The committee looked at the operation of part 2, Disclosure of the Franchising Code of Conduct, to identify possible amendments to improve the disclosure provisions of the code. The committee received 75 submissions and met with the key stakeholders. The report lists 34 recommendations for amendments to the code.

Two of the recommendations are particularly relevant to the issue of the parties' respective rights at termination - which is where we have arrived at with the Rockingham KFC outlet - expiry or non-renewal of a franchise contract. One recommendation is that the code be amended to include a requirement that a franchisor include a risk statement with the disclosure document. The committee also recommended that the ACCC be tasked with developing a prescribed risk statement document with disclosure requirements. Another recommendation is that the risk statement should, if significant, refer to the risks of the franchisee on termination, expiry or non-renewal of the franchise agreement. I know that we are in an election period and the federal government is in caretaker mode, but I believe that this is a significant issue and the committee's recommendations need to be acted upon immediately after the upcoming federal election by whichever party forms government. The federal government needs to take the matter seriously. There are obviously thousands of people who could potentially be affected.

As I have been advised, the state government, under the legislation that we have at our disposal, does not have the power to directly resolve this matter. That is unfortunate because I think this matter needs resolution. However, this issue has been brought to my attention now and I want to make sure that the policy settings we have in place both at state and federal level are appropriate for the business requirements of the modern economy. Franchising has become more and more significant in that economy.

I have taken on board the concern that the member for Peel has raised with me. I have asked the Minister for Small Business to investigate this policy issue over the next short period. 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 minister has agreed with me on this issue and has offered to ask the Small Business Development

Corporation to provide secretariat services to the inquiry, and we are grateful for that. The inquiry will require written submissions. SBDC will also conduct an Internet survey of members, and several linked forums will be held with stakeholders. The terms of reference are being finalised but will include: adequacy of existing legislative provisions, both state and federal; whether emerging trends in the franchising industry disclose patterns of unconscionable conduct that may not be covered under existing laws; and whether existing remedies available to franchisees are adequate.

I congratulate and thank the member for Peel for bringing this matter to the attention of the government. It is an area of business that we need to examine to ensure that the policy settings are appropriate and that the interests of business people, many of them very small business people, are protected. I believe that the solution does lie with the federal government. I expect it to act on the recommendations of its committee. I also look forward to receiving a report from Mr Bothams and thank him for offering his services.