



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**HOUSE OF REPRESENTATIVES**

**Federation Chamber**

**BILLS**

**Competition and Consumer  
Amendment Bill 2013**

**Second Reading**

**SPEECH**

**Thursday, 6 June 2013**

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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## SPEECH

**Date** Thursday, 6 June 2013  
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**Questioner**  
**Speaker** Kelly, Craig, MP

**Source** House  
**Proof** No  
**Responder**  
**Question No.**

**Mr CRAIG KELLY** (Hughes) (15:36): I rise to speak on the Competition and Consumer Amendment Bill 2013. This bill amends the Competition and Consumer Act 2010 to insert a regulations-making power to enable regulations—

*A division having been called in the House of Representatives—*

### **Pr oceedings suspended from 15:37 to 15:52**

**Mr CRAIG KELLY:** I am speaking on the Competition and Consumer Amendment Bill 2013. This bill amends the Competition and Consumer Act 2010 to insert a regulation making power to allow regulations to be made to exempt certain representations from the component pricing requirement in the Australian Consumer Law. This amendment will allow a regulation to be made to place restaurant and cafe menu surcharges for specific days outside the component pricing required by the Australian Consumer Law.

For the background to this amendment we have to go back to May 2009 when the Trade Practices Act was amended by this government to put in a clause which stipulated that restaurants and cafes were required to incorporate any additional surcharges into their listed prices on menus. As the ACCC advised at the time, no asterisks, no small print—you have got to have a separate menu with prices spelt out. The bill that this government brought in was clearly an overkill. It was just another example of the red tape this government has brought in which is strangling small business. At the time that regulation was brought in we already had a provision to deal with this, which was section 52 of the old Trade Practices Act. This section is a catchall section which provides that a person must not in trade or commerce engage in conduct that is misleading or deceptive or is likely to mislead or deceive. So if a business was using component advertising and prices that were misleading, we already had legislation in place that would have captured that activity. But this government thought it was necessary to bring in additional legislation, and now we see the unintended consequences and the damage and harm done to small business.

But at least I will give them some credit. On this occasion they have learned the error of their ways and they are fixing this problem, this mess they have created. First, it should never have been brought in. Even if there were any examples where we see advertising of cheap fare for holidays where the component pricing was built as a little surcharge down the bottom, it was longstanding and it was an uncontroversial practice within the hospitality industry for the percentage surcharge on public holidays, weekends and other special occasions. What they did was have all these small businesses that were doing the right thing and had been doing the right thing find they were in breach of the law even though they were not engaged in misleading or deceptive conduct.

What did we see as a result? We saw the ACCC, with not a great record of doing the right thing by small business, going after a series of small businesses. In September 2010 the ACCC said it had instituted proceedings against four cafes and restaurants alleging that they had breached the Trade Practices Act. This attack on small business was severely criticised by the Restaurant and Catering Association's John Hart. He said at the time:

Our board is absolutely furious with the way this has been dealt with. There is much more anti-competitive behaviour and yet so many bigger players get away totally unscathed. Because they will not pick a fight with them—

referring to the ACCC—

they go after the smaller players.

That appears to be exactly what happened. One of the small business owners that the ACCC went after for engaging in this terrible activity against the laws that this Labor government brought in said:

There was no warning and it has not been publicised. It was not publicised through our association. No-one called and we did not receive any correspondence. All we received was an infringement notice and they expect us to pay it now without any warning.

This is just another example of how small businesses have been unfairly treated under this government.

What is also interesting is that at the very same time as the ACCC was going after these small businesses, these small cafe owners that were committing this hideous crime of putting on the bottom of their menus a 10 per cent surcharge on public holidays—like they have probably been doing for a long time, probably for generations—the ACCC was letting some of our largest corporations get away with some of the most egregious acts. In fact one of our largest supermarket chains, at exactly the same time that ACCC was proceeding these, had large signs up in their stores saying 'low prices that you can count on'. They were engaging in the most aggressive examples of geographic price discrimination, charging 100 per cent higher prices in one store than they were in stores a few kilometres away. Where those prices were higher, they had these big signs up to assure the consumer 'trust us, these are low prices that you can count on'. The ACCC decided to take no action on that yet would go after these small businesses. That is the mess this government has caused.

That is not all we have seen from the ACCC. The ACCC may very well argue that it has to enforce the law that has been legislated by this parliament. That is a fairly legitimate argument. But if that is the case, why has the ACCC not brought one single case on what is known as the 'Birdsville amendment' to amend our laws on predatory pricing since it was legislated at the end of the Howard-Costello government? Not one single case has been brought on. The ACCC was prepared to not look at that law and not to prosecute on that law but to go after these poor small businesses. Thankfully, this amendment will fix this problem.

There are many reasons that small businesses, cafes and restaurants might legitimately want to put a surcharge on their price. It could be for the extra costs of employing staff on the weekends, which is sometimes a legitimate cost, but what about a carbon tax surcharge? Restaurants can put on the bottom of their menu 'additional surcharge for carbon tax'.

We know the carbon tax is only \$23 at the moment. We know in about three short weeks the carbon tax goes up. It increases next year as well and then we morph to the ETS. We have seen the Treasury projections and this government hopes that under its plans the carbon tax, which is now \$23 a tonne, will go to \$350 a tonne. What costs will this add to small business? Small business may well have to have a 100 per cent surcharge because of the increased electricity prices when the carbon tax reaches \$350 a tonne.

Another surcharge small business might want to put on is a Labor debt repayment surcharge—because somebody is going to have to repay that debt. We know from information released a few days ago in Senate estimates that the Christmas present that this government will leave under the tree for every Australian will be a debt of \$290 billion. This government will leave this debt as a Christmas present under the tree. When we look through the budget papers we remember that over this year and over the next four years, clearly detailed in budget papers, the interest payments on that debt will be \$34½ billion.

**Mr Bradbury:** Mr Deputy Speaker, I raise a point of order. We have all been very generous in allowing the member to engage in a wide-ranging discussion. But he is now going well and truly beyond matters of relevance to this bill.

The DEPUTY SPEAKER ( Mr Lyons ): I remind the member for Hughes that this is about the Competition Consumer Amendment Bill 2013. Please stick with this bill.

**Mr CRAIG KELLY:** The bill enables restaurants and cafes to apply a surcharge on to their menus. I am going through some of the possible things that small businesses, restaurants and cafes have and the surcharges they may have to apply.

**Mr Bradbury:** Deputy Speaker, I rise on a point of order. I think the member should be very careful. The sort of guidance he is seeking to provide to small businesses is verging on encouraging them to engage in conduct that is actually prohibited under Australian consumer law. He should stick to the matters that are the subject of this bill, which relate to surcharges for cafes and restaurants.

The DEPUTY SPEAKER ( Mr Lyons ): The member for Hughes has the call.

**Mr CRAIG KELLY:** The member makes a reasonable point, which I would like to comment on. They have often scared business about putting their prices up. Small businesses operate in a very competitive environment, especially cafes and restaurants. If they put their prices up they will lose customers. So no small business wants to put surcharges on the menu because they know that risks customers going to other businesses. It is a very competitive environment, but we cannot have the minister coming in here and creating a false impression that small businesses are able to increase their prices as long as they can justify it and it is not misleading. It gets back to the point of this bill. The mistake was the original bill that this bill is amending. We had a catch-all provision under the old section 52 and it was not necessary.

I am happy to leave my comments there. The coalition is pleased to support this amendment because it undoes one of the most disastrous policies of this government we have seen. I am sure that after September 14 there will be many other examples as we start to undo the damage that this government has done.