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**HOUSE OF REPRESENTATIVES**

**Federation Chamber**

**BILLS**

**Competition and Consumer Amendment  
(Industry Code Penalties) Bill 2014**

**Second Reading**

**SPEECH**

**Thursday, 28 August 2014**

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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## SPEECH

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**Speaker** Jones, Ewen, MP

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**Mr EWEN JONES** (Herbert) (10:42): I have got some text I need to read first, and then I would like to make some comments, so bear with me, because the first bit is a bit dry. I rise to speak on the Competition and Consumer Amendment (Industry Code Penalties) Bill 2014. The amendments in this bill form part of the government's election commitment to refine the franchising code. The bill outlines the government's franchising policy reforms and builds on the 2013 Wein review, including: ensuring that franchisees and franchisors act in good faith—and that is the key term in these things and I will be speaking a little bit more about 'in good faith'—in their dealings with each other; introducing penalties for breach of certain provisions of the franchising code; improving the transparency of marketing funds; improving disclosure by including short-form, easy-to-understand information for prospective franchisees; and cutting red tape by clarifying and streamlining the Franchising Code of Conduct, reducing unnecessary and sometimes unclear provisions.

The coalition promises to reduce red tape for business. Tony Abbott's plan is to build a strong, prosperous economy. Small business owners told us that red tape was harming business across Australia. I see that in my electorate all the time. This government will ensure the franchise industry has the support it needs to flourish. That is why, before the election, we said we would refine the national franchising code. We want to promote the growth in the sector. We want to reduce red tape and we want to make sure all participants in the industry follow best practice principles. The government has also committed to guard against separate and additional state regulations.

We are the government helping small business, not hindering it. Just as an aside, I think that having a stand-alone Minister for Small Business in cabinet, under the Treasury portfolio, is a huge statement to the business community. I know there are a few complaints around the country about where our priorities lie in relation to portfolios, but I think it makes a massive statement to the people of small business that it is not just an adjunct to another portfolio. In my time in the parliament, we have had the one person in that portfolio. Bruce Billson takes this thing very seriously. When he speaks about the pillow talk of having to fill out the BAS and that sort of thing when he speaks to you in your electorate, you know that he has been there.

In relation to being a friend of small business: I think we have to get down to what we actually have done so far. We have axed the carbon tax and we have scrapped 50,000 pages of red tape, saving over \$700 million this year. The government has committed to saving \$1 billion each year. Josh Frydenberg, as the member for Kooyong and Parliamentary Secretary to the Prime Minister in relation to red tape, is in charge of this repeal. We are having a second repeal day—it is coming up. The first one was a tidy-up of the books, if you like. What we are looking for a practical examples of where we can help business and get rid of that red tape, making sure that we are not ceding an area where a state government or a local authority can come in and crib some money back. So we are making sure that business will be protected on the way through.

We have implemented a dedicated small business support line, which has had over 100,000 calls in just eight months. Small business operators are now able to rely on advice from the Fair Work Ombudsman without fear of prosecution should the information provided by the Fair Work Ombudsman be incorrect. We have developed a 'Your First Employee' guide to help time-poor business to understand what to do when they hire their first employee.

The first franchising code was brought in by the Howard government in 1998 with the idea to regulate the conduct of participants in the franchising industry. Despite many reviews, the code is fraying at the edges and needs to be reviewed. The former government commissioned an independent review by Mr Alan Wein in 2013. The report found from evidence received that there was widespread industry support for allowing a court to impose a pecuniary penalty for some breaches of the code. But despite the then government supporting this and despite the then government asking for the report, Labor just failed to act. They failed to implement any policy before the last election. Labor once again left the work of the heavy lifting for the coalition.

Every speaker on this side has made the comment that under Labor 519,000 jobs were lost in small business. We faced the GFC and banks—everything like that—made it very hard for small businesses. But at the end of the day, it does not matter what the circumstances were: the facts speak for themselves—519,000 jobs lost. That is the challenge for us to get back.

The Abbott government supported Mr Wein's recommendations to make more flexible enforcement options available to the ACCC. Following the recommendations from the 2013 Wein review and ongoing consultations with the franchising sector, the government has committed to ensuring franchisees and franchisors act in good faith in their dealings with each other. We are use to the term 'in good faith' and we hope that the common law meaning of 'in good faith' is held as a central principle to these negotiations.

Currently, the Competition and Consumer Act 2010 does not allow pecuniary penalties to be imposed for a breach of the industry code. Nor does it allow the ACCC to issue an infringement notice in respect of a contravention of an industry code. The amendments will allow regulations to be made for a pecuniary penalty not exceeding 300 penalty points or \$51,000 for a contravention of the industry code. The ACCC will be able to issue an infringement notice to the amount of 50 penalty points, or \$8,500, if the person is a body corporate, and 10 points or \$1,700 in any other case.

Franchising gives the public access to recognisable international and Australian brands. It is a great way for people—as the member for Lindsay was saying—who do not really have a business background to get a business model that works. That is the beauty of it. That is why you pay the fees to get into a franchise. It is not about starting something from scratch but taking someone else's business model which has been proven to work and you try to make it work. That is the value of a franchise. So each party to a franchise agreement must act towards the other in good faith in respect of any matter arising under or in relation to the agreement of the franchising code.

A franchisor must provide a disclosure statement in the form set out in the franchising code to a franchisee or prospective franchisee and within the time frame set out in the clause.

A franchisor must provide a franchisee with an annual financial statement for marketing and for other cooperative funding, along with a disclosure document following a written request. A franchisor must give a franchisee reasonable notice where it proposes to terminate the franchisee agreement for breach and give the franchisee a reasonable time to remedy the breach. A franchisor must give a franchisee reasonable written notice where it proposes to terminate the franchise agreement and the reasons for the termination.

The hard part about all this is that a franchise agreement between a franchisee and a franchisor is pretty much like a marriage. There has got to be a lot of trust, and when there is trust between people who are not married to each other and there is money involved, there is a lot of tension there and this is where you need to get in—and I know the member for Hughes was jumping up and down about this as soon as he was elected in 2010, he has been speaking to me about franchising agreements.

The pressure to get the thing working and to start seeing an income leads people to try and reinvent the wheel. This is a two-way street: this is not just the franchisor cutting corners and getting the money and running; this can be the franchisee reinventing the wheel, moving away from that business model and not committing to the formula. We have to ensure that both parties act in good faith, that both parties understand the pressures that are involved here and work towards a great resolution.

There are 73,000 businesses employing over 400,000 people in Australia contributing in excess of \$131 billion annually. The number of business franchisors has grown over the last four years, a period that spanned the peak of the global financial crisis. In contrast, the broader small business sector is recovering more slowly from the GFC.

When people are talking about banking to me, they say that getting money out of banks for small business is incredibly difficult. The banking regulations, the systems they use, the pressures they put on small business to perform and the interest rates they are charging for small business loans are very, very tough and onerous. There has been constant criticism in newspapers and journals in relation to the way the banking system has worked.

In my seat of Herbert in the City of Townsville, there are over 11,000 small businesses. Townsville has a very strong small business sector. We need to back small business and support the people who are willing to lose it all to get ahead. That is the thing: to go into business—I was never in my own business; I never had a ticker but I was also very, very aware of my strengths and weaknesses. I am a very good manager of somebody else's

business, but I know my weaknesses when it would come to running my own business. I was never prepared to risk my house, my family's future and that sort of thing on that prospect.

Townsville has a very small business sector, but we need to back small business and support the people who are willing to lose it all to get ahead. We have a diversified economy in Townsville, and that is under threat. Retail and franchising in particular is a major employer, and we need to make sure they have got that there.

These amendments will deter breaches of the code and enhance the work of the ACCC by allowing it to act, if a breach occurs. The government's changes strike the right balance between the needs of the franchisors and franchisees that reflect the unique nature of the franchise relationship. This will promote better franchise in business and will also make the sector more attractive to investors. The government must get out of the way of small business and get their hands out of their pockets.

Franchising is not easy. I have always said, with free trade agreements, that Minister Robb has been able to score. There are too many people in this world who think that with a free trade agreement, we just have to sit back once we have signed the agreement and the money will just keep rolling in. It is the same with a franchise: signing up for a franchise is the start of the hard work. It is not the end of the hard work. Deciding which franchise you want to be in is the beginning. After that comes a lot of hours, a lot of organisation and a lot of commitment. As the member for Lindsay was saying, people retiring from wage-earning businesses where they were not in business for themselves can find it a very, very rude shock of just how much work is required to run a franchise, a small business.

A friend of mine is an accountant and he does transitions when people get their superannuation. He says that, quite often, people will come and see him and say, 'We have got some money here and we want to invest in a business. We want to be able to work a couple of days a fortnight; be able to write our travel off to tax; and make \$100,000 to \$200,000 each on the way through.' Troy then leans across the table and says, 'If you think that business exists, do you really think that I would be here talking to you?' Those sorts of businesses do not exist.

All businesses require a lot of hard work to get them up and running. That is what the franchise arrangement is. The franchisor has to act in good faith to make sure that they are picking the right person to go into that business and that they are prepared for it. The franchisee has to understand that this is the start of the hard work and that putting the sign up over the front door is not a guarantee that people are going to come in. They must make sure that they stick to the business case—that they are doing everything right, that they are participating in the community, and that they are doing the extra things. You cannot cut corners when you own your own business; you must commit wholly. The one thing that you can go without when you are a small business owner is sleep. The business takes up a lot of your time and you must be prepared for that.

That is the whole thing about 'in good faith'. What the minister wants to do here is make sure that people on both sides of this arrangement understand their responsibilities. A franchisor cannot just sit there and say, 'Give me \$50,000 and I will set you up in a business and that is all the work that has to be done.' I know the minister is a Richmond supporter, but Bruce Billson is a good man and he understands what people are going through in business. That is the thing: you do not have to have cancer to cure it. When you have been in a situation where you have seen a business struggle or you know how much work has to be done, that is when you really understand what needs to go into these negotiations. So when the minister is standing in front of these people and explaining what he wants, he is coming at it from the perspective that he knows how much work is involved. I like these amendments. I think they are common sense. I want all parties to understand that they are about working in good faith. I commend the government for this bill and I thank the House.