

Dear Sir/Madam,

I am writing to express my strong opposition to the Franchising Bill 2010 (EM 162) introduced by Mr Peter Abetz, MLA.

This bill will have overwhelmingly negative consequences.

Conflict will increase and investment will decrease. Compliance costs will skyrocket.

And as we have seen in public statements by major WA businesses, the impact could be so negative as to drive them to relocate their head offices outside the State.

Franchising is a national endeavour. It is rightly regulated nationally – and should stay that way.

The sponsor of this Bill says it can be introduced without increasing compliance costs. What nonsense. Every agreement will have to be reviewed in light of it. Mr Abetz says the Bill will apply to all existing agreements; therefore all existing agreements will have to be reviewed. That is an immediate and real expense.

In my business, I estimate the cost of the review alone to be several thousand dollars. And on my reading of the Franchising Bill 2010, I am not assured I will be any more confident of being compliant having undertaken the review.

The Bill has so many terms of vague meaning, I am not confident I can soundly address each one. Will my lawyer be able to give me certain answers on this question? I doubt it.

Yet I must undertake the review and have a bias for addressing any potential compliance issues, otherwise an opportunist complainant might try to use inaction against me.

This legal uncertainty is, in my opinion, the very point which exposes the underlying weakness of the Bill. The only thing which is certain is that the Bill will create uncertainty and confusion.

Mr Abetz says there will be 'no change' under his Bill for any except the "rogues" in the sector. I strongly disagree with him.

Firstly, I do not know any "rogues" among WA franchisors and I know that many of my colleagues feel the same affront that I do at the unsubstantiated use of this term. If Mr Abetz had the courage of his convictions he would name names – and give the alleged "rogues" a chance to defend themselves, instead of dragging down the reputation of the entire sector. His excuse that to do so could compromise franchisees is weak and bereft of integrity. If the alleged rogue behaviour of itself does

not demand the exposure of the culprits, then its substance must be at least questionable. There is simply no justification for the assumption of guilt, especially where there is not even a pattern of unacceptable behaviour which can be accurately portrayed by Mr Abetz.

Secondly, there will be clear, negative effects for the whole sector – franchisors, franchisees and suppliers. Who will ultimately pay for the negative effects? Franchisors and franchisees directly; suppliers indirectly (due to lower sales/billings) and consumers, through higher prices.

It is likely that, as a result of the bill:

- WA based franchisors will reconsider their growth plans. Some may even contemplate moving their national offices interstate, resulting in significant job losses.
- Interstate and international franchise brands will avoid expansion to or within the WA market.
- Franchisees will have the value of their business significantly decreased due to the decrease in demand for franchise business and the uncertainty caused by the proposed laws.

Franchising is a \$10 billion sector in Western Australia, is responsible for the creation of approximately 75,000 jobs in WA and provides a business ownership opportunity for more than 8,000 franchisees.

Will this Bill improve this situation? If not, then why introduce it?

Mr Abetz says potential franchisees will be flocking to WA to participate in this more positive regulatory environment. And what history can he point us to in support of that claim? Where in history has increased regulation, the threat of heavy fines and introduction of untested business conduct definitions lead to increased investment? If Mr Abetz can not list them, then he needs to rethink his claim; for there are many examples of the contrary where investment has been shattered by such moves. Releasing the shackles in a careful, controlled manner is the secret to stimulating investment activity. That is what the Federal Government's 'red tape' removal program is all about.

And what problem is this heavy-handed legislation intended to fix? I do not regard unspecified accusations of rogue behaviour as being sufficient. What data or evidence does Mr Abetz bring to support his claims of rogue behaviour?

In my opinion, the sector is performing well. I can say with pride that in my own business morale is high. We are doing well, despite very difficult economic circumstances.

After its inquiry in 2008, the WA (Labor) Government concluded that the sector was in good health and that any necessary adjustments could, and should, be handled at the Federal level via the Franchising Code of Conduct. The Government was right then; just as it was when the incoming Liberal Government decided against giving into pressures from vested interests to introduce a franchising Bill in 2009.

Perhaps Mr Abetz should have the last word in this submission.

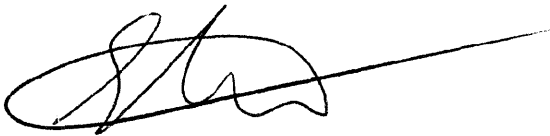
He states on his web site that "I believe every group in society has the right to be heard, but in the end the majority view must prevail, and governments should not pander to vocal minority groups". Source: [http://www.peterabetz.com/index.php?option=com\\_content&task=view&id=168&Itemid=101](http://www.peterabetz.com/index.php?option=com_content&task=view&id=168&Itemid=101)

Well, Mr Abetz, the franchise sector in general does NOT want your Bill -- in WA or any other state. How many franchise systems in WA support this Bill? Not franchisors -- systems, including a majority of franchisees? I don't know of any, but surely Mr Abetz must know many -- otherwise he surely would not be raising this bill. Why can't he tell us the names of the systems that support his Bill?

My colleagues in South Australia have made the same challenge in South Australia and there is no response from the backbencher raising a franchising Bill there, either.

Members of the committee, I urge you to act in the interests of the WA small business economy and dump this Bill where it belongs – in the bin.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'S. Terpstra', with a long horizontal line extending to the right.

Steven Terpstra.