



Sophie Valkan

From: Sophie Valkan
Sent: Thursday, 20 January 2011 10:25 AM
To: 'laeisc@parliament.wa.gov.au'
Subject: Submission to the WA Government re Franchising

Dear Sir / Madam,

I am actively involved in the Australian franchise sector having been in the sector since 1998, and strongly oppose the introduction of State based legislation on franchising. I have been a lawyer since the mid 1980s only last year having given up my practicing certificate as I have held CEO roles in franchisors for the last few years and have not practiced law for that time. I speak therefore not only from a position of intimate knowledge of the sector commercially, but also with strong understanding of the legal ramifications to the franchise sector of this proposal.

If this proposed legislation is so good and so essential to the operation of the sector as a whole, why wouldn't the federal government implement it? This is just crazy stuff. The business I currently work for does not have franchises in WA yet, and any differences in the legislative regime will be a significant factor in our decision-making process on whether to expand into WA (we currently operate in Tas, Vic, NSW & Qld).

One thing that is constantly overlooked by those who espouse "state based legislation" is that the essence of franchising is the granting of rights to people to operate a defined system. This is very cost-effective and permits the viable existence of both franchisors and franchisees due to the efficiencies of scale – the franchisor has one system they have to administer, and franchisees have one system they all use. The introduction of fractured legislation across the country changes this dynamic, as it is no longer one system that is operated – it becomes two or three or four, all in the same country. This is a ridiculous result and interferes with the efficiencies which are the very essence of why franchising works as a business model and works particularly well in Australia. State based differences increase costs, which will always end up costing consumers at some point, with no real logical justification for the differences by state. Business interests are business interests no matter where they are, so they either need protection nationally or not at all. From a practical perspective, state boundaries are meaningless to business in Australia and to introduce differences is taking a massive step back for an economy that should be walking in sync with globalization, not stepping back to state-based quirks in the law.

I agree with the detailed reasoning provided by the Franchise Council of Australia. The franchise sector is already comprehensively regulated at a Federal level by the Franchising Code of Conduct and the Trade Practices Act, and overseen by the ACCC. We have just had two major Federal inquiries on this matter that specifically considered the recommendations of the SA and WA inquiries, so there can be no possible justification for introducing a new State law that contradicts the conclusions of these inquiries.

Any new legislation at State level will add compliance costs, and is a totally unnecessary duplication. I have seen no evidence of material problems in the franchise sector. Business in any form is business and there will always be tension between parties in business, regardless of the business model – that's just how business works. However if there are problems unique to franchising that remain after the extensive recent reviews, they should be fixed at a Federal level in the Franchising Code or by ACCC action. I oppose State based regulation of this area, or any further change in legislation at this point.

I also strongly oppose the introduction of any new statutory duty of good faith, let alone a State based duty. We already have the Franchising Code, prohibitions on misleading and deceptive conduct and unconscionable conduct and a common law duty to act in good faith that will apply to most franchise agreements. This is more than adequate. Any new duty will create uncertainty, cost and be a disincentive to business in Western Australia.

Regards,

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