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21 January 2011

Via email: laeisc@parliament.wa.gov.au

Godfreys Comments on the introduction of Franchise Industry State-based Legislation in WA

Dear Sir/Madam,

It is with considerable concern I write in relation to the proposed introduction of state based legislation for the franchise industry on behalf of ICSH Pty Ltd, trading as Godfreys. Godfreys is a 79 year established Australian brand consisting of 187 retail outlets, of which 104 outlets operate under Godfreys Franchise Systems PTY LTD franchise Agreement in Australia and New Zealand. Godfreys is a member of the Franchise Council of Australia, and is an advocate of the existing Federal Government Franchising Code of Practice.

Our company has serious concerns regarding the introduction of State-based Franchise legislation to the extent that;

- State-based legislation is unnecessary and inappropriate
- Have grave concerns at the legislative intention of the SA Government; especially based on the content of the Piccolo bill (2009), which the Government has said it intends to follow.
- Do not believe the legislation is needed; i.e. rogues are not roaming unchecked, disputes are at respectable 1%, and most of the recommendations of the WA and SA inquiries (2008) have been implemented by the Federal Government and additional enhancements have been made through the 1 July Code changes and the 1 January ACCC powers.
- Believe proposed legislation will do more harm than good -- for franchisors and franchisees in WA/SA and elsewhere.
- Will undermine confidence, increase risk and retard growth -- a detriment to the WA/SA economies and national GNP.
- Support FCA submissions to WA and SA governments

1. No demonstrated need

There is no clear substantiation of the need for this Bill. The claims made about "rogue franchisors" are not backed up. No rogues are named and no pattern of 'rogue' behaviour is identified.

2. Renewal is not a problem

This Bill is really all about contract renewal. The fact is 95% of franchisees renew for a second term; 99% of those who want renewal, get it. We don't need new laws, with big fines, to fix a non-existent problem.

3. Wrong motivation

The Bill's effect coincides with the commercial interests of one very large franchise business



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owner who is trying to get a new contract for his 50 fast food stores, which he has owned and operated highly profitable for the past 25-30 years.

4. **Jobs likely to be lost**
As a result of point 5 (above), hundreds of jobs are at risk in WA (as reported in The West Australian newspaper in November 2010)
5. **Franchise business values will fall**
The value of franchisee businesses, of which there are about 8,000 in WA, will decrease due to the uncertainty and instability within the franchise sector.
6. **Business financing costs will increase**
Financing costs will rise because lenders will re-price to take account of the added risk created by uncertainty and the possibility of opportunistic legal action or heavy fines. This means the cost of financing will rise, whether it is for purchase of a new business or funding a capital expense in an existing business.
*At least one major bank has addressed this point in a submission to the WA Govt.
7. **Compliance costs will rise sharply**
State-based legislation will significantly raise compliance costs for franchisors and franchisees and is contrary to the recommendation of the Bothams Enquiry into Franchising in WA (2007/08).
8. **Labor and Liberal Governments have rejected the idea**
WA Labor (2008) and Liberal (2009) Governments decided against making the changes suggested in the Franchising Bill 2010. The pressure to make changes has continued because the commercial dispute referred to in point 3 has not been resolved.
9. **Bill overlaps existing 'good faith' law**
The requirement to act in 'good faith' already exists in the Trade Practices Act 1974 and has been recognised by the courts. Creating a new, vague definition will simply create a new platform for costly and unproductive legal argument, where no such platform currently exists. The Bill seeks to elevate 'Good faith' to a virtual proxy for automatic right of contract renewal.
10. **Automatic renewal is against freedom to contract and State leasing laws**
Quasi automatic renewal of franchise agreements is against the principles of leasing and of freedom to contract. Why do the proponents not seek to have the same rules apply to leasing? Because they realise that landlords would not have a bar of it. Why then should franchising be singled out?
11. **Retrospectivity is dangerous and inappropriate in new laws**
The Bill will act retrospectively by applying to existing agreements – not new agreements written after the Bill is introduced. This means 70,000 existing agreements could be subject to the new laws, meaning franchisees and franchisors could face fines of tens of thousands of dollars if they are found guilty of breach of good faith negotiating or even a technical breach of the franchise agreement. This represents a major negative overhang on the sector.
12. **Complaint numbers are not large and are not rising**
Complaints to the ACCC have remained steady in recent years at less than 1% of franchisees. Griffith University statistics show disputes within franchise systems are at the same 1% level consistently over the past decade.
13. **Positive regulatory changes have already been made**
The Federal Government adopted most of the suggestions of the WA and SA inquiries in its



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package of changes to the Franchising Code and the TPA taking effect from 1 July 2010 and 1 January 2011. These changes need time to take effect and for their impact to be measured before precipitous changes are made.

14. Drafters have no experience

The drafters of the Bill – Peter Abetz MP and academic Frank Zumbo – have no experience or expertise in franchising. They do not adequately understand the ramifications of what they have proposed.

15. Small business growth will stall

Franchising is the turbo motor on small business growth. It is our concern that small business growth in WA will decrease.

Regards,

A handwritten signature in black ink, appearing to read 'Rob Lewis'.

Rob Lewis
General Manager - Franchise