



Mr Timothy Hughes  
Principal Research Officer  
Economics and Industry Committee  
Level 1, 11 Harvest Terrace  
WEST PERTH WA 6005

31 January 2011

### **Inquiry into the Franchising Bill 2010**

Dear Mr Hughes,

ANZ Mobile Lenders provide mobile home loan services for customers at a time and place that suits them. ANZ Mobile Lending is structured as a franchise model and ANZ is a franchisor in respect of 178 mobile lending territories across Australia.

ANZ has a number of concerns with the proposed Franchising Bill 2010. In particular, we are concerned that this legislation is unnecessary and creates an additional regulatory burden in an area which is already heavily regulated.

The franchise sector is already regulated at the Federal level by the Franchising Code of Conduct and the Trade Practices Act 1974, and overseen by the Australian Competition and Consumer Commission (ACCC). ANZ believes that further regulation at the State level is unnecessary, and would impose additional costs on the franchise sector.

ANZ also has specific concerns relating to the provisions of the proposed legislation:

1. The broad definition of "renewals" in the legislation could be problematic in an environment where franchisees may leave the sector and return, potentially with a new corporate entity. In particular given the retrospectivity, there should be no connection between completely separate contracts with franchisees separated by a period of time and potentially relating to different territorial areas.
2. The duty of good faith as expressed in the Bill would create inconsistency with the requirements of the Federal regulation and create uncertainty about the obligations of contacting parties.
3. The extraterritoriality of the Bill creates problems for those whose franchise territories are near state borders or who occasionally deal with a customer in Western Australia. Notably it purports to apply where the business is conducted even *partly* in Western Australia. Thus, despite the fact the business could be almost entirely outside WA, the WA law could apply. This means that territories near the border that might have some customers from WA or franchisees who undertake a one-off transaction in WA potentially could be obliged to comply with two different regulatory codes.

**Group Corporate Affairs**


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In respect of pre-contractual negotiations that would mean ANZ might need to treat an unknown number of franchisees as potentially "WA Franchise Agreements" despite the fact the nexus to WA is insignificant.

4. This point is exacerbated given that once an agreement is a "WA Franchise Agreement" the Bill purports to apply as far as possible even to acts outside WA. It is not practical for ANZ as a franchisor to manage its franchise agreements on the basis of the customer locations at an individual customer level.

Thank you for the opportunity to provide a submission on the Franchising Bill 2010. ANZ would be pleased to provide further information to the Committee and I can be contacted on .

Yours sincerely



Michael Johnston  
Manager Public Policy