



WA Parliament Economics
and
Industry Standing Committee

RE: WA Franchising Bill 2010

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

Submission by John A Brown

Committee members, in support of my submission to you I herein provide a brief overview of my relevant experiences in the franchise sector in Western Australia over the past thirty years, firstly to assist you to appreciate my perspectives and to understand my concerns. Equally I hope that within my submission you will identify potential remedies to the current concerns raised by Mr Abetz.

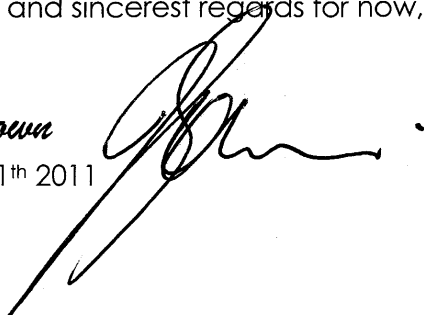
- o Entered the franchise sector in 1981 as a franchisee of the Bedshed group and over the next decade conducted business as a franchisee and with multiple stores at one stage.
- o Established a franchise specific Management Consultancy in 1991 with partners providing services to existing Franchisors and to potential Franchisors in assisting them with development and growth strategies. This consultancy had a core foundation stone of providing free weekly educational seminars to the marketplace through until 1998 in an attempt to see that people had their eyes wide open before entering the sector. In 1999 the SBDC undertook to conduct the seminars with our material and this continued for some years further.
- o Became a Franchisor in 1991 and controlled three franchise systems with partners and alongside the Management Consultancy.
- o Served on the WA State Executive of the Franchise Council of Australia and for a period as President.
- o Served as a Director of the Franchise Council of Australia Ltd on two occasions.
- o I have served on many other committees along the journey.
- o Served on a small business committee with the WA CCI.
- o Most recently I was fortunate enough to be inducted into the Australian Franchising Hall of Fame in 2010 in recognition of my contribution.

I would also make the point that in spite of some emotionally charged emails that circulated by some parties in late 2010, I offer my views herein as an independent party and in no way influenced by others.

Thank you and sincerest regards for now,

John Brown

January 11th 2011

A handwritten signature in black ink, appearing to read 'John Brown', written over a large, stylized flourish that extends across the page.

- WA FRANCHISE BILL - SUBMISSION
- Franchising is an 'imperfect business model'. Just as all other business models are including the Public Company sector. Regulation is therefore necessary, however too much regulation is counter productive and would stifle the very nature of the business model.
- Franchising is a successful and sustainable business model that has opened up significant opportunity for Franchisees and Franchisors alike over the past thirty or more years. This has added great wealth to the State of Western Australia and provided significantly to job growth rates and will continue to do so unless it is over regulated.

It is founded upon entrepreneurialism and commercial opportunity coming together. It would be impossible to regulate for each and every flaw whether those flaws are created by the nature of the risk in any business model; or by the nature of human interaction in a commercial arrangement and the potential for conflict in then managing the expectations of either party.

- Remedies for conflict resolution and consequential actions already exist in the federal Franchising Code of Conduct and to add further layers of regulation on a State by State basis will surely hold the potential to kill the Goose that laid the Golden Egg in small business. Franchising is a successful business model, but not without its flaws as noted above. Any party which feels reason to be concerned can and should take the appropriate recourse that already exists. The remedies are in place today.
- The premise of the Bill is that the sector has too many rogue Franchisors.
 - For this proposition to carry any weight the Member introducing the Bill must be in a position to name those parties and then they too should come forward in support of the Bill, Any failure to come forward would indicate or at best suggest that there is little real substance to the matter.
 - Without any evidence to support this premise the Bill is potentially:
 - Improperly founded, or
 - Founded upon rumours, or
 - Curiously driven by another agenda

- The history books of franchising in Australia demonstrate clearly that each time that there is legislated intervention into the sector (particularly that driven by scare tactics and fear) the sector:
 - Slows dramatically in growth rates
 - Business values fall considerably
 - Franchisees and Franchisors alike suffer financial hardship and in some cases extremely so resulting in business failures

- It could be equally and readily argued that there is clear and bountiful evidence of Rogue Franchisees in the sector.
 - Franchisors however, unlike some in the Franchisee sector DO NOT complain to government about this when it occurs; they simply get on with managing it to the best of their ability. The Franchising Code of Conduct is there already and it works for all parties quite effectively. We as a sector do not need further intervention in an attempt to fix something that is a) an imperfect business model, and b) is not broken.

 - Any attempt to introduce a Good Faith clause into the Code of Conduct should at the very least ensure that it has clear and absolute definition.
 A failure to provide this will surely feed the legal system with indecision and yet do nothing for those that saw the need for it to be used. This inevitably will leave scarred and financially ruined parties in the wake of lengthy court cases, rulings, appeals and counter appeals. We do not need it but some it seems would like it?

- Retrospectivity will create chaos. Retrospectivity will create high cost to all parties and at a time when small business is struggling to survive the effects of the GFC and the Interest Rate increases in the second half of 2010. How can one expect business people to plan and work for financial security when governments can retrospectively change the landscape?

- From my 30 years of franchising experience in all capacities, those that suffer from a feeling of being 'hard done by' are in the main guilty of not doing their homework at the start or just working hard to reach their goals; and this applies to Franchisors and to Franchisees. The relationship model in franchising is based on each party providing credentials and information to each other (Disclosure), and then understanding each others expectations and feeling confident that they can be met. In the past twenty years as an advisor to the sector, most, (as high as 90%), of aggrieved Franchisees that called on my free 'Franchise Hotline' service for help in WA admitted that they took little or no formal advice before entering into the relationship. A failure to meet expectations would surely follow and then the consequential dispute or at best disagreement.

This is the cause of most disagreements and failures; a failure to prepare well, educate oneself and then to execute to a thoroughly thought out plan.

- The franchise relationship is not a Consumer to Business relationship. It is a Business to Business relationship and in my own view too few new Franchisees see it that way and then find that they are not up to the task of being business people. This feeds failure.
- The need right now is for government support and not governmental attack and/or further layers of regulation that in truth does not deal with the core issue.

This support should be either or all of the following:

- A change to the Code of Conduct (Federal only) to make it compulsory for potential Franchisees to take qualified and experienced Legal and Commercial advice prior to entering into the sector; AND for those parties which provide that advice it should also be compulsory for them to provide written evidence of that advice, for provision to Franchisor. Then and only then can a Franchisor be certain that the candidate has their eyes wide open.
- A compulsory requirement for potential Franchisees investing above a specified limit to prepare a comprehensive Business Plan, supported in writing by their appointed Accountant, to ensure that the financial and commercial aspects of the proposed business are entirely understood.

- o A federally or State funded Education Programme to ensure that anyone that is about to become a Franchisee or indeed a Franchisor is fully aware of the 'scope of risk', roles and responsibilities and associated business matters.

Far too many people that enter business arrangements do so with the necessary level of knowledge and this of course does not only apply to franchising. The Small Business Development Commission is well placed to provide these courses and can call on local WA expertise to do so and it could be mobilised within a relatively short period.

This action would mitigate small business failure rates and underpin the financial strength of the sector thereby providing a greater number of jobs and more security for everyone.

In support of my submission I can make myself available with sufficient notice and can be contacted as follows:

John A Brown

e:

m:

