

Your Ref:

Our Ref: Franchising Law Committee: 21000333/8

16 April 2012

The Hon. Simon O'Brien MLC
Minister for Finance, Commerce & Small Business
13th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

By email: Minister.O'Brien@dpc.wa.gov.au and simon.obrien@mp.wa.gov.au

Dear Minister

FRANCHISE AGREEMENTS BILL 2011

I write on behalf of the Franchising Law Committee of the Queensland Law Society in relation to the introduction of the *Franchise Agreements Bill 2011* ("the Bill") in the Legislative Council by the Hon. Ljiljana Ravlich on 24 November 2011.

The Bill is almost identical to the *Franchising Bill 2010* which was defeated in the Legislative Assembly on 2 November 2011, as amended.

The Committee is very concerned that the Bill, which was introduced into the Legislative Council a mere 22 days after its predecessor was defeated, is an attempt to progress a failed bill.

The Society has written extensively to Members of the Legislative Assembly and has participated in the Economics and Industry Standing Committee's Inquiry into the Franchising Bill 2010. A copy of the Society's submissions is **enclosed** for your kind consideration. In summary, the Society's concerns about the *Franchising Bill 2010*, which have particular and urgent relevance to the Bill, are:

- That the Bill still suffers from technical defects, as previously raised;
- That the Bill provides uncertainty for parties to a franchise agreement, legal practitioners and members of the public, as the Bill is an attempt to introduce a state based Code to regulate franchising;
- That the introduction of the Bill creates a conflict with state and commonwealth regulation. The consequence of that can lead to double jeopardy for parties caught under both codes;

- That the Bill is attempting to define the concept of “good faith” by introducing a statutory definition at a state level whereas the Commonwealth Parliament has intentionally left the concept of “good faith” undefined so as to allow a wide interpretation of the principle;
- That the Bill has significant retrospective application on past and present “WA Franchise Agreements” as it allows aggrieved parties to make applications for redress orders (including compensation and renewal orders) within six years after the date the act or omission occurs;
- That the Bill will have significant cost implications for professionals, business parties and the community as the Bill has a wide application to parties outside Western Australia; and
- That ultimately state based legislation to regulate franchising in the manner proposed will result in more litigation, greater costs to participants and considerable confusion and uncertainty.

The Society’s expressed concerns about the *Franchising Bill 2010* and the Bill remain.

The Economics and Industry Standing Committee considered these concerns and concluded that the *Franchising Bill 2010* be opposed. This was accepted by the Western Australian Legislative Assembly in its response.¹ Most overwhelming was the Legislative Assembly’s consideration that:

Franchising is most appropriately and usefully regulated at the Commonwealth level and therefore there must be compelling reasons to depart from that regulatory system by introducing state-based legislation;

Recent amendments to the Commonwealth Competition and Consumer Act 2010 (including the Australian Consumer Law) that have come into effect in 2010 and 2011 should significantly improve the effectiveness and enforcement capabilities of the ACCC;

The full suite of amendments to the Franchising Code of Conduct and the Competition and Consumer Act 2010 address many of the problems cited in earlier State and Commonwealth inquiries, with a view to lifting the standard of conduct in the franchising sector; and

Given the significance of these amendments, which are due to be reviewed in 2013 (i.e. in less than 18 months time), the Committee was not convinced that the Franchising Bill 2010 is an appropriate measure at this time. ²

In conclusion, the Society holds grave concerns about the Bill and strongly calls for the Bill to be opposed.

¹[http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3813900a646037bc1ab8b48148257913000980e1/\\$file/3900.pdf](http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3813900a646037bc1ab8b48148257913000980e1/$file/3900.pdf)

²[http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3813900a646037bc1ab8b48148257913000980e1/\\$file/3900.pdf](http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3813900a646037bc1ab8b48148257913000980e1/$file/3900.pdf)

Please do not hesitate to contact either myself or have a member of your staff contact our Policy Solicitor, Louise Pennisi on (07) 3842 5872 or l.pennisi@qls.com.au if you wish to discuss these concepts further.

Yours faithfully

Dr John de Groot
President