



Franchise Council of Australia Media Release

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MEDIA RELEASE - Franchise Council of Australia

Franchise community alarmed at proposed WA legislation - An abuse of process, says WA and national Franchise community

The WA Parliament will be setting the scene for uncertainty, conflict and reduced investment in the \$10 billion WA franchising sector if it proceeds with a private members' bill to introduce franchising legislation.

WA franchising executives -- including franchisors, franchisees and suppliers to the sector -- have raised the alarm in direct submissions to key Government and Opposition MPs.

In the coming days, material will be distributed to every WA-based MP, whether in the Federal or State Parliament, describing the franchisee detriment, anticipated increase in disputes and decrease in investment which would flow from the introduction of the new rules.

A private members' bill raised by Liberal backbencher Peter Abetz, and supported by WA Labor, seeks to impose a draconian set of new franchising rules in WA, which the bill audaciously -- and possibly unconstitutionally -- seeks to have applied nationwide.

The Executive Director of the Franchise Council of Australia, Steve Wright, said the WA franchising community was understandably up in arms about the Abetz bill.

"Franchising is rightly regulated nationally," Mr Wright said. "To introduce State rules is akin to winding the clock back to the days of the narrow gauge railway," he said.

"It puts the positive national push for national harmonisation of State laws grindingly into reverse gear. It flies in the face of efforts of States and the Commonwealth to remove red tape and inefficiencies -- rather than create them.

"Worse still, this bill has been thrown together without any of the rigour which should be applied to new legislation. It is an abuse of process to allow a private members' bill of a highly technical regulatory nature that is NOT within the bounds of current State legislation to proceed without the slightest examination of the impact of the bill," Mr Wright said.

"And Mr Abetz provides no data to support the need for the bill's introduction. He has provided no case studies; nor named the rogue franchisors he says are the motivation for the bill.

"Both Labor and Liberal Governments rejected calls for the introduction of this type of legislation in 2008 and 2009 and all State Governments nationwide have agreed, through the COAG process, that the Federal Government should continue to regulate the sector.

"It is totally unclear what has brought about this idea's reincarnation for the third time," Mr Wright said. "Without having taken any initiative itself, Labor has now grabbed an opportunity to try to embarrass the Government by supporting a Liberal private members' bill they declared no intention of raising themselves, You have to ask yourself what is going on.

"The Abetz bill is bad for small business in WA," Mr Wright said.

"It threatens to undermine every franchising contract in WA and nationally -- affecting up to 70,000 franchise contracts nationwide. The bill will fail to help franchisees. On the contrary, it will penalise them.

"Franchise business financiers do not support this bill. They see it as destabilising and potentially damaging for the sector. It is likely, therefore, they will reassess and perhaps re-price risk. This means it will be harder for franchisees to get funding and they may pay a higher price.

“The outcome of that is that franchisees will find it more difficult to find a buyer when they seek to sell their business, and when they do, the sale price is likely to be lower.

“This is the last thing WA or the nation needs in the wake of the GFC when small business investment is so critical for economic recovery.” Mr Wright said.

The bill seeks to:

- *Introduce State legislation into a Federally regulated sector --- for the first time in 30 years.*
- *Destroy the right of freedom to contract*
- *Act retrospectively, throwing doubt over 70,000 existing contracts*
- *Apply exclusively to franchising businesses, not to others*
- *Ignore Constitutional principles of the reach of State legislation*
- *Upend franchising principles which have prevailed the world over for more than 30 years*
- *Provide an ‘automatic right of contract renewal’ -- destroying the right of a franchisor to choose whether or not to extend a contract (equivalent of tenant automatic right of lease renewal)*
- *Impose a personal injury compensation opportunity exclusively for franchising in contractual circumstances for which personal injury legislation was never designed*
- *Deny natural justice (no ability to defend charges, except in exceptional circumstances)*
- *Deny right of appeal*
- *Reverse the onus of proof*
- *Impose fines of up to \$100,000, able to be levied by a single commissioner with authority way beyond the reach of any similar appointment anywhere else in the country.*
- *Introduce a definition of ‘good faith’ behaviour by which the commissioner will make judgements. The definition is arbitrary, extraordinarily broad and totally subjective; i.e. requirement to act in good faith by having to be able to DISPROVE an allegation of ‘bad faith’ which encompasses acting: honestly, fairly, reasonably and co-operatively. ‘Good faith’ already exists in the Trade Practices Act -- and is being effectively policed. A new definition will simply raise uncertainty and encourage opportunistic legal action. That is why disputes -- brought by franchisors or franchisees -- will rise under this bill. The Federal Government (July 1 changes to the Franchising Code), the Senate (Unconscionability Inquiry 2009) and the best trade practices lawyers in the country came to this very conclusion earlier this year (Federal Government appointed Expert Panel)*
- *The Federal Government introduced changes to the Franchising Code of Conduct on July 1. It described the measures as “sweeping” and said they should be allowed three years to ‘bed down’ before further change was contemplated.*

WA Labor should take greater notice of the lead from its Commonwealth colleagues on this issue.

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