

18 January 2011

Mr Timothy Hughes (Principal Research Officer)

Economics and Industry Standing Committee

Level 1

11 Harvest Terrace

West Perth WA 6005

Submission to the Economics and Industry Committee in relation to the Inquiry into the Franchising Bill 2010



Dear Mr Hughes,

I wish to express my opinion and Bedshed Franchising Pty Ltd's opinion on the private members bill (Bill) introduced by Peter Abetz MLA.

As the Chief Operating Officer of a major West Australian based franchisor, I fail to understand what benefit this bill would have to any franchisor based in Western Australia. Bedshed Franchising operates stores in 5 of the 7 states and territories, the majority of which are franchised. We take our compliance responsibilities seriously and the franchising industry is well regulated currently.

We have recently updated our disclosure document to reflect the update to the Franchising code of conduct (2010) and this update clarified the need to disclose end of franchise term arrangements amongst other updates.

This Bill contains provisions such as the power to award damages for personal injury including physical or mental impairment and economic loss as a result of the breach of the Bill, it is totally inappropriate and globally unprecedented in franchising for an individual to be liable for such provisions.

The Bill also allows a court to order renewal of an agreement "for a period and on such terms as a court considers just having regard to the terms of the old agreement". I consider this to be totally inappropriate that a court can take over what would ordinarily be a commercial negotiation. As a franchisor with agreements as old as 25 years, this would also greatly limit any ability to "modernise" an agreement.

WA franchise agreements:

My understanding of this Bill is that as we are a franchisor based in Perth, Western Australia, this Bill will apply to all our existing and future franchise agreements. In addition to this the Bill relates retrospectively, which goes against the fundamental principles of legislation.

In my opinion this allows unscrupulous lawyers to drum up business by approaching franchisees with ideas for litigation, resulting in franchisors being put under pressure to settle legal claims in order to avoid

Bedshed

ABN 51 689 752 590
Bedshed Franchising Pty Ltd
 14 Collingwood St, Osborne Park WA 6017
 Email: gculmsee@bedshed.com.au

Phone: **(08) 9445 1055**
 Direct line: (08) 9204 6434
 Fax: (08) 9445 1011
 www.bedshed.com.au

ever increasing costs of defending unreasonable claims. This seems to me to go against the idea of promoting mediation to resolve disputes rather than litigation, in my opinion mediation allows business relationships to continue largely unharmed after a dispute whereas relationships can be permanently damaged after litigation.

Duplication:

As franchising is already regulated in WA by the ACCC and the WA Fair Trading Office and both of these federal and state departments are well resourced and very competent. I fail to see what a new commissioner would add to an already well regulated industry. Further as a taxpayer in WA, I object to my taxes being used in this way when they would be better directed toward health or education of our children.

A new commissioner would just add bureaucracy and "red tape" to any franchising activity thereby increasing the cost of compliance for franchisors in WA.

The future of Western Australian Franchising:

If this Bill was enacted into law it would significantly disadvantage WA based franchisors. As Bedshed Franchising's major competitors are based in the Eastern States, this would put Bedshed Franchising at a significant disadvantage to our competition. The cost of compliance is currently a heavy burden and this Bill would further exacerbate this cost and workload, in my opinion this would adversely affect business activity in WA as eastern state based franchisors would seriously consider whether to take the risk of having agreements that fall under this Bill.

As a franchisor that is expanding in the eastern states, we would seriously have to consider whether we would look to relocate our Central office from its current location in Osborne Park WA, to Sydney or Melbourne in order to avoid having this Bill cast its net over all of our agreements.

Summary:

Bedshed Franchising Pty Ltd. Operates 41 retail stores nationally, 18 of which are in WA. We are the third largest speciality bedding retailer in Australia.

Bedshed Franchising does not support this Bill in anyway and strongly feels that the franchising industry in Australia is well regulated by well-resourced and capable regulators and would not benefit from any further regulation. This Bill is largely unworkable and would adversely affect franchising nationally and specifically in WA, this Bill would perpetuate the perception of WA as a back water that does not promote business activity and investment.

Yours faithfully



Gavin Culmsee

Chief Operating Officer

Bedshed Franchising Pty. Ltd.