



6 December 2019

Franchising Taskforce
The Department of Employment, Skills, Small and Family Business
Department of Employment, Skills, Small and Family Business
GPO Box 9880
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Email: franchising@employment.gov.au

To Franchising Taskforce:

Re: Franchise Sector Reforms – Regulation Impact Statement

1. Introduction

1.1 The Motor Trades Association Queensland (MTA Queensland or the Association) responds to the Franchise Sector Reforms – Regulation Impact Statement (the RIS) by submitting the views it has formed for the Taskforce's consideration.

2 Context

2.1 The MTA Queensland advocates on behalf of participants in the automotive value chain supplying Queensland's private and commercial transportation market. Through the many representations on behalf of its members, it is acutely aware of the dynamics of the franchised businesses comprising the automotive value chain.

2.2 This submission does not specifically address the questions intended for operators of franchise arrangements. Instead, it presents a view on the RIS' Principle 1, problem 1.2, option 1.2.2 and 1.2.2(b) which are:

Principle 1: *Prospective franchisees should be able to make reasonable assessments of the value (including costs, obligations, benefits and risks) of a franchise before entering into a contract with a franchisor*

Problem 2: *The reliability of information provided to prospective franchisees may be difficult to assess*

Motor Trades Association Queensland

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Options to address problem 2:

Option 1.2.2: *Requiring franchisors to verify financial statements and introducing a national franchise register*

Under this option, the government would require franchisors to verify financial statements (Recommendation 6.5), would establish a national franchise register (Recommendation 6.14) and prohibit 'no agent' and 'entire agreement' clauses in franchise agreements (Recommendation 6.6) and

1.2.2.(b): *National Franchise Register*

Under this option, a national franchise register would be established by government, and all franchisors would be required to lodge their disclosure documents and template franchise agreements.

3 Comment

3.1 Over the past 30 years, there's been 17 franchising inquiries that include a chronology of reviews, legislative and regulatory changes. In 1998 the inaugural Franchising Code of Conduct was introduced followed by a comprehensive review and a new Code in 2015 intended to achieve a 'level playing field' for stakeholders. The several policy iterations subsequently have failed to achieve the robust framework in respect of the franchising business model needed to enable greater certainty and better protections for franchisees.

3.2 The current franchise inquiry process which has its genesis derived from the Parliamentary Joint Committee on Corporations and Financial Services (PJC) *Fairness in Franchising* Report (the Report) is an opportunity to take the franchising business model into the 2020s and beyond. Having weighed the disturbing frequency of franchise failures, the Association is of the view that Australia's franchising sector challenges requires a more robust regulatory framework based on a formal statutory surveillance and oversighting regime. This proposal will not solicit universal agreement, but a juncture has been arrived that demands a more rigorous approach.

As stated in a prior submission, taking account of the difficulties and ineffectiveness of previous initiatives to reform the statutory franchising framework, this may be an appropriate opportunity to consider the development of an alternate national policy platform to regulate franchising.

3.3 The Association is of the view that the problem of the '*reliability of information provided to prospective franchisees may be difficult to assess*' could be remediated with the application of option 1.2.2 which requires franchisors to verify financial statements and introducing a national franchise register through option 1.2.2(b).

3.4 As suggested in a prior submission the national register could be predicated on the mandatory registration of all franchisors and include a schedule of individual franchising arrangements concluded. This registry could emulate the corporate register that issues the Australian Business Numbers and collects audited accounting and financial performance data. A similar unique numerical identification would be issued to each franchisor possibly entitled the Australian Franchisor Number.

3.5 It is acknowledged there are issues of compliance as indicated in the RIS (Option 1.2.2(b) p.17) and in the 2008 PJC report: 'that requiring franchisors to register guarantees of compliance would not improve actual compliance as the government would not be verifying the accuracy of franchisors' statements. Further, such a system could reduce the due diligence undertaken by prospective franchisees and create an expectation that the regulator has endorsed the franchise system (The Report p.77)'

3.6 The register should have a mandatory requirement that the financial reports submitted by a franchisor as part of the registration procedure shall be accompanied by a registered auditor's report with an imprimatur that the documents have been verified as true and correct representation of the business' performance.

3.7 Offsetting concerns pertaining to a register are the state and territory precedents requiring lessors to register commercial leases on standalone registers which are accepted real estate practice.

3.8 The arrangements pertaining to the national register may be administered by the Australian Securities and Investment Commission (ASIC) or the Australian Competition and Consumer Commission (ACCC) which has responsibility for the Franchising Code of Conduct and a fee for service would be to the account of the franchisor as a cost of doing business. It is noted that the PJC in the report indicated 'merit in the ACCC operating a franchise register with franchisors providing updated disclosure documents and template franchise agreements annually in compliance with the Franchising Code'.

3.9 It would be appropriate that enforcement mechanisms such as civil penalties should apply to franchisors for misleading or deceptive reports in respect of their registries.

4. The MTA Queensland background

4.1 The MTA Queensland is the peak organisation in the State representing the specific interests of businesses in the retail, repair and service sector of Queensland's automotive industry located in the State.

4.2 There are some 15,500 automotive value chain businesses employing approximately 88,500 persons generating in excess of \$20 billion annually. It is an industrial association of employers incorporated pursuant to the *Fair Work Act 2009*. The Association represents and promotes issues of relevance to the automotive industries to all levels of Government and within Queensland's economic structure.

4.3 Australia's first automotive hub, the MTA/Q, has been established in specifically designated accommodation at the corporate office. The hub is an eco-system that supports innovation for the automotive industry.

4.4 The Association is the leading automotive training provider in Queensland offering nationally recognised training, covering technical, retail and the aftermarket phases of the motor trades industry through the MTA Institute - a registered training organisation. It is the largest automotive apprentice trainer in Queensland employing trainers geographically dispersed from Cairns to the Gold Coast and Toowoomba and Emerald.

Thank you for your consideration.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brett Dale', with a small horizontal line at the end.

Dr Brett Dale DBA
Group Chief Executive
MTA Queensland