



BUSINESS COUNCIL
OF CO-OPERATIVES AND MUTUALS

Regulation Impact Statement consultation

Submission to the Franchising Taskforce

Franchising Taskforce
Via: franchising@employment.gov.au

6 December 2019

Dear Sir/Madam,

The Business Council of Co-operatives and Mutuals (BCCM) is pleased to provide a response to the Franchising Taskforce Regulation Impact Statement consultation.

The BCCM is the national peak body for co-operative and mutual enterprises (CMEs) in Australia. It is a member driven and funded organisation representing CMEs operating in all industries.

CMEs are corporate entities that are built on principles of self-help, sustainability and democracy. There are more than 2,000 co-operatives and mutuals in Australia. By providing purchasing power, access to markets and risk pooling mechanisms, co-operatives underpin the sustainability of more than 160,000 businesses in sectors such as agriculture, health, the automotive aftermarket, liquor retailing, cleaning supply retailing and health product retailing.

Our submission responds to Principle 7 by suggesting some actions that can enhance the operation of the Franchising Code and its interaction with general law.

Response to Principle 7: The framework for industry codes should support regulatory compliance, enforcement and appropriate consistency

The policy objective of Industry Codes is to address specific market problems in a defined industry.

The Franchising Code is a regulatory response to power imbalances and lack of aligned long-term interests of participants in franchise systems.

Co-operatives of independent retailers engage in similar business activities to the participants in a franchise system, such as common branding. However, they do not have the same power imbalances as a franchise system because they operate under a different business model: in a co-operative the member (the equivalent of the “franchisee”) is both the customer and the owner of the co-operative. Co-operatives of retailers are owned and democratically controlled by retailers and are solely focused on delivering value to retailers.

Despite the clear difference between co-operatives of retailers and traditional franchise systems, there is uncertainty in the co-operative sector about when or whether the Franchising Code applies to such co-operatives.

The uncertainty arises because of:

- Lack of regulatory guidance or information for co-operatives of independent retailers on how or whether the Franchising Code applies to them.
- Uncertainty about the application of the exemption of the relationship between a co-operative and its members in clause 5(3)(f) of the Franchising Code.

This uncertainty adds red tape and compliance costs for co-operative businesses.

Given the policy objective underpinning the Franchising Code is to address market problems in the franchising industry, the BCCM is of the view that dealings between co-operatives and their members should not be regulated by the Franchising Code.

The history of the Franchising Code suggests the intention was to provide an exemption with respect to the relationship between a co-operative and its members. Item 13 of the 1999 amendments to the Code inserted 'a reference to the Corporations Law in subparagraph 4(3)(f)(viii). This clarifies that all types of registered co-operatives are intended to be exempt from the provisions of the Code.'¹

There is an opportunity to clarify this is the case and better define the types of businesses that the Franchising Code applies to. The BCCM recommends that:

The Franchising Taskforce accept that dealings between co-operatives and their members should not fall under the Franchising Code.

The ACCC include guidance on when, if ever, the dealings between a co-operative and its members fall under the present Franchising Code in the Franchisor Compliance Manual.

If the ACCC guidance is that dealings between co-operatives and their members can fall under the Franchising Code, the Franchising Code is amended to clarify that dealings between a co-operative and its members do not fall under the Franchising Code.

The references to co-operatives legislation in the Franchising Code are updated to refer to the co-operatives legislation currently in force in each state and territory.

The BCCM can provide further information on the matters raised in this submission if required.

Yours faithfully,



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¹ This is now clause 5(3)(f). Prior to this amendment, there was no exemption for companies registered under the Corporations Act and operating under a co-operative constitution. See Explanatory Statement, Trade Practices (Industry Codes - Franchising) Amendment Regulations 1999 (No. 1) 1999