



**Small Business  
Development Corporation**

Our ref: D19/8752

Franchising Taskforce  
Department of Employment, Skills, Small and Family Business

Via email to: [franchising@employment.gov.au](mailto:franchising@employment.gov.au)

Dear Taskforce

## **FRANCHISING TASKFORCE – REGULATION IMPACT STATEMENT**

The Small Business Development Corporation (SBDC) welcomes the opportunity to make a submission to the Franchising Taskforce's Regulation Impact Statement (RIS).

### **Background**

The SBDC is an independent statutory authority of the Government of Western Australia (WA) established to support and facilitate the growth and development of small businesses in the State<sup>1</sup>.

One of the agency's key strategic objectives is to advocate for small businesses through influencing the policy and regulatory environment in which they operate. Over the past decade the SBDC has contributed to several Government and Parliamentary inquiries and reviews into the Franchising Code of Conduct (the Code) and the franchising sector generally. More recently we have made submissions to the Parliamentary Joint Committee of Corporations and Financial Services Inquiry into the Operation and Effectiveness of the Franchising Code of Conduct (the Inquiry) in May 2018 and to the Franchising Taskforce in September 2019.

### **Commentary – Regulation Impact Statement**

The SBDC supports all seven principles in the RIS and provides the following comments, to be read alongside our previous submissions, to the Franchising Taskforce (the Taskforce).

#### *Disclosure requirements*

As mentioned in our earlier submissions to the Taskforce, the SBDC firmly believes that changes need to be made to the Code to ensure prospective and renewing franchisees are better able to make a fully informed commercial decision based on a

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<sup>1</sup> The views presented here are those of the SBDC and not necessarily those of the Western Australian Government.

clear understanding of their rights, responsibilities and obligations prior to entering into or renewing a contract.

Upfront disclosure is relied upon by prospective and renewing franchisees to undertake their due diligence before entering into or renewing a franchise agreement. The SBDC supports the requirement for franchisors to provide important information in a plain-English disclosure document. More specifically the following information should be disclosed to franchisees:

- details about the operating costs (including those associated with wages, rent and inventory)
- financial viability and profitability of the franchised business
- the use and reporting of marketing funds
- any restrictions on supplies
- the amount of rebates provided by suppliers
- end of agreement arrangements including the allocation of goodwill; and
- details about what happens if there are material changes to the franchisor such as to its ownership or in the case of bankruptcy.

Given the the ongoing imbalance of power in and abuses of the franchisor/franchisee relationship, the SBDC believes that improving the level of upfront knowledge of prospective and renewing franchisees have the potential to prevent problems from developing in the first place and becoming grounds for dispute later on.

### *Dispute Resolution*

As the SBDC has discussed in previous submissions, there is a need for more assistance to be provided in the early stages to try to seek resolution in a timely and cost effective manner to avoid parties having to go through the court system. There needs to be another mechanism in place to resolve disputes when mediation has failed. To this end, the SBDC supports both conciliation and arbitration in-principle, provided costs can be kept to a minimum and decisions made swiftly.

The SBDC also supports recommendations that the mediation function of the Office of the Franchising Mediation Adviser be merged with the Australian Small Business and Family Enterprise Ombudsman (ASBFEO). The SBDC believes that the ASBFEO should be the primary body for franchising disputes, and importantly it should be adequately funded to ensure the best outcomes for parties in dispute. The ASBFEO has strong connections with state-based Small Business Commissioners which will allow for emerging trends across jurisdictions within the franchising sector to be identified and confronted much earlier.

### *Deterrence*

While not explicitly discussed in the RIS, the SBDC believes that there needs to be a more effective means for deterrence of poor behaviour in the franchising sector. To further disincentivise non-compliance with the Code and deter franchisors from making misrepresentations to franchisees or abusing the franchise relationship, the SBDC strongly supports the Inquiry's recommendations to:

- extend unfair contract term (UCT) provisions under the Australian Consumer Law to all franchise agreements, and

- significantly increase penalties for breaching the Code (and the UCT laws).

The current penalties set out under the Code only apply for a small number of specific offences, and where the code is breached outside of this, no significant penalties apply. The SBDC supports an extension of penalties to all aspects of the Code, as well as an increase to the current pecuniary penalties. Presently the maximum financial penalty under the Code that a Court can impose for a breach is \$63,000, which is insignificant when compared to the \$1.1 million that corporations can receive for contravening the Australian Consumer Law. As the SBDC has outlined previously, we believe that the threat of higher financial penalties would serve as a stronger deterrent for abusing the franchise relationship.

### **Concluding comments**

As stated in the SBDC's submission to the Inquiry on 11 May 2018, it is time for strong leadership to be shown to address the problems plaguing the sector and restore confidence in the franchising business model. Given the size and scale of the franchising sector in Australia and its importance to the national economy, the SBDC is hopeful that the Taskforce will progress meaningful reforms as a matter of urgency.

If you would like to discuss this submission in more detail, please do not hesitate to contact [Redacted] or email [Redacted]

Yours sincerely



David Eaton  
SMALL BUSINESS COMMISSIONER

6 December 2019