

6 December 2019

Members of the Franchising Taskforce
Department of Employment, Skills, Small and Family Business
10/14 Mort Street
Canberra ACT 2601

By email: franchising@employment.gov.au

Dear Sirs/Madams,

RE: Franchising Taskforce – Regulatory Impact Statement

We write in relation to the Regulatory Impact Statement (**RIS**) published by the Franchising Taskforce on 11 November 2019.

The National Retail Association (**NRA**) is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth) which represents employers in matters which may affect their industrial or commercial rights or obligations. The NRA includes in its membership both franchisors and franchisees.

Noting that must balance the interests of both its franchisor and franchisee members, the NRA makes the following observations in relation to the various options proposed in the RIS. The NRA's concerns relate primarily to the formation of the franchisor-franchisee relationship.

Option 1.1.2 – Changes to the Franchising Code to increase disclosure

The NRA is generally supportive of the proposition that franchisors be allowed to affect disclosure electronically (Option 1.1.2(a)).

The NRA is generally supportive of the proposition that the information statement should be provided as a separate, stand-alone document rather than as part of a bundle of documents (Option 1.1.2(b)).

The NRA echoes the concerns previously raised by franchisors in relation to Option 1.1.2(c), noting that there are often limitations on a franchisor's ability to acquire this information from an incumbent franchisee. It should also be noted that in the case of an outgoing franchisee, the prospect of a breach notice for failing to yield up this information to the franchisor when requested is unlikely to carry any weight.

The NRA is generally supporting of the proposition that new franchisees be provided with a copy of the ACCC's Franchisee Manual (Option 1.1.2(d)), particularly as this is able to be done electronically.

Noting the matters raised by stakeholders in relation to leasing disclosure (Option 1.1.2(e)), the NRA is of the view that an ongoing duty of disclosure in relation to the terms of the lease for a particular franchise premises may help ameliorate the concerns of all parties.



Option 1.1.3 – Simplified disclosure requirements

The NRA agrees, in principle, that a simplified disclosure statement may more effectively communicate all information which is materially relevant to a prospective franchisee.

However, the NRA is concerned that care should be taken in determining the level of simplification, lest the simplified disclosure statement result in the provision of too little information, or the simplified format results in a loss of relevant nuance.

Option 1.2.2 – Verification of financial statements

The NRA notes the concerns expressed by franchisors expressed in relation to Option 1.2.2(a), and notes further that access to documents held by a franchisee is a perennial issue for its franchisor members.

If Option 1.2.2(a) were to be pursued, in NRA's it would be appropriate to require the franchisors take "reasonable steps" to verify the financial information available. A franchisor will have taken "reasonable steps" if they have exhausted all avenues by which to verify the financial position of the franchise, even if they have not been able to acquire any financial information.

The NRA tends to agree with the concerns raised by franchisors in relation to Option 1.2.2(b), particularly in relation to the prospect of unwarranted reliance on materials lodged in any register.

The NRA is generally supportive of Option 1.2.3 with respect to pre-entry education of franchisees. The NRA suggests that this education ought to include not only the online program supported by the ACCC, but should also include, at a minimum, online training modules available through the Fair Work Ombudsman.

Option 1.3.3 – Mandatory legal and financial advice

The NRA notes the concern that requiring prospective franchisees acquire legal and financial advice prior to entering into a franchise agreement will raise the cost of their entry into the franchising agreement.

In response to this, the NRA notes that entry into a franchising agreement is a significant business investment and a reasonable person in the circumstances ought properly be obtaining this advice regardless.

At present, the obtaining of this advice is a voluntary, rather than mandatory, increase to the cost of entry. It is the experience of the NRA that prospective franchisees who obtain this legal and financial advice before entering into a franchising agreement are more likely to operate a stable and compliant franchise.

With this in mind, the NRA supports the proposal to require that prospective franchisees acquire legal and financial advice prior to entering into a franchise agreement.

Option 2.2.3 – New cooling off period if lease terms 10 per cent above estimate

Of the various options contemplated to address Problem 2.2, the NRA is most inclined to agree with Option 2.2.3.



This option allows both a degree of certainty for franchisors within a certain degree of flexibility in lease terms, and also allows franchisees the option to exit the franchise agreement if it transpires that the true lease costs are significantly different to the terms of their agreement.

This option would appear to be an adequate balancing of the rights of franchisors and franchisees in this regard.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Dominique Lamb", written in a cursive style.

Dominique Lamb
Chief Executive Officer
National Retail Association

