

***THE OPERATION AND EFFECTIVENESS OF THE FRANCHISING CODE OF CONDUCT -
PARLIAMENTARY INQUIRY 2018.***

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INTRODUCTION :

This submission is put forward in the hope that other there is law reform in the area of franchising disclosure. Our experience is that the current regime of Franchise disclosure is a legal minefield and Disclosure documents provides very little information and subsequently protection for prospective Franchisees. The current disclosure requirements of Franchisors provides very little information which upon a decision to enter a Franchise is based. Most of the useful information is contained in the marketing material provided by Franchisors in both written form and discussions with Franchisors.

The strengthening of the obligations of Franchisors to provide accurate information and to be held to account for not executing representations should be considered as part of the process to protect Franchisees from unscrupulous Franchisors.

Franchisees are often at the hands of a poorly conceived and executed business plan and more often that not are the ones who have little influence, input or redress for poor business plans or poor management.

In the climate of distrust and contempt being generated for some of the largest and previously respected Australian Corporations being revealed through Financial Services Royal Commission we contend that the governments of both persuasions do not have to look to far to see similar behaviour. We note that currently Government Business Enterprises are not the subject of investigation by the Financial Service Royal Commission. We submit that the government should on this evidence presented here remove that exemption.

The formation of this current inquiry has it's origins in the poor conduct alleged in the media of various franchisors.

This submission will deal with a relatively unknown and small experiment in franchising by the countries largest franchisor - Australia Post.

The Australia PostShop Franchise was a failed entry into true franchising by Australia Post from 2006 - 2015 and Franchisees bore the cost of Australia Post failure.

PostShop Franchises folded with the closure and conversion of all Australia PostShop Franchises to Licensed Post Offices in 2015. Not one of Australia PostShop Franchises reached the end of the 10 year term contemplated at the start of the agreement. All contributors to this submission hope that it will in the current climate the exposure of the conduct will cause responsible Shareholder Ministers and the Australia Post board to seek further information regarding this failed business model and the impact on innocent Franchisees.

A SHORT FACTUAL HISTORY OF AUSTRALIA POSTSHOP FRANCHISE MODEL:

1. In 2002 Australia Post first announced that it would be entering the Franchise market. In 2002 Australia Post engaged Ernst and Young to access the model. ***Australia Post stated that the introduction of the franchising in its retail outlets was for the purpose of establishing an alternative outsourcing arrangement model.*** On 16 October 2002 a copy of the Ernst and Young report was tabled in The Senate. This report provided a detailed analysis of the PostShop Franchise model and Australia Post committed publicly to the adoption of some of the recommendations of the Ernst and Young Report.
2. The PosShop Franchise model sat idle for sometime but remained a point of interest for some Senators as Australia Post appeared at Senate Estimates. In writing Australia Post elaborated on its plans for the Australia PostShop Franchise Model on 17 February 2004 and stated: ***“Australia Post intends to establish a network of 150 franchised PostShops over the next 3 - 4 years. Of these around 50 would be from voluntary buy-backs of LPO Licenses. The benefits to Post of the introduction of the franchising relate to improved customer service and financial performance and an overall strengthening of the PostShop Brand.”***
3. Further to above point on 24 May 2004 [REDACTED] elaborated in Senate Estimates that it was in the capabilities of ***Australia Post to absorb approximately 450 Australia Post employees who would be affected by the conversion of 100 Corporate PostShops to the Franchised PostShop Model.***
4. On 8 November 2005 in Australian Financial Review Australia Post expanded for the first time in the media it's plans for the establishment of 150 PostShop Franchises over the next 3-4 years. It further committed to PostShop Business model in an article in Business Review Weekly on 19 January 2006. BRW stated: ***“The country's largest franchisor, Australia Post, has re-committed to franchising by***

introducing a new retail format. Australia Post will open 150 franchised outlets in metropolitan shopping centres in the next 4 years. About 100 of the stores will be built from scratch; the others will be converted from licensed Post offices.” Interestingly neither of these articles were provided to

prospective franchisees as some would expect a Franchisor trying to trumpet a franchise model but more on that later in the submission. Other articles also appeared in the Financial Review.

5. Australia Post towards the end of 2006 early 2007 began advertising for prospective franchisees in Victoria, New South Wales, Queensland, South Australia and Western Australia. The offer in each of these states was for a limited number of franchises to add to what was 4 pilot sites that Australia Post had been operating for a number of years.
6. Australia Post were now in the Franchise marketplace competing with other franchise business models.

REPRESENTATIONS BY AUSTRALIA POST OF WHICH MADE AN ATTRACTIVE FRANCHISE OFFER:

The substance of the representations listed below were common and consistent by Australia Post throughout South Australia, Western Australia, Victoria, New South Wales and Queensland where the business model was being promoted. For accuracy the submitters concede that item 10 was not represented to applicant Franchisees in New South Wales -

1. That ***Australia Post would establish a network of 150 Franchised Outlets within 3 - 4 years.*** (In writing and in preliminary discussion)
2. That ***Australia Post would be converting 100 corporate outlets to Franchises.*** (In preliminary discussions.)
3. That ***Australia Post was offering a 10 year term.***
4. That ***Australia Post would offer opportunities for further terms.*** (In discussions and Public statements)
5. That ***Australia Post would provide a designated management group to assist Franchisees and to grow the franchise group.*** (In writing and in preliminary discussion)
6. That ***Australia Post in adopting the franchise model would establish a Franchise Advisory Council.*** (In writing and in preliminary discussion)
7. That ***Australia Post would maintain property leases.*** (In writing and preliminary discussion)
8. That ***Australia Post would be responsible for store fit-outs and maintenance.*** (In writing and preliminary discussion)
9. That ***Australia Post may as the franchise group grows give Franchisees an opportunity to own up to 3 Franchises.*** (In writing and preliminary discussion)
10. That ***Australia Post had obtained for the Australia PostShop Franchise accreditation with Leading Australia Banks and they were offering tailored finance packages for Franchise applicants.*** (In

writing and in preliminary discussions Australia Post identified the Commonwealth Bank, National Australia Bank, ANZ Bank and Westpac Bank as banks who had accredited the Australia Postshop Franchise model.)

Based on the representations above the business model was a very attractive investment and given that those franchisees who often enter a model at the commencement of a business model it was and should remain a good investment. It was seen as a safe and secure business model to be supported by the considerable financial strength of Australia Post. Indeed most franchisees were conservative investors in the Franchise market and whilst returns on investment may have been less than on offer from other Franchisors the strength of Australia Post was viewed as a positive. Many franchisees had in fact migrated from Licensed Post Office model. All franchisees held high hopes that this Australia Postshop Franchise model would develop into a mutually beneficial partnership.

This reality was unfortunately far from the truth. This was not through the fault of Franchisees.

In the Preliminary Franchise Contract which all entered into states at - 14(1)(b) Each Party: shall at all times act in good faith in relation to the other. The experience of all of the contributors to the submission is that from the start Australia Post did not act in Good Faith.

THIS SUBMISSION WILL FOCUS ON THE FOUR KEY REPRESENTATIONS NOT DELIVERED BY AUSTRALIA POST: THEY ARE REPRESENTATIONS NUMBERED ABOVE 1, 2, 4 AND 10.

REPRESENTATIONS 1: 150 FRANCHISED OUTLETS AND

REPRESENTATION 2: 100 CORPORATE OUTLETS CONVERTED TO FRANCHISES.

Successive Australia Post Annual Reports listed the number of Franchised PostShops as follows:

2006 - 2007 - 27 Franchises

2007- 2008 - 28 Franchises

2008 - 2009 - 29 Franchises

2009 - 2010 - 28 Franchises

There were no further PostShop Franchises opened by Australia Post after 2010.

In late 2013 Australia Post publicly announced that it was their intentions to close the PostShop Franchises. There would be no renewal of Franchises at the end of the term. The offer from Australia Post was that

franchisees were being offered an early exit from their businesses - or a conversion to less attractive Licensed Post Office model. The initial offer of conversion to the Licensed Post Office meant that in most cases Franchisees would have to make a further capital outlay to purchase their own business. The conversion to the Licensed Post Office model would also mean a reduction in the profitability of the business as Licensed Post Offices have a less attractive fee structure. In fact the whole financial viability of the Licensed Post Office network was in doubt at the very time Australia Post was encouraging Franchisees to convert. Australia Post would not be offering any compensation for the early termination of Franchises other than the contracted Exit payments that were in each individual Franchise agreement. These exit payments heavily favoured Australia Post and took no account of equity and value of the businesses that individual Franchisees had built up in their businesses.

Australia Post response to matters raised in the Ernst and Young Report of 2002 stated that Australia Post had adopted the FME (Future Maintainable Earnings) and EBIT (Earnings Before Interest and Tax) principles for proposed Franchise Values. Upon announcing closure of the Franchises, Australia Post adopted the NPV (Net Present Value) method of valuing the Franchise businesses. This placed exiting Franchisees at a distinct disadvantage and the heavily resourced Franchisor at advantage in the negotiation process. The offers from Australia Post got to the take or leave it type of offer.

In November 2013 Franchisees met as a group for the first time in a meeting organised by themselves in Sydney. At no time in the preceding 7 years since the establishment of the Franchise group had Australia Post sought to conference with Franchisees. Meetings with Australia Post at the commencement of the Franchise Group were efficient, well organised and informative, however this group submits that from 2009 meetings became less regular, were often initiated at the request of Franchisees in each state and seemed to lack structure and meaningful content. They had in fact deteriorated to a complaints sessions. The Franchisee Advisory Council which Australia Post had represented would be established had never been established. There was little or no contact with other franchisees other than what was organised by themselves. There can be no doubt that Australia Post had preferred it to be that way.

By the end of 2010 Franchisees were beginning to question where the growth in the Franchise network was coming from. The network as reflected in the numbers above had stagnated. Designated Franchise Support Managers were now being given duties back dealing with Licensed Post Office channels.

In December 2010 Australia Post informed the Franchisee of [REDACTED] that they were contemplating the closure of the [REDACTED] PostShop franchise. The Franchise closed in April 2011. The franchise exited this business after Australia Post had failed to secure an extension of the lease of the premises for the Franchise. Australia Post offered as an alternative premises that were located some 2 kms from the business heart of the suburb the Post office had previously serviced. In short the Franchisee believed that the location was in fact

selected to set them up for failure. It was to be located a distance of approximately only 500 metres from another PostShop Franchise. Despite assurances to the exiting franchisee Australia Post never re-located a PostShop Franchise and business was converted to the inferior Licensed Post Office model. Australia Post never re-offered the business for sale as a Franchise and it was sold again by Australia Post as a Licensed Post Office some time later.

Previously rumours had circulated amongst Franchisees as to why expansion of the Franchise was bogged down. The rumours centred on Industrial disputes between Australia Post and it's employee unions the CEPU as a contributing factor in the stagnation of the Franchise group.

Franchisees were oblivious to inter-play between Unions and Australia Post over franchising but the fact that Australia Post did not now seem interested in progressing gave credence to this. No franchisee has reported that Australia Post at any stage through the interview process provided information that would indicate that Australia Post was constrained in any way from implementing the business plan they had outlined for the Postshop Franchise model.

In May 2010 Australia Post responded below to a question from Senator Abetz:

1. In previous Hearings, senior officers of Australia Post have told us of the new franchising model for retail shops they were establishing. Even now, it is promoted strongly on your organisation's web site. Can you tell the Committee how this program is going?

Answer:

2. Franchised outlets are in operation in all mainland states. They are operating profitably for both Australia Post and the franchisees and are providing customers with a high level of service and access to an extensive range of Australia Post products and services. **Progression of the franchise network beyond the initial phase has been affected by the delay to Australia Post's seventh Enterprise Bargaining Agreement.**

When confronted with this information by Franchisees; Australia Post constantly denied that this matter was having any impact on Franchising. The evidence obtained by Franchisees tells the ultimate truth:

In 2004 Australia Post entered into an Enterprise Bargaining Agreement (EBA6) with it's employee unions the CEPU, CPSU and TWU.

3. In this agreement which had a NOMINAL expiry date of 31 December 2006 Australia Post was constrained to a maximum of 20 conversions of corporate PostShops to the Franchised PostShop model. Refer Clause 9.

4. Australia Post after the NOMINAL expiry date of EBA6 were hard in negotiations with it's employee unions in endeavouring to strike a new agreement.
5. As part of those negotiations Australia Post made offers and received counter offers from the CEPU regarding the number of corporate PostShops that would be converted to Franchises.

The below table sets out a time line for negotiations between Australia Post and the CEPU over the issue of Franchising. Much of the information in the table was taken directly from the Statutory Declarations of Catherine Walsh, Employee Relations Manager, Australia Post and Exhibits presented as part of evidence relied upon by Australia Post in hearings before the Industrial Relations Commission and subsequently Fair Work Australia.

DATE:	ACTION:
24.11.2004	AUSTRALIA POST AND CEPU SIGN EBA6 AND AGREE TO LIMIT THE NUMBER OF CORPORATE CONVERSIONS OF FRANCHISES TO 20 FOR THE LIFE OF THE AGREEMENT.
28.9.2006	NEGOTIATIONS FOR A NEW ENTERPRISE BARGAINING AGREEMENT UNDER THE WORKPLACE RELATIONS ACT COMMENCE BETWEEN AUST POST AND UNIONS.
31.12.2006	NOMINAL EXPIRY DATE OF EBA 6 PASSES HOWEVER AUSTRALIA POST AND UNIONS REMAIN BOUND BY THE AGREEMENT.
14.2.2007	CEPU WRITES TO AUSTRALIA POST SUGGESTING DRAFT CLAUSES AROUND FRANCHISING FOR THE NEXT EBA. AUSTRALIA POST REJECTS THE CLAUSES AS BEING ILLEGAL AND NOT PERMITTED IN A NEW EBA.
10.5.2007	AUSTRALIA POST MAKES AN OFFER BY WAY OF LETTER IN RESPECT MATTERS OF CONCESSION ON FRANCHISING TO THE CEPU. AUSTRALIA POST AGREES TO LIMIT THE NUMBER OF CORPORATE TO FRANCHISE CONVERSIONS TO 83 FOR THE LIFE OF THE NEXT EBA AND AGREES TO MAKE THIS COMMITMENT BY WAY OF A SIDE LETTERS TO THE EBA.
11.5.2007	CEPU SERVES NOTICE ON AUSTRALIA POST FOR THE COMMENCEMENT OF A BARGAINING PERIOD OVER MANY MATTERS INCLUDING FRANCHISING.
28.8.2007	CEPU SERVES NOTICE ON AUSTRALIA POST FOR A SECRET BALLOT SO AS TO COMMENCE INDUSTRIAL ACTION. IN DISPUTE ARE A NUMBER OF MATTERS INCLUDING FRANCHISING.
3.9.2007	AUSTRALIA POST APPEARS IN THE FAIR WORK COMMISSION MAKING AN APPLICATION TO OPPOSE THE GRANTING OF A BALLOT FOR INDUSTRIAL ACTION BY THE CEPU. IN EVIDENCE IT CLAIMS CEPU IS TRYING TO RESTRICT FRANCHISING. AUSTRALIA POST GIVES EVIDENCE IT IS BOUND BY EBA6.

1.10.2007	CEPU PROPOSES A COMMON LAW DEED TO SIT AT THE SIDE OF THE EBA. AUSTRALIA POST REJECTS BEING A PARTY TO ANY DEED
18.10.2007	AUSTRALIA POST PROPOSES A DRAFT EBA7 TO THE CEPU SUPPORTED BY A SERIES OF 30 LETTERS OF COMMITMENT AUSTRALIA POST IS PREPARED TO MAKE. ONE OF THESE LETTERS COMMITS TO THE CONVERSION OF 83 CORPORATE OUTLETS TO FRANCHISES AUSTRALIA POST CLAIMS THEY HAVE REACHED AN IN PRINCIPLE AGREEMENT.
22.10.2007	AUSTRALIA POST DISTRIBUTES A STAFF INFORMATION BULLETIN ADVISING THAT AGREEMENT HAS BEEN REACHED. COMMITMENTS IN RELATION TO FRANCHISING ARE NOW TO BE KEPT BY A SIDE LETTER OF COMMITMENT.
24.11.2007	FEDERAL ELECTION IS HELD AND A LABOUR GOVERNMENT IS INSTALLED
21.12.2007	CEPU PROPOSES TO AUSTRALIA POST IN LIGHT OF THE ELECTION RESULT A NEW COMMON LAW DEED TO BE READ ALONG SIDE THE EBA.
16.1.2008	CEPU EXECUTIVE RECOMMENDS TO IT'S MEMBERS THAT THEY SHOULD NOT ENTER INTO AN EBA WITHOUT THE PROTECTION OF A COMMON LAW DEED SITTING ALONGSIDE THE EBA.
23.5.2008	CEPU FORWARDS A PROPOSED COMMON LAW DEED TO AUSTRALIA POST TO BE READ IN CONJUNCTION WITH A NEW EBA. CEPU PROPOSES AT 12.4.1 AUSTRALIA POST SHALL NOT FRANCHISE ANY MORE THAN 83 CORPORATE SITES DURING THE PERIOD OF OPERATION OF EBA7.
31.7.2008	CEPU SENDS AUSTRALIA POST ANOTHER COMMON LAW AGREEMENT. THIS AGREEMENT AT 12.8 A MAXIMUM OF 20 CORPORATELY OPERATED OUTLETS WILL BE CONVERTED TO FRANCHISED OUTLETS DURING THE LIFE OF THE EBA.
6.8.2008	AUSTRALIA POST BY LETTER ADVISES CEPU THAT IT OPPOSES ENTERING INTO A COMMON LAW DEED.
15.8.2008	AUSTRALIA POST AND CEPU MET BUT COULD NOT AGREE ON A WAY FORWARD IN REACHING AGREEMENT.
20.8.2008	CEPU LETTER TO AUSTRALIA POST REQUESTING A COMMON LAW DEED
26.8.2008	AUSTRALIA POST BY RETURN LETTER REITERATES ITS OPPOSITION TO A COMMONW LAW DEED.
10.11.2008	CEPU FORMALLY ADVISES AUSTRALIA POST OF INTENTION TO NEGOTIATE A NEW ENTERPRISE AGREEMENT. CEPU ADVISES THE PREVIOUS DRAFT EBA7 AGREEMENT NO LONGER REPRESENTS A VALID OFFER TO EMPLOYEES OF AUSTRALIA POST
20.11.2008	AUSTRALIA POST WRITES TO CEPU AND ADVISES IT IS PREPARED TO MEET AND DISCUSS WHAT THE CEPU WAS PROPOSING.
18.12.2008	AUSTRALIA POST AND CEPU MEET AND RAISE 24 MATTERS THAT IT NOW SOUGHT TO RENEGOTIATE.
21.1.2009	AUSTRALIA POST AND CEPU MEET TO CONTINUE NEGOTIATIONS

30.4.2009	AUSTRALIA POST WRITES TO CEPU. AT POINT 6: <i>RETAIL: I CONFIRM THAT AUSTRALIA POST REMAINS COMMITTED TO THE CONTENTS OF OUR EBA7 LETTERS CONCERNING RETAIL - (FURTHER) (B) THAT NO MORE THAN AN ADDITIONAL 30 CORPORATE OUTLETS WILL BE FRANCHISED BY 31 DECEMBER 2010. THIS FIGURE HAS BEEN REVISED DOWN FROM 83 OUTLINED TO YOU PREVIOUSLY.</i> IT GOES ON TO SET OUT THE WORDING OF THE CLAUSE FOR THE PROPOSED EBA7.
14.9.2009	CEPU FORWARDS A DRAFT EBA 2009 TO AUSTRALIA POST.
7.10.2009	CEPU FORWARDS A RE-DRAFT OF AN ENTERPRISE AGREEMENT. AT CLAUSE 30.4 <i>RETAIL: 30.4.1 AUSTRALIA POST IS COMMITTED TO MAINTAINING THE CURRENT RATIO OF CORPORATE, FRANCHISED AND LICENSED POST OFFICES.</i>
9.10.2009	AUSTRALIA POST RESPONDS IN WRITING: <i>RETAIL (CLAUSE 30.4) UP UNTIL MAY 2009, THE PARTIES HAD BEEN DISCUSSING CLAUSES RELATING TO THE RETAIL NETWORK THAT SOUGHT TO PLACE A LIMIT ON THE NUMBER OF FRANCHISES AND AGREED CRITERIA FOR LPO CONVERSIONS. THE CLAUSE DID HOWEVER CONTEMPLATE AN INCREASE IN THE NUMBER OF BOTH OF THESE OUTLET TYPES. YOUR CURRENT DRAFT CLAUSE FUNDAMENTALLY SHIFTS THE CEPU'S POSITION TO ONE OF STOPPING GROWTH IN THE FRANCHISE AND LPO NUMBERS RATHER THAN LIMITING GROWTH. THIS IS QUITE A DIFFERENT CLAIM BY THE CEPU.</i>
15.10.2009	AUSTRALIA POST RESPONDS PROPOSING A DRAFT AUSTRALIA POST ENTERPRISE AGREEMENT AND AT CLAUSE 33.3 <i>NO MORE THAN 30 CORPORATE OWNED OUTLETS WILL BE CONVERTED TO FRANCHISES BEFORE THE NOMINAL EXPIRY DATE OF THIS AGREEMENT. THE PROVISIONS OF THIS CLAUSE WILL OPERATE UNTIL THE NOMINAL EXPIRY DATE.</i>
22.10.2009	CEPU PROPOSES A RETAIL CLAUSE TO AUSTRALIA POST AT CLAUSE: <i>30.4.2 AUSTRALIA POST IS COMMITTED TO MAINTAINING THE CURRENT RATIO OF CORPORATE, FRANCHISED AND LICENSED POST OFFICE OUTLETS.</i>
25.10.2009	AUSTRALIA POST RESPONDS WITH A PROPOSED CLAUSE: <i>30.4.2 AUSTRALIA POST IS COMMITTED TO THE LONG TERM VIABILITY OF ITS RETAIL NETWORK. THIS NETWORK IS AND WILL CONTINUE TO BE A MIX OF CORPORATELY OWNED OUTLETS AND PRIVATELY OPERATED OUTLETS UNDER ONE OF A NUMBER OF ARRANGEMENTS. THE OVERALL MIX OF THE NETWORK IS NOT LIKELY TO CHANGE SIGNIFICANTLY OVER THE PERIOD OF EBA7.</i>
21.10.2010	EBA 7 IS COMPLETED AND SIGNED: AT CLAUSE 40.2.2. <i>AUSTRALIA POST IS COMMITTED TO THE LONG TERM VIABILITY OF ITS RETAIL NETWORK. THE NETWORK IS AND WILL CONTINUE TO BE A MIX OF CORPORATELY OWNED OUTLETS AND PRIVATELY OWNED OUTLETS UNDER ONE OF A NUMBER OF ARRANGEMENTS. IT IS NOT INTENDED THE THE OVERALL MIX WILL CHANGE OVER THE TERM OF THIS AGREEMENT.</i>

Between 28.9.2006 and 25.10.2010 there were 32 known incidents of negotiation and conflict between Australia Post and the CEPU where the subject was the PostShop Franchise model.

At all times from 24.11.2004 until 21.10.2010 Australia Post remained bound by the provisions of clause 9 of EBA6 2004 - 2006.

This submission suggests that because of the ferocity of the industrial battle that Australia Post had been undertaking between 2006 and late 2010 it capitulated to union demands and abandoned any prospect of franchising on 22.10.2009.

Australia Post responded in writing to Senator Boswell to his questioning on 25.2.2014 around the restrictions that EBA6 placed on them. Australia Post responded in writing stating -

Australia Post believes this question refers to its agreement with the CEPU within the then Enterprise Agreement (EBA6). This was a commitment that for the life of that agreement (2004 – 2006), Australia Post would not convert more than 20 corporate outlets to a franchise.

This agreement did not restrict Australia Post on the size of its franchise network. At the time Australia Post advised prospective franchisees its network would be achieved through a combination of the conversion of existing corporate outlets, conversion of licensed outlets and the establishment of new sites.

Any uniformed reading of this answer by Australia Post suggests that their binding arrangements had concluded in 2006. This was the spin put forward by Australia Post managers when confronted. It is in fact un-true and mirrors the abhorrent corporate behaviour currently on display at the Financial Services Royal Commission. Australia Post resents having their corporate misbehaviour brought to light by members of Parliament and would rather provide to the parliament half truths and answers which deliberately mislead.

It is incredulous that Australia Post embarked on the sale of Franchises whilst being bound to a contract that restricted the growth of the Franchise network and chose deliberately not to disclose the limitations of the contract.

Attempts were made by a number of Franchisees to gather interest from the ACCC on this matter alone. The experience of those Franchisees in dealing with the ACCC is similar to the frustration experienced by consumers currently exposed at the Financial Services Royal Commission.

It will be for the ACCC to reply for themselves when these issues were brought to their attention why they did not investigate.

REPRESENTATION 4: THE PATH TO RENEWAL.

In this submission we do not propose to suggest that the Franchise Agreements into which we entered were not for a fixed 10 year term.

What is in dispute was that Australia Post did not represent a path to extending the 10 year term. All who made a contribution have been able to provide information that Australia Post held out a process to the extension of the franchise agreement at the end of the 10 year term. The methodology Australia Post presented in Interviews differed from applicant to applicant but nonetheless there was a path suggested.

Most small business people have very little in the way of superannuation and often forego that luxury in small business in the expectation that the equity they build in their business can at some time be realised. That is the case for all making a contribution to this submission.

This submission refers this Committee to the testimony of Australia Post at References Committee in to Franchising Code of Conduct on 17 October 2008.

In evidence be for the Committee Australia Post said in the following exchange between Senator Boyce of the Committee and [REDACTED], Manager, Retail Channel, Australia Post and [REDACTED],

Senator Boyce: I notice you talked about a 10-yr licence?

[REDACTED] - *For the Franchise?*

Senator Boyce - Do they have renewal options ?

[REDACTED] - *There is no renewal option in the Franchise Model. That is explicit up front.*

[REDACTED] - *Just to make a correction, there is no automatic right of renewal. We have not yet got to the end of a 10-year term under our more recent franchise post-shop model. But our anticipation is that renewal may be open but is not guaranteed.*

Senator Boyce- But you must have a business plan around that?

[REDACTED] - *Our intention would be -*

Senator Boyce - Would be to renew the good ones?

[REDACTED] - *You would have heard from most people that good franchisees are very good to keep. NO DOUBT THAT WOULD BE OUR DEFAULT POSITION.*

Upon the announced closure of the Franchise group Australia Post fell back to the contract as their legal shield and repeatedly denied that representations had been made to Franchisees that extension may be available. The exchange above corroborates the position of Franchisees that Australia Post in selling the

franchises provided methods to the extension of the Franchise agreement. Some of the methods explained by Australia Post was that a further Capital contribution would be required for a further term.

REPRESENTATION 10: ACCREDITED FRANCHISE STATUS.

In the brochure *“A Postshop Franchise - the Key to your business success”* the following information is provided at page 12 - *“ Finance Assistance - Leading Australian Banks have examined our franchise system and are offering tailored to Australia Post Franchisees. Applicants must meet lending terms and conditions including serviceability requirements. information about these offers is available from Australia Post. “*

This representation was made prominently in public information nights and other information sessions conducted by Australia Post. It was also made in the private meetings with various franchisees. The representation was made in Queensland, South Australia and Victoria. The representation does not appear to have been made to franchisees in New South Wales.

The concept of a franchise accreditation by the banks is perhaps better highlighted in the article in the magazine Dynamic Business 21 Jan 2007 -

“Banks are now starting to acknowledge the value of the infrastructure and support that comes with a franchise,” says [REDACTED]. “Some are loaning between 50 and 70 percent against the business rather than on some other security like your home. If the franchise you’re considering has this kind of bank accreditation it’s a good sign.”

Australia Post was advising prospective Franchisees that it had obtained “Bank Accreditation” from Commonwealth Bank, NAB, ANZ and in some information sessions from Westpac.

Franchisees report that they attended meetings with various Australia Post Franchise managers where the bank accreditation was highly promoted. Some attended meetings accompanied by accountants, business advisors and the representation was repeated in their presence.

The CBA website in early parts of 2007 listed 34 accredited companies. Australia Post was listed amongst those companies. A webpage link from the franchising page of CBA took any prospective Franchisee from the CBA webpage to the Australia Post webpage and ultimately to the Australia Post webpage where “Australia Post Franchise.

It is with the deepest of regrets on behalf of one ex-franchisee who borrowed from the CBA that he discovered in 2013 only through litigation that *Australia PostShop was not accredited by the CBA or indeed any bank.*

It is not surprising given the conduct of the banks at the Royal Commission that this would come to light. It is however disturbing in the extreme that Australia Post were participants and instigators to this deception.

The discovery of this information does correlate with experience of many Franchisees who had borrowed under the impression that the Franchise Model was accredited. Many franchisees within a short period of time found the banks with whom they had borrowed were now withdrawing their support.

There is now evidence that Australia Post did not have accreditation with any financial institutions and this can be provided to this inquiry.

THOSE WHO HAVE MADE A CONTRIBUTION TO THIS SUBMISSION URGE THIS INQUIRY TO URGENTLY REFER THIS EVIDENCE TO THE RESPONSIBLE SHAREHOLDER MINISTERS FOR FURTHER INVESTIGATION.