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Parliamentary Joint Committee on Corporations and Financial Services  
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8 November 2018

### **Inquiry into the operation and effectiveness of the Franchising Code of Conduct**

Chair Michael Sukkar and Committee Members,

Our franchise network is one which has been successfully operating for 19 years. We now have a community of over 60 Practice Directors (franchisees), leading physiotherapists and business owners who provide valuable services, support and employment within their local communities.

We were greatly dismayed to be the subject of negative claims, including representations of an extremely serious nature, made to the Inquiry. In response, we made inquiries about writing our own submission but have been advised that is not possible.

**We completely reject the representations made to the Committee on 24 August 2018 by Mr. Peter Bain in submission #152. We confirm we do not allow a culture for such behaviours to exist.**

The decision to reference our franchisees as Practice Directors is a deliberate one. It is a recognition of the fact that they are independent business owners and that they are important partners in and drivers of our network. However, to avoid any confusion and for the sake of clarity, in this letter we have reverted to the designation of "franchisees".

We note that the Committee is looking to develop workable solutions that enhance the sector without the imposition of unnecessary and unworkable burdens on the many successful franchisees and franchisors. We also note the original and supplementary submission by the Franchise Council of Australia (FCA). We are an active longstanding member of the FCA, and we enthusiastically support both submissions.

Specifically, in relation to the claims made to the Committee in relation to our network in submission #153 by Mr Peter Bain, we make the following observations:

#### **Strength of Business Model**

Mr Bain makes various assertions on pg. 1 of his submission including that "the franchisees, to a very large extent, are exposed to all the risks of equities and few of the benefits" along with other statements about the weakness of the business model. We totally reject his opening premise and the examples he gives. In particular:



- Each franchisee determines how they wish to structure their business, including the level of salary they wish to pay themselves, the number of staff they choose to employ and the salaries they need to pay to attract them, but always complying with employment and workplace laws.
- Historically our group has grown through both new practice acquisition/conversion, and through organic increase in sales of existing practices. In particular, recent group practice revenue has been driven by strong year-on-year growth of existing locations. In FY18 alone, group practice revenue growth was 11.6%<sup>1</sup>, compared to the average Australian physio industry annual growth of 2.8% for FY14-19<sup>2</sup> - which is more than four times the industry standard. We acknowledge that this growth rate is an average across our network (as is the industry benchmark), with some practices performing above and others performing below this metric. That said, given each of our practices are at a different stage of business growth it is entirely normal for such variations to occur.
- Franchisees, of course, get all the upside of their equity (they retain profit; it's a saleable/transferable asset, and they can borrow against it).
- Fit out is determined in close consultation with franchisees and we work with each one to scope a fit-out within their means. If necessary, fit outs are staged over time to assist in managing cash flow, and we offer a panel of providers at competitive rates (of which no revenue is received by the Franchisor).
- Our franchise agreements DO NOT have an exit fee, despite the alleged claim. However, as a special condition only for those franchisees who wish to take up the option, they may purchase the goodwill and ongoing concern of the practice to enable them to operate independently of the franchise. This is uncharacteristic of most franchise systems and offers our franchisees a unique benefit. They can continue to operate from the same location, with the same staff, same phone number and access to the client data built up during their time within the network in exchange for a fully disclosed fee.
- Our contracts involve normal 'restraint of trade' provisions common to any franchise, professional services or employment agreement. They are not onerous and have cascading provisions to accommodate for whatever the courts may deem to be appropriate in the circumstance.
- All franchise fees are detailed in the Agreements and Disclosure Document. These include a royalty fee of 7% of gross sales and a marketing levy of 2%. Again, uniquely in our network, we do not charge royalties on any sales of existing clients the franchisee already serviced before converting under our brand. These generous provisions have been conveniently overlooked in the malicious statements made about us. They create enormous goodwill in our system with existing franchisees given it optimises their profit potential.
- When a proposed change may give rise to a new fee or obligation on franchisees, often our franchisee advisory council (which includes peer-elected representatives of our franchisees) reviews and provides input into such decisions. This means that often, based on the feedback of the franchisees, the franchisor is inclined to re-think or defer such initiatives until more agreeable solutions can be discovered.

Over recent years, some of our franchisor fees have been reduced or removed due to better economies of scale, selection of new third-party providers, and due to advanced support platforms. This is all possible as result of the collaborative relationship we have with our franchisees and benefits them directly.

Mr Bain claims on pg. 3 that the divestment of fully-owned and part-owned company practices is some sort of litmus test of the health of the business model. The facts are:



- It is not our core business strategy to fully or partly own practices in the long term. Put simply, we do not believe in competing against our franchisees, and we favour local partnership to drive better community engagement and practice performance.
- We do however invest in practices to support our core strategy of franchisee success and to stimulate the growth of the group.
- We regularly take up and sell down these interests as needed to support the franchisees involved.
- We have also at various times bought up or sold down ownership stakes where there was an opportunity to gain a foothold in a niche market or geography, or to secure key personnel into the group (i.e. those looking to partner). In the last year we have increased our equity stake in one practice at the request of the franchisee and we have sold down our equity in two practices, both at the request of the continuing franchisees who wanted to take a greater stake in their profitable businesses. This is a fluid dynamic and not at all a reflection on a negative business model. On the contrary, the strength of underlying practice profits makes them tradable.

Our success as a Franchisor is determined by our franchisees' success. Our franchisees are long-standing and active members of our network and drive our future. Their endorsement of our brand and business model is well documented, and nearly all of them rallied in support against the baseless claims recently made against us during the above cited inquiry.

Our network, which currently consists of approximately 100 locations including 48 flagship franchised practices, continues to grow because our franchisees value the advantages we give them. We are extremely proud of what we have created in partnership with our franchisees and the success they enjoy being a part of the Back In Motion Health Group.

Yours sincerely,

**Jason T. Smith**  
**Group Director**  
**Back In Motion Health Group**

1. In FY18, Back In Motion Health Group Practice revenue was \$42,427,959, compared to FY17 \$38,022,272 - an increase of 11.6%.

2. *Physiotherapy Services - Australia Market Research Report* <https://www.ibisworld.com.au/industrytrends/market-research-reports/health-care-social-assistance/physiotherapy-services.html>, downloaded on 7 November 2018.