

3000 suffering Post Office Licensees, 7 low-cost, enduring solutions for all franchisees

3000+ Post Offices franchisees around Australia have been financially devastated.

They are in need of repair and restitution.

But what can prevent similar occurrences in the future?

Here are 7 enduring, low cost solutions!

The term licensee and franchisee are interchangeable under Australian laws, but they are now revealed as very weak and meaningless laws.

The Franchising Code of Conduct can be a cloak for the deception that can be done to innocent people going into small businesses, mostly for the first time. They can be manipulated and controlled for the financial gain of their franchisors. Not by all, but by far too many.

The Australian Post Office franchisees are not alone.

How did it come to this? What could have prevented it?

The Franchisees Association of Australia (FAAi) is a volunteer, not-for-profit group that has been seeking, without success so far, to Australian laws that can and should protect small business types such as Franchisees.

The following are our suggestions:

(1) Vet Franchise Agreements before they are sold!

Resolve a vast number of potential problems before they get out into the market!

- a. Many appallingly unfair franchise agreements are sold each year to unwitting folks, inexperienced in business and often just seeking to 'buy a job'.
- b. If you buy a few shares on the stock market you have the protection of ASIC vetting the Prospectus for fair disclosure
- c. But nobody vets Franchise Agreements.
 - a. Would you sign up for a franchise where, if you went broke, that *wasn't* the end of it? The franchisor demands that you continue to pay the anticipated royalties he had until the end of the contract (as if you hadn't gone broke). One franchisee told the FAA he told the Franchisor "You can't get blood out of a stone". The Franchisor pointed out the franchisee had signed personal guarantees and these would be used, starting with selling his house.

- b. Under the Franchising Code the franchisee is supposed to seek legal, business and accounting advice. Needless to say most don't. To decipher all the meanings behind dense legal language is nigh on impossible. The best deceptions are unstated or obscurely hidden in some operations manual.
- d. The current system requires every single franchisee to read, understand and seek professional advice
- e. It's absurd duplication and extraordinarily expensive. The FAA estimates 90-95% of franchisees, can't afford, don't understand – they simply trust the franchisor
- f. Some of the worst franchising agreements are issued by multi-national corporations. We're not talking about just some rogue franchisors.
- g. Wouldn't it be better to have some small section of ASIC, or the ACCC, or a small specialist agency do the job – do it well – and do it once.
- h. The declaration of 'fit to be offered' doesn't mean a recommendation, just as a passing of a Prospectus by ASIC isn't a recommendation.
- i. The FAA volunteers to contribute more detail or explanations if called upon to do so.
- j. This solution can be low cost. Simply charge a fee to Franchisors to have their franchise vetted to cover the cost of such vetting. The vetting should be nothing more than the vetting of the Agreements/Contracts being offered and whether or not they are potentially in breach of the Code

(2) A Franchising Code that included "Good Faith"

- a. This has been debated many times before but the lobbyists on behalf of the Franchisors have always managed to convince the Government of the day against allowing it into the Code. Why? It's in dozens of other pieces of legislation. The complexities of Franchising are far too extensive for prescriptive solutions
- b. The Wein Inquiry recently recommended that it finally be brought into the Code and this apparently now has the support of both parties. But it's still needs to happen.

(3) A Franchising Ombudsman

- a. Similar in concept to the format that has worked so well in the banking and communications industries; where small folk have a 'go to' entity which acts a relief value via its independence and impartiality.
- b. Unrealistic franchisees 'need to be told' as much as do 'overbearing' franchisors.

(4) Revision to the "Unconscionable Conduct" provisions of the Code

- a. There have been innumerable calls for this to happen. The criteria currently written into law are excessively high hurdles. The incredibly small number of successful legal actions over the last few decades is testimony to the need for a more equitable balance.

(5) An enforced, as well and enforceable, Franchising Code

- a. There are no penalties for breaches to the Franchising Code. What protection or comfort is that for franchisees?
 - b. There should be criminal sanctions for breaches of the Code. They need not be overly severe. Those recommended by the Wein Inquiry are a good start.
 - c. There should be Co-extensive Liabilities and Civil Consequences
 - d. Disclosure Documents which work as Statutory Warranty
- The FAA legal advisors would be happy to elaborate on how these might work

(6) Variable (and sensible) terms of contract and tenure

- a. The term of a franchise must allow the investor sufficient time to recoup entry, and exit, costs as well as make a reasonable return on investment
- b. This is a classic example of how a Franchisor can hold a Franchisee 'over a barrel'. E.g. A Motor Manufactures requirement of a Car Dealership to build specialised premises with marble floors, glass walls, wood panelling. An investment normally requiring 20 years amortisation. Not much good if the Franchise has an expiry in just 5 years.

(7) Use of the Unfair Contracts legislation for franchising

- a. It was originally envisage that franchising would fall under this legislation but was withdrawn at the last minute with the argument that franchising is more about business-to-business. We strongly submit it's more about big business with unequal bargaining power and that it's mainly consumers buying into business for the first time.

The above is a submission by the Franchisees Association of Australia Inc. – with particular reference to Part (iv) to the Terms of Reference.

We would welcome the chance to expand upon it if called upon to do so.

Sincerely,
Andrew Lovitt
Secretary,
FAAi.