

Submission: A inquiry into the operation and effectiveness of the Franchising Code of Conduct, 2018

We operate a multi-brand business with around 250 franchise owners operating within the Home Services and Automotive sectors. Our systems operate on a fixed weekly fee basis with an initial investment ranging from \$12k - \$60k. We manage our network through a state based master franchise model.

It is from this standpoint that I have set out below my views on the operation and effectiveness of the current code.

Operation

From the Franchisor perspective the disclosure process is relatively straight forward as there are relatively minor changes to be made on an ongoing basis. As franchise system's we should be able to manage what is simply a process.

The requirement to provide a prospective franchisee the information fourteen (14) days prior to their commencement date does not present an issue.

Despite this, we are aware that a surprisingly large number of systems do not have a Code compliant Disclosure Document, especially in the area of disclosure of current and past franchisees. We are also aware of systems that will only provide contact with those individuals with the Franchisor present, which defeats the whole purpose.

Effectiveness

This is where the Code falls down. In an effort to provide the franchisee protection from every potential pitfall, the Code and associated disclosure process has the opposite effect.

The sheer weight of paperwork – Disclosure Document, copy of the Code, copy of the Franchise Agreement, total over 130 pages (that is for a simple business with an upfront cost of as low as \$8,000). Who is going to read it and more importantly, who is going to understand the content? This is the largest contributor to the ineffectiveness for a low investment franchise.

A simple solution would be to create a "Short Version Disclosure Document" for systems with an upfront investment of less than \$x amount. This should also be written in plain English so that the cost of obtaining advice is not prohibitive.

A lot has been written about the inequality of power within the franchise relationship, with the majority of the belief that it is stacked against the Franchisee. Whilst this might be arguable in the case of the better known High Street brands, it certainly doesn't apply to the mobile services sector, where, if our experience is anything to go by, a franchisee can simply strip the branding off their vehicle and carrying on operating.

We would estimate that between 10%-20% of franchisees that leave a system continue to provide the service using the same intellectual property under their own brand. In many of these cases the departing franchisee continues to pass themselves off as still being a member of the system to maintain the perception of legitimacy. We currently have one such case where they have registered a domain name the same as ours with a .com suffix and images that are on our site. There is virtually no remedy under the Code, with the Franchisors only option being to take their chance in the courts where the result is uncertain.

This not only hurts the Franchisor as Franchisees also have a stake in the brand and therefore expect the Franchisor to act.

As to a solution to the issues I believe there a number of possibilities but the first question needs to be.. what is the aim of the Code?

Is it to protect Franchisees from failure?

Is it to ensure they have all the information to make an informed decision?

If the world was a perfect one, every Franchisee who followed a franchise system would get the same result, but we know that this isn't the case. Some will ignore the system, thinking they no better, some will avoid the aspects of running a business that they don't find comfortable, and some are just not cut out to deal with clients or have the discipline to work in a consistent way. In terms of a service type business most "failure" could be better described as outcomes not meeting expectations.

There are various estimates as to the number of franchise systems in Australia with most estimating the number to be around 1100. The truth is though, that no one knows and by comparing franchise directories with on-line searches there are a number that are offering franchises but do not appear on any list. We had a case recently where someone had bought what they thought was a franchise (advertised on Franchise Directories) only to be told, when they had paid money, that they had entered into a Licence Agreement and consequently were not covered by the Code and therefore not entitled to a cooling off period.

Something that I, and a number of colleagues have been advocating is a Franchise Directory. This would act as a repository for all information related to franchise systems and would be the first point of call for prospective franchisees and their advisors. I see this more aligned to an ASIC search than a Trip Advisor rating system, as the latter is open to gaming. Just give prospective franchisees the facts.

In Summary

The Code, whilst cumbersome, is not difficult to operate from the Franchisor's perspective. The key to compliance is in the enforcement of the penalties introduced in 1995.

The Disclosure process should be different for a low investment business.

Adding further legislation will only effect the compliant franchise systems (which are the majority) as non-compliance is a choice and those that choose not to comply will continue to do so, widening even further their advantage and leaving franchisees out of pocket.

Australia has the most heavily regulated franchise sector in the world, yet we can't provide a potential franchisee with a simple mechanism where they can check the veracity of what they are being told from a credible source.