

Minority report

Franchisees and landlords

Evidence was provided to the inquiry that retail franchisees can be severely disadvantaged in that the franchisor conducts all negotiations and is technically the ‘tenant’ of the premises.

This has given rise to the perception of some franchisees that the landlord and franchisor act in collusion against the interests of the franchisee. This arises because, between them, they know precisely how much profit a franchisee is making and could therefore manipulate rent, outgoings and franchisees’ costs to their best advantage.

Ms Roslyn Lanigan, the franchisee of a coffee and muffin shop in Brisbane submitted:

As we did not negotiate the terms of the lease (this belonging to the master franchisor) we were not in a position to determine the exact things that were promised or understood at the time of the original signing. We checked out as much as we could and know from what we were told by the then master franchisor and the then leasing agents of the centre that we were misled.

... We find that we are not given direct access to centre management as we are the sub-lessees and told to direct all concerns via our master franchisor. This makes it difficult to communicate. We feel that the master franchisor, along with our parent company, have an ambivalent interest.¹

Ms Lanigan was also concerned she had not been provided with an audited statement of the marketing funds for the first year of operation of the new centre, and was ‘regularly fobbed off’ when seeking information on issues directly related to the profitability and security of her business.²

1 Roslyn Lanigan, *Submission No. 37*.

2 Roslyn Lanigan, *Submission No. 37*.

The matter of franchises is dealt with extensively in Chapter 3 and if all of the recommendations contained therein are adopted and the appropriate aspects legislated then the current vulnerability of franchisees will be largely corrected. Given the uncertainty of both the Government's response and the length of time it may take to enact changes it is important that the Uniform Retail Tenancy Code give some support to franchisees.

While it is understood that they can not be treated as tenants in a legal sense, the fact is that they, in the main, are small business people with a great deal at stake who are often working very long hours to pay both the landlord and their franchisor and receiving only a pittance.

One franchisor admitted that it was possible for their franchisee to be paying up to 80 percent of their turnover in rent and franchise and product charges.³ This left only 20 percent to pay wages, electricity and telephone charges and their profit. The same franchisor agreed that their franchisees were not allowed to participate in discussions with the landlord on rent or tenancy related matters.⁴

Within the tenancy recommendations of this report franchisees will have no right to any information about the centre or premises in which they operate, its tenancy mix or its merchants' association unless their franchisor allows them to. Yet every non-franchisee tenant or prospective tenant could have their valuers made aware of the details of their occupancy. Equally, non-franchisee tenants can belong to merchants' associations which could influence the tenancy mix, exclusivity of trading rights, promotional direction, levies, etc.

There is a need to balance these rights within the Uniform Retail Tenancy Code proposed in Chapter 2 of this report in the event that the franchising recommendations are not adopted.

The Committee has recommended in this report that the Franchising Code of Practice should provide for full disclosure of retail tenancy information to retail franchisees.⁵ Even if the franchising recommendations are adopted it is possible that a franchisee will be unable to establish that their franchisor is in breach of the provisions because they cannot independently access the information that their franchisor is supposed to supply. In other words, they need to be able to cross check the information to determine if they are being provided with the information to which they would be entitled under a revised Franchising Code of Practice.

3 Grant Garraway, Kleins, *Transcript of evidence*, pp. 757-58. Asked if a franchisee paying 21% rent to turnover would be paying about 80% of turnover on fixed charges - franchise fees, rent, stock - Mr Garraway replied: 'It is fair to assume someone paying over 20 per cent has difficulty with their bottom line'.

4 Grant Garraway, Kleins, *Transcript of evidence*, pp. 758-59 & 761-62.

5 Recommendation 3.1 of this report.

Recommendation

It is therefore recommended that the Uniform Retail Tenancy Code provide for franchisees to be able to:

- (a) access all of the information about a centre that tenants can;**
- (b) have their own valuers access centre data and provide them with advice on the same terms as other tenants;**
- (c) belong, in association with their franchisor, to any appropriate merchants' association and participate in consultation about tenancy mix, promotional levies, and other relevant matters; and**
- (d) meet jointly with the franchisor and landlord at times when there is a dispute over the levels of rent or the terms and conditions of the lease as a preliminary part of any dispute settling process.**

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