

Federal Government Franchising Inquiry

03/09/08

Dear Committee,

I welcome the opportunity to contribute to the current review. I am very hopeful that your Committee receives submissions from the many Australian families that have suffered at the expense of the Australian franchising system.

I have been a good citizen and contributor to community. I have been a competent performer in all of my employment opportunities or business pursuits. The honorable David Hawker MP has commended me for my work in health administration. The management of a retail franchised business was not rocket science, yet it proved to be the most difficult management exercise I had encountered because there was no solution to make this “tried and tested franchise system” profitable.

Our brief interlude into the franchising world during 2001 saw us set back 20 years from a financial perspective. The experience also had a devastating impact on us personally and emotionally as we were on top of the wave to financial ruin at a rate faster than a speeding bullet. I am no longer involved with franchising as we escaped complete financial ruin by taking on the franchisor through an established network with other franchisees aimed at exposure of the franchisor and then ultimately through mediation processes.

I accept that there are good franchisors who have an interest in the bottom line of their franchisees; the downside is there are also franchisors that quite ruthlessly will allow people to blow their life savings and then exit these franchisees with massive debts, which practically ruin the rest of their lives. These unscrupulous franchisors then encourage another family to buy into that same business and the “churning” process continues. Australians buying into franchises are not the big business end of town people, it is the mums and dads who are prepared to roll up their sleeves and have a fair dinkum Aussie go to make something of their lives. These families need much more protection than what is afforded to them at the present time.

It is the bad franchisors that necessitate a need to make changes to protect future Australians before they buy into a franchise. There is a need to make the checks and balances stronger and mandatory to protect those who cannot protect themselves. My concern remains for the many franchisees I know who are suffering as a consequence of buying into non-profitable franchise systems and the actions taken against them by unscrupulous franchisors. I have first hand knowledge of families who have lost their life savings, their mother's investments and marriage breakdown as a consequence of a poor franchise system.

The truth about our experience is that if the disclosure requirements of the Franchising Code of Conduct had worked to our advantage instead of significantly favoring and protecting the franchisor we could have avoided much of the heartache and turmoil over a four-year period. A franchisor can approach mediation supposedly in good faith with no intention of achieving resolution because they know their franchisees generally cannot afford to take them on through the court processes.

My experience was to go through mediation under the code and come out the other end with a resolution between the parties. I can assure you that from my experience mediation is not working because it is too costly for franchisees to effectively pursue mediation. By

the time you muster the courage to take on the franchisor and master franchisee and their teams of lawyers you may already have the banks hounding you because you have been unable to meet your financial commitments as a consequence of the flawed franchise system you have bought in to. I was fortunate that a reputable lawyer allowed me time to pay off the debt. Let me assure you my assessment of mediation is all about the franchisor using their deep pockets and bargaining power to exit the franchisee with as little as possible and to ensure they silenced the franchisee from ever saying anything negative about the franchisor.

The ACCC will advocate in the Butler's situation that mediation was effective. I can assure your review panel that it was far from effective. The outcomes have allowed what I would deem to be an unscrupulous franchisor to continue to allow the next Australian family to lose their life savings. The Butler's will be advocated as poor operators who left the system. The next purchaser of the franchise will not be advised that the Butler's lost hundreds of thousands nor will the disclosure statements provide any such detail. I am aware of a franchise in Melbourne where the previous three franchisees' have gone belly up and yet the master franchisee is currently trying to sell the business to another unsuspecting buyer with all the usual gloss and razzamatazz about the merit of the business.

My complaints to the ACCC were extensive and well documented, essentially they fell on deaf ears despite the ACCC being aware and informed that franchisees around Australia continued to lose their assets and mount up massive liabilities. Realistically if the ACCC gets a notch in their belt for helping Fred Smith it has little political advantage, it probably requires the same level of resources to represent Fred Smith as it does to take on a large oil company. My experience with the ACCC establishes very clearly that the code in its current format offers little protection to franchisees because the ACCC could not find any legal grounds to pursue the franchisor and yet the financial rape and pillage continued.

The franchise we owned is currently for sale at \$310,000 through a broker I would rate as questionable and one that has previously been fined by Consumer Affairs Victoria for breaches of business ethics. The broker is advertising that the franchise is currently under management and business can improve. The manager of the franchise business is the National Chairperson of the Franchisor and is a very good operator, no one fresh off the street will manage the store to the current management capabilities. The next buyer of this business is paying less than what I paid for the business, they will be paying more than I was paid by the franchisor to exit their system. The buyer will suffer the same losses as the Butler's incurred which will be significant. The master franchisee will portray them as a poor operator and during the first two years will continue to tell them that this is the toughest time in retail and things will get better. The buyer will need to sell their private assets to keep the business afloat and before they realize it they will be on a pathway to financial ruin. And so the process continues.

The experience of not drawing a wage for four years, returning no profits and working enormous hours as a matter of survival is not a pleasant one. Add to this the hounding by the banks and creditors and you begin to get the picture of what is occurring for franchisees all over Australia at this very moment. Let us not forget I was buying into a tried and tested franchise system that should have been able to return a profit and a return on our investment.

I am hopeful that I have set the scene to provide you with my first hand experience with franchising. Regardless of the advice that is available to prospective franchisees there needs to be enshrined in legislation measures that will ensure no Australian is "duded" of their life savings as a consequence of unscrupulous franchisors.

It is often claimed by the Franchising Council Of Australia that there are support mechanisms in place and that the “unscrupulous franchisors” are a minority. The harsh reality is that whenever any franchisee says boo about a franchisor or talks about the negatives of franchising the FCA rush out their PR machine to state all is rosy and not everyone is suited to franchising. I personally wrote to the FCA during my troubled times in a pseudonym and because I was asking questions about one of their “hall of famers” no reply was forwarded. The FCA ignored my request for detail about a franchised system.

I would like to remind the panel that one “unscrupulous Franchisor” can do untold damage to many families over decades and it will not be identified through the disclosure documents. No matter how good your due diligence is the true facts are not presented because if they were the franchisor in my case would have been out of business years earlier.

I am not sufficiently qualified to present what may be legal solutions to overcome the current problems, however, I will make the following recommendations: -

1. There needs to be a register of Government approved and accredited lawyers and financial advisors that can legally provide advice to prospective franchisees. No prospective franchisee should be permitted to waive their rights to seek such advice. Your everyday solicitor/lawyer is not necessarily up to speed on the franchising laws, problems and pitfalls-the advice being sought should be treated as more than the checking and signing of a contractual arrangement. A prospective franchisee can be dazzled by the prospects of a new business venture and they need to be protected from themselves.
2. There needs to be added to the statements of advice received from lawyers and financial advisors a further mandatory statement in the franchise agreement that the prospective franchisee has contacted 10 current franchisees (listing them) to ascertain the credentials of the system and the franchisor.
3. Franchisors must be legally required to disclose the last known names and addresses of the previous three franchisees that owned the franchised store. These past franchisees need to be protected against franchisor confidentiality agreements, which prevent them from speaking honestly about their experience with the franchised system.
4. The practice of Franchisors silencing all and sundry through their exit strategies needs to be addressed as it is allowing the practice of “churning” to flourish.
5. The hours of work a prospective franchisee will be required to work in store to sustain financial viability needs to be stated in the disclosure documents.
6. The practice of franchisors presenting income forecasts and projections needs to be outlawed. The prospective franchisee should be making decisions with his advisors based on the true and accurate financial statements provided by the vendor. These statements must be the true and accurate audited statements provided by legally qualified accountants.
7. Government needs to support the establishment of a Franchisee’s Association that can be an advocate and aim to provide assistance to all future and current prospective franchisees so that they may make the right decisions and choices. The Government

should recognise that the FCA has a proven track record of being funded by the franchisors and looking after franchisor interests. It is time for the everyday mums and dads to be looked after by an independent organization. Seeding funding needs to be provided by Government to an interested party to establish such an organization.

8. The franchisor should have to disclose precisely what occurs at the end of the franchise agreement licence and the potential costs that have to be paid by the franchisee electing to exit the franchise system. The same applies for renewal, all costs should be provided

up front.

I hope this detail provided gives you an insight into the world of franchising from a person that has seen franchising at its very worst. Unfortunately what I experienced continues for many Australian families who do not have the necessary support mechanisms in place or the financial resources to free them from the entrapment of a franchise system.

I would be pleased to be afforded the opportunity to meet with your panel to talk first hand about my experience. The attachments I am enclosing with this letter need to remain confidential because I too have been required to sign a confidentiality agreement to protect the future interests of the franchisor at the expense of the innocent prospective franchisee.

Yours truly,

Mr. Gavin Butler
Director
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