

Dear Hon Dr Craig Anthony,

I write to you as the Minister for Small Business.

My name is Peter, and I wanted to make you aware that there appears to be a massive injustice being done to one of the most important groups in Australia. That is the small business group.

I say this because, at every level of Australian society, we pride ourselves with the fact that there is equitable justice for all. Except that is for small business. To be specific, if as an individual I get screwed by a business or another person, there are a myriad of steps I can take, which are within the reach of every Australian

Not so it appears for small business.

In brief, I bought a Coffee franchise which commenced trading in late 2005

I new there was something wrong from the outset, and after numerous discussions, meetings, and consultant reviews, it became apparent that the store had not been put together correctly, which directly affected the stores ability to become viable. I know this, because I took a proactive approach to my problem and hired an economist to analyse the revenue drivers for the group, and this is the conclusion that was reached. I have attached the report for your records

To help put things into perspective, Centre Management have told me that I was ranked as the number 1 cafe in the centre, and number 3 food outlet behind McDonalds and KFC from around 6 to 9 months after I opened right through until I gave the store back to the franchisor.(I have this in writing)

The problem lay in the fact that when the store was put together, the franchisor benchmarked my store at 19,000 per week. I was only able to ever achieve around 13 to 14,000 per week. Please note that the attached report shows, that if I were to pick up my store and place it in an equivalent centre, with equivalent demographics as the shopping centre I was in, but in Qld, then my store would be producing a revenue around 5,500 more per week. This tells me that the franchisor used what they knew based on Qld stores to benchmark my store

Now here is the problem. There is no way I could have known about the impact the lack of capacity (as per the report), would have on revenue at my store before I entered the franchise. The franchisor and I have been to mediation, and they have the attached report and all documentation leading up to the report. Their stance is that they refute the report and are not prepared to do anything about it. The mediation process was a joke, because as soon as I tried to discuss the attached report, the franchisors representative threatened to leave, which pretty much shut down any discussion on compensation or even something to help me survive.

The most traumatic aspect about all of this though is the following: -

1. I have been quoted anything from 150k upwards to fight the franchisor in court assuming I won (I obviously can not afford to do this)
2. Although I am in Vic, I cannot take them to VCAT, because of the franchise agreement, and there is no equivalent body or system in Qld
3. I've had to walk out of my store, which means they sold a faulty store to me for 440k, and got it back for 0, less what they are going to pay my bank and then they intend to resell this faulty store to some other unsuspecting person

4. The franchisor have come out of this totally unscathed and even worse, they are going to continue hurting people with their faulty design.

I've tried to get litigation funding, but my case doesn't offer enough money for it to be worthwhile

I've tried going to ASIC, but they would only act if I could find 6 or more similar cases who were willing to stand up and say so

How is it that a small business in Australia, doesn't appear to have a leg to stand on if it gets screwed. What happened to giving people a fair go?? What's happened to justice?? Especially justice for a group as important to the Australian economy as small business.

Moving forward, I don't know that there is much that can now be done about me and my case although I would welcome any suggestions you may have

What I'm even more concerned with, is how to stop the franchisor and others being able to do this to people. My thoughts lie along the path of prevention rather than cure.

Suggestion 1: Some form of litigation insurance for small business, which is initially government funded, or partially funded, which gives small business some chance of getting justice, and stop these franchisors from being such cowboys with peoples lives

Suggestion 2: I'm not sure exactly how you would enact the following, but the concept revolves around the merit of fair exchange. In other words, if I sell you a business that doesn't meet a minimum standard of what we agreed it would do, then I should be entitled to a full refund just as I would be if I bought a faulty good from a retailer. In other words, I suggest that the consumer affairs fair trade laws become applicable to the business sector.

I would further suggest that instead of the current situation were the person buying a business is 100% responsible for working out whether a business is an appropriate investment or not, since the person who knows the most about the business is the seller not the buyer. I suggest a situation be created, whereby the buyer and the seller are both 100% responsible for the sale of a business, in that the seller should be required to make some basic representations about the business capabilities etc

Both of the above suggestions are obviously in their most basic format, but I think they give you an idea of what I'm suggesting.

If interested, I have attached a more comprehensive paper on my fair exchange idea under FairBiz Submission to the Joint Committee.

I would be happy for you to contact me for further for a discussion re the above.

Kind Regards
Peter

FairBiz Member Standards

Who is FairBiz

FairBiz is a trade association

FairBiz's Purpose

It is clear that for any group or country to prosper and grow, the people within must be united in action and purpose. The degree that the country grows and prospers, is directly proportional to the degree that its actions are united for the purpose of enhancing the wellbeing and resources of its inhabitants. And also to the degree that time effort and resources are not squandered and wasted on internal fighting and bickering

Equally as important, is the minimising and the elimination of actions that impede, distract and in general cause loss and suffering to any of the group members

It is the responsibility of every man, women and child, to ensure that every person within the community has the opportunity for a minimum standard of living. This minimum will obviously be determined by the wealth that is available within the community

No one has a god given right to a hand out. But every man woman and child has the right to the opportunity to make the most of their lives, as long as that doesn't take away from anyone else's life

Competition between business is essential to growth and innovation. But this must be tempered so that the competition doesn't become a vehicle whereby another business is destroyed

As business forms the backbone of societies financial success or failure, it is vital that this society be overflowing with successful ventures. Ventures that are adding both more than they are taking out and growing. The other side of the coin is to ensure that the possibility of business failure is minimised or ensure that each and every appropriate endeavour has every possibility of success.

This can only occur, when all the traders and small business people of a community band together and form an alliance, that has at its core the purpose to ensure the financial well being of all

United we stand, Divided we fall

FairBiz's Goals

FairBiz was setup to ensure a fairer interplay between Australian Businesses

How does FairBiz ensure fairer interplay between businesses

By providing a code of conduct that all members must follow
This code of conduct provides a very high level of protection for business people which is something that doesn't currently exist. Because it provides this level of protection, it will be magnet for small business people who will form its core membership group. This in turn will force businesses like franchisors to become members, if they want to attract potential franchisees. This in turn will create a large base of support from which to help change Australian Law to incorporate FairBiz doctrine as Law

Who are FairBiz members

Unlike traditional trade associations, who's aim is to work with specific groups, FairBiz aims to work with and for businesses in general.

It would also welcome current trade associations who are aligned with FairBiz under its umbrella

FairBiz's Goals. To Minimise or eliminate the causes for business failure within a community

1 It is in everyone's interest, if every business is successful

2 If a business is unsuccessful it is usually due to the following reasons

- a) Economic conditions affecting industry, including competition, credit restrictions, fall in prices increase in costs
- b) Lack of business ability including underquoting or failure to assess potential of business
- c) Excessive interest payments on loan monies and capital losses on repayments
- d) Excessive drawings including failure to provide for taxation
- e) Inability to collect debts due to disputes, faulty work or bad debts
- f) Failure to keep proper books of account and costing records
- g) Lack of sufficient initial working capital
- h) Gambling or speculation
- i) Seasonal conditions including floods and drought

The aim of Fairbiz is to

1 Reduce the possibility of the above occurring to an individual or business by

- a) Ensuring that any a member wishing to start in business only enters into a viable industry. This is ensured through training & counselling services
 - b) Ensure that all members have a basic level of business ability through training and mentoring. Look at the possibility of a licence to conduct business. The licence would ensure that their was at least a minimum competency level.
 - c) Ensure that members are only borrowing appropriate levels of monies as per currently accepted financial ratios
 - d) Provide some sort of monitoring for members to help keep them on track with taxes and creditors
 - e) Provide a debt collecting facility, with the option to assist businesses finding it hard to pay their bills, by getting them to become members and giving them access to FairBizs facilities
 - f) Ensure bookwork is being kept in order, through proper training
 - g) Ensure that they have enough resources to see the business through its initial start up period
 - h) Minimise and Eliminate the instance of members gambling or speculating by providing appropriate counselling services
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- i) Assist through seasonal conditions through providing insurance facilities etc
- 2 Help get them out of the situation, once they are in the situation before they have to go bankrupt

FairBiz Code of Conduct

The basic tenet of FairBiz is that both parties conducting a business transaction are 100% responsible for ensuring that all promises, and agreements are adhered to fully 100% of the time

That both parties conducting a business transaction are 100% responsible for ensuring that neither party suffers loss as a result of the business being conducted

In this light, all agreements must be in writing otherwise they are not real. Therefore no business activity should be commenced until the boundaries of an agreement are drawn up. This agreement should include, what is being promised, the time frame to complete the task and the total cost of providing this product or service, with no hidden extras.

That both parties conducting a business transaction are 100% responsible for ensuring that as soon as either party, becomes aware that there is a loss occurring due to the business transaction, that

- a) Both parties will meet to try and turn the loss into a gain for a reasonable period of time
- b) If the business cannot be turned around within a specified time then it should cease conducting the loss creating business

- 1 Based on the above tenet, every business must adhere to the Consumer affairs - Fair Trading rules, in their dealings with other businesses as a minimum
- 2 If a member doesn't adhere to the above, they agree to be held financially responsible for any loss that the victim and Fairbiz suffers in recouping money
- 3 It is the responsibility of Fairbiz to ensure that every accepted member trades in a manner which follows the rules for fair trading as put forth by consumer affairs
- 4 No franchisee or trader should purchase a franchise unless the franchisor agrees to be a member of FairBiz and by so doing agree to follow its code of conduct
- 5 Existing franchisees and traders, should become members of Fairbiz. This will also assist franchisors to become a members of FairBiz, and therefore agree to follow its code of conduct