

Secretary, Parliamentary Joint Committee on Corporations and Financial Services
Department of the Senate
PO Box 6100 Parliament House
Canberra ACT 2600

corporations.joint@aph.gov.au

Being a past franchisee I would like to submit the following observations for consideration by the committee

- 1) The franchising code of conduct does not work and will not work as the primary structure of a franchising system. It has failed those who need it most and will always fail to deliver because it relies on the mechanics of common law and taut for its enforcement . Most franchisees cannot afford to mount a prolonged and complicated legal action to get justice so in effect they have no recourse to ensure proper conduct of people who have criminal and immoral intent.
- 2) The code has no method of protecting people against market fade. That is the slide in profitability due to the dilution of market advantage through the rise of opposition and market trends (ie once having a truck gave you a huge market advantage in the transport industry because most people still had horses but as time moved on you had to have a truck just to be in the industry so the truck did not provide market advantage and therefore no increase in margin) Franchising works the same way someone has a system that delivers market advantage and hence margin and sells it charging a fee/royalty that is produced by the advantage offered, however as the advantage is diluted by the evolution in the market place there is no mechanism to adjust the fee/royalty charged and so people are screwed to the wall without recourse or avenue to appeal

Therefore I humbly propose the following;

- 1) There must be a License for all franchisors and their employees that deal with the franchisees (administered by ADSIC where people can be barred from being part of the system) Similar to a motor dealers license.
- 2) There must be a franchising ombudsman to deal with complaints as a first port of call and this should be funded like other ombudsman where the franchisor pays a fee and is charged each time a complaint is lodged.
- 3) All franchisees should have to be a member of their “body corporate” a legal entity set up to look after the franchisee group of any given franchisor

- 4) The franchise fee/royalty should be set each year by the Industrial relations commission. The submission would be looked after by the body corporate and the franchisor would have to validate their fee/royalty in the light of the market trends environment and the services actually delivered and the effectiveness or otherwise of their slush funds (also known by the misleading name of advertising funds). Such a structure would make the system fair and sustainable and all franchisees in a system would have opportunity to get reward for their labour with affordable recourse on the issue of profitability
- 5) Tenure issues should be looked after by the rental bond board because a franchise is really the rent you pay for the building you don't get.

In summary the franchisee who is usually time, cash and people poor can not use the expensive legal system to defend or pursue against the adequately resourced franchisor. The cost of the legal system is not synchronous, amicable or resource-able by a small business. Therefore as the legal system is not an option, unsavoury types are left to financially and emotional rape and pillage at will and without restraint while the people elected wonder why all the problem and fuss when it all looks so workable and structured.

Somebody referred to the ACCC as tits on a bull. I thought this was a bit rough as the tits on a bull at least have some novelty and ascetic value

Many thanks
malcolm