

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

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Submission by Darren Scott

By way of introduction to my submission I have recently ended a franchise arrangement with the [REDACTED] ([REDACTED]). My business partner and I made this decision after almost three years of very hard work and with only significant combined debt to show for it (in excess of 1 million dollars). In fact in NSW / ACT it is likely that more than 70% of the 55 [REDACTED] franchisees are losing money with little chance of trading out. If you interviewed these franchisees the majority will tell you that the [REDACTED] misrepresented their franchise model along with other breaches of the Franchise Code. The sad fact is that as most of us are now "financially destitute" and will struggle to find ways to seek restitution from [REDACTED]

Ultimately this submission is less about describing in great detail the dispute with [REDACTED] and the failure of its franchise model in NSW. Its intention is to highlight and provide understanding as to the difficulties and issues that franchisees like me encounter with references to my specific experiences with [REDACTED]. I'd also like to thank the Parliament for establishing this inquiry and hope it achieves some worthwhile recommendations and legislation.

Every day in the media there are reports about problems in the franchise industry. These include franchises/franchisors going broke, legal disputes between them or franchisors not wanting to renew franchisee agreements once a brand has been established in the market.

The facts are that there many good franchise operators who offer genuine business opportunities and help in the contribution of \$128 billion dollars and 400,000 plus jobs to the Australian economy. On the downside there are, sadly, opportunists who see franchising as a way to rapidly expand their businesses and bank balances. While the Franchise Council of Australia (FCA) will argue that we are well regulated and protected, undoubtedly there are still too many gaps for exploitation.

Returning to the [REDACTED] experience:

When the [REDACTED] decided to expand outside of Queensland, it chose a franchise model so as to avoid the significant costs of construction, rents, operating costs and wages. These costs were borne by the franchisee with the [REDACTED] providing finance at commercial rates in the majority of cases.

The [REDACTED] represented to potential franchisees that they would need to [REDACTED] [REDACTED] per month on average to be viable and this was easily achievable within 6 months. The [REDACTED] refused to provide figures from existing business to substantiate the numbers and even asked for a deed to be signed saying that we

didn't rely on their representations to make a decision to go ahead with the franchise.

History now shows that the [REDACTED] number was a fabrication to demonstrate the model could work to induce people to buy. Less than 5 branches out of 55 in NSW / ACT have averaged the [REDACTED] per month after 2 or more years of trading. In documents subsequently discovered, it is clear the model is about being shareholder accretive with essentially scraps on offer to the franchisee. (Copy attached).

Once it all ends up "going pear shaped" and mediation doesn't work the [REDACTED] lawyers ensure that a long, protracted and expensive legal case will ensue. (I hold copies of letters sent to me from their lawyers [REDACTED] stating this as fact.)

Exploring the FCA for support will be futile even though they purport to represent franchisors and franchisees. Both the [REDACTED] and [REDACTED] are members of the FCA. The FCA is also on record more than once blaming franchisee for business failures. This is despite; in this case, [REDACTED] boasts that it selected only the best of the best, rejecting the majority of applicants as commercially unsuitable. Similarly the ACCC is reluctant to prosecute alleged breaching franchisors.

The final ignominy with [REDACTED] is that they are both the franchisor and in a lot of cases the [REDACTED], meaning they have access to intimate [REDACTED] details as well as holding direct [REDACTED]. In my case they withheld a commission payment destined for our tax obligations to apply to their [REDACTED]. They are also now trying to [REDACTED]

The up shot of these behaviours are many, including financial hardship, health issues, potential marriage break ups and fewer revenues to the Government caused through financial losses and even bankruptcy.

Ultimately the long-term economic viability of the franchisee industry is dependant on the protection of both the franchisor and franchisee. The franchise industry currently contributes to the Australian economy employment of over 400,000 and revenues of \$128 billion annually. These figures are impressive and require Parliament to have accurate independent advice to sustain the future viability of the industry and its continued growth.

Based on my experiences and those of others I would like to make the following recommendations for consideration:

- All franchisors to register a prospectus and disclosure documents with ASIC which are to be available from the website to potential franchisees, Legal advisers and accountants.
- Public companies must also include in its prospectus all information on proposed financial returns to the franchisee, franchisor and shareholders.
- All franchise documentation to be vetted and registered with the ACCC.
- Mandatory franchisor business plan to be available to franchises and include, franchisor development program, anticipated growth, marketing plan , staff experience and training, system development and an independent financial viability audit report
- Franchisees to do an initial probation training period of three months in an existing franchisee site at their cost before been selected to be a franchisee. (A practice currently carried out by some of the major successful franchisors).
- Amend legislation to recognise the value and principle of good faith and good will developed by the franchisee which has benefited the franchisor's business.
- Amend the code to make it a breach where a franchisor uses threats or intimidation against a franchisee and limit timeframes for the hearing of legal disputes in court
- Legislate for the Federal Court as the sole jurisdiction for the registration of franchise agreements and any subsequent legal disputation.
- The ACCC to establish a mediation service and provide financial assistance for mediation where a franchisee is financially disadvantaged and unable to proceed to mediation.
- Establish a Franchise Ombudsman or similar domiciled in the ACCC
- Provide financial assistance for the establishment of specific franchisee represented body (as an alternative to the FCA)
- Amend the code or legislate to stop the franchisor using access to a franchisees business and personal financial accounts using that knowledge or access to those accounts to the detriment of the franchise in either a contract dispute negotiation or the freezing of commissions payments owed by the franchisor.

END of SUBMISSION