



Mr Scott Cooper



Please accept this as a formal submission for consideration in the inquiry into impacts of the Franchising Bill 2010 that has been referred to the Economics and Industry Standing Committee.

My experience as a franchisee in one of Australia's largest franchise systems saw me encounter the lies and deception of franchising, and awaken me to the financial brutality of the legal system. In summary:

- The *Franchising Code of Conduct* was breached by the franchisor in failing to provide mandatory information in the Disclosure Document.
- The franchisor admitted to the breach of the *Franchising Code of Conduct* and accordingly admitted that the breach should be remedied.
- The franchisor orchestrated a totally meaningless and unachievable settlement.
- The meaningless offer that would never have occurred (proven by the clarity of hindsight), was extended along with an aggressive invitation to litigate if I 'wanted more'.
- The costs of litigation were less than subtly re-enforced by the franchisor, and confirmed by the legal profession.
- Ultimately, the costs of litigation could never be justified in light of what could be claimed, so to mitigate further financial damage I walked away from the franchise with nothing. I walked away with nothing despite the franchisor admitting they had breached the Franchising Code of Conduct.

As it currently stands – even despite the recent Federal amendments, the Trade Practices Act (TPA) and the Franchising Code of Conduct are totally ineffective at protecting franchisees, unless they have access to vast sums of money to litigate. The Franchising Code of Conduct though mandatory in name, is primarily voluntary in nature, and the falsehood of protection is a convenient marketing tool to entice new franchisees.

The costs of accessing the legal system are undeniably extremely prohibitive for the vast majority of franchisees, and as a direct result dispute resolution by default becomes an area of grave concern. The adversarial nature of the legal system also works against franchisees, with franchisors also staunchly defending their name by wielding a legal sledgehammer. The franchisee is left with a 'take it or leave it offer' that may be extended at mediation, or litigate.

The gaping chasm that exists between mediation and litigation is insurmountable for many, and needs bridging, contrary to the predictable claims of franchisors and their representatives, the Franchising Council of Australia (FCA). Litigation, if commenced, is invariably deliberately steered into a protracted financial war of attrition to claim a 'win' by default.

To demonstrate the knowledge of the strong position that franchisors currently hold, allow me to quote Jim Penman, the name and face of one of Australia's largest franchise systems 'Jim's Group'.

'The law is pathetically weak...I'm in an incredibly strong position, where the legal process is so cumbersome and expensive that franchisees, especially in service industries like ours, can't afford to fight as they get buried under the costs.'

To further extend the 'strong' position the franchisor currently holds, I refer you to a quote from the Chairman of the ACCC, Mr Graeme Samuel, before the most recent Federal inquiry.

'It can also avoid one of the real problems that we often find in making our risk assessment on litigation, which is to say, 'If we litigate against this particular franchisor, there is potential brand damage that will be done and that brand damage can have its own backwash effect on other franchisees, which in the global context of a particular franchise could do more damage than may have occurred as a result of the particular misconduct that has affected the franchisee concerned.'

Unless mistaken, it appears the image of franchising is paramount — not the law. This is further supported when the continual lack of action at a Federal level is considered. Despite recommendations to the contrary following the latest inquiry, the Federal Government continues to resist meaningful reform. I find this somewhat confusing given that both the Federal Committee and the ACCC acknowledge that there are no accurate statistics available for the franchising sector. To quote from the committee's final report:

'Due to a lack of sound data, the true extent of disputation in the franchising sector is difficult to determine'.

'The limited available data on the franchising sector is primarily derived from willing respondents to industry surveys...'

'The majority of the information has been extracted from a biennial survey undertaken by the Asia-Pacific Centre for Franchising Excellence within Griffith University. The survey is sponsored by the Franchise Council of Australia.'

'The Australian Competition & Consumer Commission (ACCC) commented that the shortage of statistical data on franchising 'contrasts with the level of information available about general business demography in Australia'...'.

Despite acknowledgments such as these, the Hon Nick Sherry and others seem willing to blindly accept the extremely biased and prejudiced advice of the FCA.

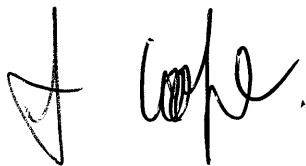
To pose an alternative question, would there be any real impact if the Code was removed from the TPA and simply rely on the supposed 'good faith' that is claimed to exist under the TPA like other businesses? Unless the laws are effective and accessible, I fail to see their purpose. Without a Code, the FCA can then go about conducting business as usual, without

having to protest every suggestion of reform that would see some level of balance injected into the franchise industry. I fully understand that they do not want any balance — they want control.

In relation to the line of argument that State based laws would be detrimental to franchising, I fail to see how it impacts at all if franchisors are compliant with existing laws. It only impacts on those that are alleged to be in breach. I am yet to have it explained how it comes to pass that amongst other things, a franchisor can admit to breaching the law and then wilfully invite litigation, yet the franchisee loses all the money invested by walking away with nothing. Where is the deterrent and where is the protection?

I fully understand why franchisors and the FCA are vigorously opposed to the proposed reforms. They do not want their *carte blanche* disturbed. As franchisees attempt to have the ineffectiveness of the current laws and systems exposed, only to be ignored by people that can make a difference at a Federal level, there is now an opportunity to make meaningful change. I truly hope you fully appreciate this opportunity and take the first step towards national reform. Franchising needs it!

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Cooper', with a stylized initial 'S' and a flourish at the end.

Scott Cooper