

SEP 2004

Re: Inquiry into Franchising Code of Conduct

I trust the following experience in the Franchising Industry will assist the Committee in preparing the Report.

A Company of mine entered into a Real Estate Franchise Agreement in August 2004. Included in the Agreement were 5 pages of personal guarantees. (These should be a separate agreement and it is deliberately misleading to include them in a Real Estate Agreement). The Guarantees were enforceable against any guarantor in respect of future earnings lost as result of the failure of the business.

This is outrageous, grossly unfair and should not be permitted.

Real Estate Franchise Agreements generally should be in a "standard" format and if not, then the intending franchisee should be required by law to obtain legal advise (similar to Bank Guarantees) and not as an option.

The signed Franchise Agreement should be lodged with a Government instrument and not just kept in the top drawer of the Franchisor.

In my case, the Franchisor entered into another Franchise Agreement with a Director of my Company and did not terminate the original.

This is currently subject to litigation, but it should never have been allowed and this needs to be formalised by the Inquiry.

The Franchisor needs to have regular reporting to the Franchisee ie. financial (yearly) and regular written notices. The Franchisee should equally report the trading figures for the Franchise eg. Gross Commissions less Direct Expenses such as Rent, Wages, Advertising etc. so that the financial position is communicated and any problems quickly isolated.

I have not identified the Franchisor but will do so on a strictly confidential basis.