



9 SEP 2007

2nd September 2008.

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

Mr Chairman,

On behalf of AIRCO we are writing to express our support for changes to the laws covering franchising agreements in Australia, which we understand is the subject of your inquiry.

For the past eight years AIRCO has been able to grow the business as a result of our successful relationship with many franchise based businesses, particularly franchisees. The cornerstone of that success has been our ability to develop stable and long-term ongoing relationships with franchisees and, in some cases, the franchisor.

However, AIRCO was most concerned at media reports of the forced closure of the KFC Rockingham store – operated continuously by Competitive Foods Australia Limited for 30 years – in November last year. Not only were we shocked at the impact of the closure on CFAL and its staff, but also the potential instability that such an action has within the market and on our business. We have been made to believe that there are three more KFC stores scheduled to close late in 2008.

We have now witnessed that a franchisor can take advantage of the lack of regulation of renewal rights under the existing law and inflict substantial damage upon a franchisee and its workforce.

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The problem is well recognised and known as that of 'franchisor opportunism'. Here, the franchisor by not renewing the franchise agreement, forces the franchisee out of business, purely and simply to set up its own business at the same location and thus profit exclusively from the goodwill built up by the former franchisee without having to pay anything for it. Even with this threat in hand, the franchisor can exploit the franchisee in the acquisition of the franchisee's business or assets at significantly below market value

The success of AIRCO with companies – and franchisees, in particular – is our ability to partner with our customers and suppliers. As a result we view the unprecedented and opportunistic use of the unchecked ability of a franchisor not to renew a franchise agreement (and in this case a long-standing agreement) as a potential threat to the stability of our business.

AIRCO has been following this issue closely and we have been made aware of the lack of provisions at a federal level through the Trade Practices Act and the Franchise Code Conduct and at a state level through the Fair Trading Act.

As a result we would strong support the following changes:

1. Amendments to the Franchise Code of Conduct to include a provision requiring a franchisor to renew the franchise agreement on expiry, unless the franchisor had a good faith reason not to do so, and to include a provision requiring a franchisor to renew the franchise agreement on expiry, unless the franchisor had a good faith reason not to do so.
2. Changes to the Franchise Code of Conduct and the relevant State-based Fair Trading Act that ensures that a franchisee could take legal action to stop a franchisor from misusing its superior bargaining position and require a franchisor to act reasonably and in good faith in negotiating a renewal of a franchise agreement; and
3. Provisions in either the Franchise Code or the Trade Practices Act and the Fair Trading Act to require a franchisor to

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compensate a franchisee for the value of the franchise business if the franchise is not renewed.

We at AIRCO believe that in the broad public interest and to ensure equity and stability in the franchise industry that these changes be adopted by your inquiry as part of its recommendations to the Australian Government.

Sincerely,

A handwritten signature in black ink, appearing to read 'JACK OTTO', with a large loop at the end of the signature.

**JACK OTTO
(Director)**