

Sam Gow Pty Ltd – Submission for Review

**Sam Gow Pty Ltd**  
**ABN: 74 211 411 269**

**Submission**

**For the Federal Franchise Inquiry into the  
Franchising Code of Conduct**

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**Table of Contents**

Introduction - The real face of loss .....	3
Misleading & Deceptive Marketing - The Seduction Process.....	3
The Lies and Deception – Non Disclosure .....	5
In the Store – The beginning of the end.....	6
Part 2 – The Franchising Code of Conduct.....	8
Disclosure .....	8
Division 2.1 – Clause 6C .....	8
Division 2.2 – Before Franchise Agreement.....	8
Reg 10 (a) (i) & (ii).....	8
Reg 11 1 (a) (b) & (c) .....	8
Subsidiary issues which need to be addressed by the code .....	9
Accountability.....	9
Transparency.....	9
Checks and balances .....	10
Churning franchisee’s .....	11
Third line forcing .....	11
The establishment of an Independent Franchisee Association .....	12
Summary – As at January 2008 .....	13
The Conclusion - The End.....	14

<b>Introduction</b>	<b>The real face of loss</b>
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Firstly I would like to start by introducing myself as I feel that this is an important aspect of this whole discussion as it is a person/people who buy these businesses. My name is Samantha Gow and I was 23 years old when I bought my Franchise business. I have a husband and three small children.

Foremost, before I discuss the changes that I believe should be made, I would like to note and exaggerate that there is a person and a family behind the company name that bought my business and that person has been left financially broke, almost homeless (my house hasn't sold yet) and close to the complete breakdown of my young family numerous times. I have developed an anxiety disorder and struggle everyday to keep a job and pay my bills and the never ending company debt.

I think these things need to be kept in mind when discussing the various and in-depth topics which are long over due for attention, correction and change. There are so many unscrupulous things that have happened to me over the last 3 years, since buying my Franchise that I could not possibly mention all of them for this purpose, but I will address those that need to be publicized and heard.

I would like this submission to not only be a document of discussion and information for the review board to consider, but also an insight and a journey to familiarize those who can only try to imagine the horrific journey I and others have been subjected to since buying a Franchise business. I would like to note that everything I submit is based on my own experience in this area.

<b>Misleading &amp; Deceptive Marketing</b>	<b>The Seduction Process</b>
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For me it was an ad in the paper, it read long established Successful Business, \$100K net profit per annum, company logo on top, \$220k call this person on 88888888. So I made the call.

**That call would be the start to my own demise.**

Originally it was an agent I had to deal with, but then all of a sudden it was the Master Franchisee's job to keep the seduction going. He was nice as pie, sent me out a glossy

publication, with “Build your success on our foundations”, but first they wanted to know what your asset and liability position was before you could even be afforded any in-depth information about the Franchise.

I did question this, but I was assured that it was just standard procedure and that if I just filled it in I could get a copy of the stores financial information, meet the owners and spend a day in store to see if I would be suitable. So I filled it in.

I was given financial figures from the Master Franchisee that come from the head office data base of the stores historical figures and different financial years, that is all great but I did not know at the time that those figures, I believe had been subjected to alteration so that the true operating expenses of the store were not shown.

I did all the responsible things and sought professional advice from my lawyer & accountant. I then took the figures to the bank with my home as security to obtain a loan after all of the tooting and frowning we had finally agreed on a purchase price of \$190k.

My application was declined as I did not have the security nor did I have any capital to start a business. I went back to the master Franchisee and said “thanks but no thanks” as I can’t get the finance. He said here contact this person from a major bank, he will be able to help you and needless to say the rest is history. Surprise Surprise I got the loan & they even got my mum to go guarantor.

I had entered into an offer to purchase agreement with the then owners of the franchise, but the Franchisor and the Master Franchisee kept delaying the final signing of the franchise agreement. On the Friday afternoon before the following Monday settlement and at the 9<sup>th</sup> hour, whilst I was in training in my master Franchisee’s store, my Master Franchisee produced 5 pages from his fax and handed them to me with the following instructions, “get your mother to sign these, otherwise settlement won’t go ahead on Monday and the vendor’s will start to fine you for breaching the sale contract for the constant delays”.

Facing the prospect of losing my deposit and incurring penalties for failing to settle on time, I took the paperwork home and had my mother sign them. She was not afforded the opportunity to seek legal advice nor was she ever given or saw any disclosure documents.

What she was actually signing were guarantor documents for the Franchise Agreement, which in turn we would come to realize when the litigation started and the Franchisor was also suing her too.

## The Lies and Deception Non Disclosure

The work load was despicable, more than 70 hours per week and I hardly ever saw my children or Husband.

It was not a profitable store and it didn't have a net profit of \$100,000.00.

They did not give me any financial training, I could not cost my own products and I did not know how they worked out selling prices for my store.

They did not give me any Christmas training.

Our potential profits were capped by ceiling prices, dictated by national office.

The specials we were made to sell were a lot of the time being sold under cost.

The people who I bought the store of were not bad operators but rather they too, were not making any money.

I did not meet any of the other owners & nor did I spend a day in store.

In fact and in truth I was not even allowed in my store until the day I physically took it over.

The store I bought was falling apart and needed expensive repairs and basically I was just a cash cow who was treated like a mushroom, the less I was told the better their prospects of getting me to work myself into the ground, to make them money and keep my mouth shut.

The schedules in the Disclosures documents were incomplete, information pertaining to the stores financials were conveniently left out. We did request them, but were told they would be filled in after the Franchise Agreement was signed.

The Franchisor waited until the purchase contracts had been exchanged and a date for hand over to be established with the vendors until they pushed me into a corner and put back my settlement date 3 times. They refused to settle until they had the Master Franchisee make my mother sign as guarantor and had me sign the already executed Franchise Agreement again without a lawyer present and for my mother, she was not afforded the opportunity to seek legal advice nor had she ever been given or seen any disclosure documents ever at all.

They also refused to settled until I had signed the finance papers and agreed to purchase the most expensive and unreliable cash register in probably the world. I had to fork out another \$21,000.00 on top of the purchase price or I couldn't settle again and the vendors would take my deposit and start fining me for every day over the specified date.

This cash register system has since been repossessed from [REDACTED] and was sold at Auction for \$1500.00. I still owe ESANDA \$12,000.00 and of course have no means to pay it to them.

My mother was never anything to do with the purchase of the store and how my Franchisor found out that my mother was guarantor on the business loan is still extremely questionable.

That underhanded tactic used by this particular Franchisor has now caused my mum to be sued as well. That is the arrogance of this Franchisor, not only will they bully you into signing legal documents without any legal advice or disclosure but then when it turns sour they will sue you with it.

Unbeknown to me I had purchased a huge expensive Lemon that no body else wanted and for good reason.

## **In the Store – The beginning of the end**

From the minute I stepped in the store it was a nightmare. All of my staff left, I had practically no support and the “buy more chicken” slogan was poisoning my customers. (Even the customers were not out of reach for these unscrupulous Franchisors royalties.)

In the first 3 months I had lost the \$15,000.00 start up capital and was quickly realizing that something was unbelievably wrong. I put off staff which increased my hours more and had to bank everyday to try and cover the bills.

I could not afford to pay myself a wage and my personal funds were rapidly drying up, at this point I hadn't quite realized it yet but I had lost \$240,000.00, my house, wellbeing and my sanity, but most of all my children had lost their mother.

I started asking questions and that just made it worse. That is when their “tried and tested” bullying system kicked in. I was told in no uncertain terms that myself and my husband were bad operators, our store was dirty, our staff should be sacked and we weren't following the system, that was why we weren't making any money, and at first I believed them .

We went through the disillusioned rigmarole of retraining, we bought new uniforms, scrubbed the store and hired new staff, funnily enough though we still weren't making any money and were getting closer and closer to financial ruin. By this stage I was becoming quite heavily pregnant and needed to spend more time in the office instead of the store, so I decided to make some phone calls to other Franchisees off the store list at random.

That was when my eminent reality slapped me in the face and all of my suspicions were starting to be confirmed. Call after call to all over Australia the stories were heartbreaking and unbelievable but yet so true. I had to earn their trust though before they

would talk, as it still is today the Franchisees are so bullied and intimidated they would rather suffer in silence than suffer the consequential abuse from the powers that be, if they dared to speak out and tell the truth about the churning and profitless stores they had the unfortune to own.

I realized that I had been scammed and I spent the next few months with the gift of hindsight figuring out exactly how it had happened and the last 3 years campaigning for it to be stopped.

I stopped following the system so I could keep my head above water, I started expressing my views and gradually became a part of approx 40 Franchisees who had been used and abused and wanted their money back. My Franchisor retaliated and openly used their Masters to make an example of that “Woman in QLD” who was going to loose her store after National office was going to come down hard on me. They certainly lived up to their threats and my Master Franchisee thought that they even had the right to phone me and threaten to take my store whilst I was in labour giving birth.

I went to my lawyer and legally rescinded my agreement, which was almost four years ago. The Master Franchisee and National Office’s lawyer came down and took my store in the middle of our trading day with 1 hours notice.

The Master had it for a while but his deceit had caught up with him and he was operating 3 un profitable stores, he couldn’t make a profit either and went under to the tune of approx \$940,000.00,which is apparently what he ended up owning the Franchisor.(The Franchisor have successfully obtained a “writ” against him now for close to one million dallars and he has since disappeared into the distance. Even though I still have an action pending against him too, my lawyers has not had a response from his lawyers since the original litigation started in 2004.)

Then the Franchisor ran my store and I pay the bank back. They have now sold my store back to the people I bought it off all those years ago. I have not received a cent for any of the plant and equipment, stock on hand or goodwill. It was and still is one rule for them and another for everybody else.

Everything I paid thousands of dollars for they took, ran and sold loan free. How, because they held the lease, we, mere cash cows were not allowed to lease our own store, but rather paid for a License to operate (This I realized when it was all to late).

<b>Part 2 – The Franchising Code of Conduct</b>
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<b>Disclosure</b>
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## **Division 2.1 – Clause 6C**

The Franchisor should have to clearly state their obligations to the Franchisee under the code preferably in “layman’s terms” or as close to as possible. Archaic legal jargon should be eliminated as much as possible as the disclosure documents should be able to be read and understood by the majority of the people who would consider buying a Franchisee. From my experience that majority would largely encompass “mum’s and dad’s”, ex trades people, office workers ect. It does not usually include those who have had a tertiary education or who have been in small business before.

## **Division 2.2 – Before Franchise Agreement**

### **Reg 10 (a) (i) & (ii)**

Prospective Franchisees should be given full disclosure including all schedules pertaining to the store in question at least 3 months prior to signing, paying a deposit or entering into a contract of sale. Incomplete disclosure documents should be regarded as non disclosure as it does not give a prospective franchisee a complete undertaking as to the stores and the Franchisors full financial position, requirements and obligations. Prospective Franchisees should not be obligated to pay for the disclosure documents but rather the cost should fall on the Franchisor as a normal business expense.

### **Reg 11 1 (a) (b) & (c)**

A Franchisor must not enter into a franchise agreement unless they have received a written undertaking from the prospective franchisee, their solicitor and accountant. The undertakings should address the potential franchisees financial position, legal understanding and “readiness” to operate a franchised business. These undertakings should be made from a professional opinion. These professional opinions should be heavily considered by the Franchisor as an independent assessment before the store can be contracted for purchase.



## **Subsidiary issues which need to be addressed by the code**

### **Accountability**

Franchisors NEED to be told that they can be and will be held accountable for their Franchise systems. This must be legislated. Far too often the buck is passed from one middleman to another, which makes it almost impossible to litigate against (if you should be lucky enough to have any money left).

The Franchisor regardless of how many people they employ or master's they sell to, still call the shots when it comes to the entire system. They are paid the royalties, they instruct, they select the suppliers, they control the supply ect.

The franchisor should have to conduct their business knowing that if there are misrepresentations made at any level of the pre- purchase negotiations then they can be sued and/or heavily fined. This should hopefully control some of the misleading and deceptive behaviour that commonly exists at the present time. At the moment there really is no deterrent, as the buck is so easily passed from the old owners to the Masters to the business broker to whoever.

The liability net needs to be narrowed. It is their franchise and they need to be somewhat solely responsible for underhanded and misleading conduct.

### **Transparency**

Franchisors should have to be as Transparent as possible. It needs to be mandated that all stores complete history should be accessible to prospective franchisees, before they enter into anything with the Franchisor. When a store is put on the market for sale, the prospective franchisee should be able to have in detail:

1. Every previous owner and contact details.
2. Why those owners are no longer in the system.
3. How those owners left the system and under what terms.

4. The prior Franchisees figures should also be made available and signed off by a reputable and registered third party before being provided to the potential Franchisee.
5. All financials provided by the Franchisor should be substantiated and signed off by a reputable and registered third party before being provided to the potential Franchisee.
6. How many mediations the Franchisor has been involved in and the reasons for the intervention of the mediation.
7. Any litigation that the Franchisor has been involved in and what that litigation was about.

All of the above information must be supplied to the potential Franchisee at least 3 months prior to entering into or signing anything

The information provided must be from when the Franchisors and the potential store commenced trading.

## Checks and balances

The code needs to legislate against the current inequality that exists with the Franchisor/Franchisee relationship. The following are all immediate and necessary changes that need to be made to give back some power and equality to the Franchisee. No longer should the Franchisee just be considered as the cash cow and workhorse, this industry has to be changed to reflect equal responsibility, accountability and control.

A Franchisor or Master Franchisee should need to hold a license to sell any of their franchise stores. It is already considered to be common practise in various industries for this to be standard conduct.

If that Franchisor breaches the terms of their license they should be held accountable by an independent body.

Franchisees MUST hold their own leases to the store they have purchased. Licences to occupy/trade MUST be abolished. A person should not have to spend hundreds of thousands of dollars to buy a business which they can have taken off them at the wrath of the Franchisors discretion.

The Franchisee must have the right to negotiate the terms of their lease with the shopping centre management. The ability of negotiating a lease should no longer solely be in the Franchisors/Masters power.

Franchise agreements have to include an implied standard of good faith by the Franchisor. If a Franchisor elects to sell areas to Master Franchisee it must be considered by the Franchise agreement that there is in fact an AGENCY relationship between the Franchisor and the Master Franchisee. No longer should the Franchisor be able to board themselves up in an untouchable castle, by casting the liability net over everybody

involved but themselves. This kind of behaviour and irresponsibility needs to be extensively legislated against and stopped.

Franchisors need to be held accountable for all and any forms of bullying and unconscionable conduct. They need to be made aware that this kind of behaviour will not be tolerated any longer.

Isolating people, segregation people, threatening and intimidating franchisees must be stopped and action against this type of behaviour must be taken.

Franchisees should be able to have ready access to any and all other Franchisee nationwide. The Franchisor must make available email addresses, phone numbers and postal addresses for all of the Franchisees operating within the franchise.

A reasonable list of fees and charges should be imposed to eliminate unnecessary and plain greedy revenue raisers for the Franchisee.

### **Churning franchisee's**

This type of behaviour is absolutely rife within the Franchise I was involved in. As much as the Franchisor will deny it, those of us who were ripped off through it know the truth.

Exit fees paid to the Franchisor need to be abolished. You have paid through the nose the whole time you have been in the system so why should you have to pay to get out. In my personal situation this conduct became my entrapment, I couldn't afford to stay in and nor could I afford to get out.

This is one of the high and unnecessary costs that should be abolished. The Franchisor is paid by the incoming and the outgoing, why? That is just plain greed and exploitation.

### **Third line forcing**

It is understandable that Franchisor's need to have a consistent quality of product through all of their stores. What does need to be addressed though is using this need as a weapon to mandate who a franchisee buys from and at what price. Franchisees should have the choice, without question, to buy from suppliers that they think are adequate. I have never met a Franchisee who would intentionally buy substandard products at the risk of losing business.

Our Franchisor in particular was receiving high royalties from suppliers for the right to sell to their stores. In some instances the Franchisor would tell their suppliers the price at which they are to sell to the stores. We had no bargaining power and simply were not able to bargain with our suppliers and could only buy from anyone else if they approved it (which they never did). If our Franchisor found out that a store was buying a product

cheaper the Franchisor would haul the supplier over the coals and then cut the supply off. We had no control over any aspect of our supply and neither the Franchisor nor the suppliers would make available the supply agreements or any information pertaining to the supply of my store.

## **The establishment of an Independent Franchisee Association**

This part of my submission is one of the most important aspects of the whole industry. At this point in time there is no one protecting the interests or the business health of any Franchisee in this country. I believe that it is paramount for the Federal Government to establish and fund a completely independent committee to oversee and help Franchisees who made need assistance.

I also feel that this body should be responsible for monitoring the Franchising industry and also addressing the changes highlighted under the above heading “checks and balances”. They should also provide information, protection and support to all Franchisees whilst also being responsible for reporting back to the Minister for Small Business from a Franchisee’s perspective the “going’s on” in the industry and how it is performing.

I strongly disagree and will expressly refute that the FCA has any interest in protecting Franchisees rights and nor to my knowledge has it really ever done anything but collect money from Franchisors and put them in their hall of fame.

The ACCC is another body that I have largely realised is a toothless tiger. They have failed the Franchisee’s in this industry time after time, incident after incident. There is not a franchisee in this country who hasn’t written to this organisation for help. In the vast majority of cases disappointment and neglect is unfortunately the forthcoming response to those so desperately in need.

The Franchising industry needs a complete overhaul be it one step at a time or all at once. The Franchisors have had control and no accountability for far too long. That is change that must come soon.

I would like to mention and highlight that there was an organisation who was a not for profit body with strictly Franchisees on their agenda. I would also like it to be known that this small organisation was also destroyed and bankrupted at the hands of an unscrupulous franchisor. I believe that these same people have slowly recovered and dusted themselves of and started again, but who is going to stop it from happening again.

This kind of bullying has been going on right under the ACCC's and the Governments nose and I do blame them for my young demise. Silencing, threatening, intimidating and isolating has been the game to which I was an unwilling participant.

## Summary – As at January 2008

At the present time my mother and I are being sued by my ex Franchisor for approx \$52,000.00 for bills that I could not pay, even after they have my store they still want more. The “chargeback” system that was in place with our franchise exclusively enabled franchisees to trade in solvently and when you can't pay they sue you.

I have launched my own counter suit against my former Master Franchisee and Franchisor for alleged breaches of the Trade Practices Act concerning, misleading and deceptive conduct and unconscionable conduct. The reality of this suit is that it looks great on paper but it will probably never see the light of day, because there is no more money to fund it. I am claiming \$311,000.00 in damages but conveniently the position I have been left in doesn't allow enough to spend another \$100, 00.00 on litigation to fight for it.

My marriage has since turned into divorce and I now have the daily struggle to pay a \$3,000 mortgage per month as a single parent to keep my children in a home. This has been my reality for the past 4 years now. I have tried to sell my house numerous times but the market won't pay what I owe the bank or the let alone the real estate agents costs on top. I just simply cannot grasp how this situation in this day and age was ever able to occur, it is a huge and detrimental experience that will continue to devastate my children and I for years to come and yet the people responsible are still in the business of making more money without accountability or conscience.

In summary I hope that I have portrayed an understanding of being a franchisee in this current industrial system. I also applaud the minister's office for taking some action and creating some change, for what will inevitably be a lot of work to redeem and reform the Franchise Industry, to bring back the equality for Franchisees.

I would also like to note in this closing that not all Franchisors conduct a business as badly and abusively as the one I was involved in and I am sure that there are a lot of Franchisor doing the right things by their franchisees and conducting an equal and profitable relationship.

It is also for these Franchisors that the system should be changed and monitored because the rouge Franchisors have the ability to ruin it for the good because, people will soon realise the truth and as a consequence will no longer invest their money.

Even though most legislation is not retrospective, I would like to ask the committee to keep in mind those of us who are still involved in litigation or who are still severely financially ruined. If at all there is something that can be done to help us, I believe that we have earned it and deserve it if possible.

We have fought very hard to be heard and I would like to note that a lot of the Franchisees making their submissions have risked a lot and potential litigation, so they could be a part of these changes, changes that will probably never benefit either one of us that have already been churned and financially ruined.

I have a vested interest in helping to correct the wrongs and stopping the cycle. I hope that my voice with the thousands of others will no longer be ignored and I would be more than happy to discuss further any of the topics I have covered in this submission in person or as necessary.

## **The Conclusion – The End**

After four years of litigation and the complete rape of my life on the 19<sup>th</sup> June 2008, facing the real possibility of being Bankrupted, I chose to end the suffering by signing a settlement agreement that by no means afforded me anything other than the opportunity to pick up the pieces without being a Bankrupt for the rest of my life.

In the end I was self representing myself and my company, I had no money left and was using a public organisation to help me draft serious legal documents, documents that take lawyers years of study at university level to be able to complete adequately. Combining that with the prospects of also having to represent myself in a 2 week trial was completely ambiguous and I knew the end was near.

The need for people to have access to litigation funding is huge and a very important issue. I could not get funding from anyone anywhere, even though they all liked the prospects of my success, this government has also made it impossible for funders to fund people like us impossible.

My claim was not large enough and the chance of a class action for franchisees is not possible. Franchising in this country as it stands and in the current time is like having a license to steal money and once its gone your chance of any redress are basically nil.

The Government needs to look at freeing up funders to make the legal system more accessible to everyone, not just the rich rogue Franchisors. Give people and the Courts a better chance at a “Fair Go” for change and justice.

Conveniently I cannot discuss the terms of the settlement but I can say that I had no other choice but to sign it, shut my mouth and walk away. The Franchisor was using a loop

hole in the legal system to bankrupt myself and my company in the Supreme Court and the Federal Court for costs orders that had been awarded to them through the Civil litigation, costs orders due to them having me provide them further and better particulars on numerous occasions throughout the disclosure stages of the litigation.

Every time they won with the registrar, they got costs and in the end they used those orders to bully me with bankruptcy. If you become a Bankrupt in this country you cannot sue legally so therefore they would get two things achieved:

1. Bankrupting me for good.
2. Not being able to continue with my 4 year litigation against them.

In the end I thought it would be far easier to pick up the pieces without being a Bankrupt. I couldn't let them take my opportunity at a better future or financial freedom and add it to what they had already robbed me off.

I live in a rented caravan in my mother's back yard and my 3 small children share one room in the house. I finally found someone to buy my home, albeit for \$60k less than the mortgage, Settlement is due to be completed shortly and after paying the last of the company debt I will still have a \$100k mortgage, 25yr home loan and no home.

The Government has let my young family and me down on numerous levels and I will be paying the cost off the extreme inadequacies for the next 15 – 20 years. I have since been trying to block this whole nightmare out and was extremely hesitant to make any further submissions to any future enquiries.

The outspoken person full of Aussie fight and want for Justice that wrote the first two versions of this submission, died with the last 6 years of the raping of my life, but this one last conclusion and end to my story had to be finalised on paper and submitted, still hoping for change and betterment for others like me.

Regards

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