

Committee Secretary,  
Parliamentary Joint Committee on Corporations and Financial Services,  
Department of the Senate,  
Parliament House,  
Canberra,

Dear Sir / Madam

I attach a copy of an email being circulated by the FCA. In all probability you will be aware of it already, however the salacious untruth presented prompts me to write.

I have been a successful franchisee for more than 30 years and for the FCA to state that unreasonable and inappropriate pressure is not applied to franchisees by franchisors is a blatant lie. I refer you to the infamous Caltex Petroleum FUD (fear, uncertainty and deception) document that was exposed some years back. The situation has only worsened since that time. I have been told, as have most franchisees, on many occasions that mid-term renewal of your franchise is subject to you capitulating to a number of proposals that are otherwise outside the framework that forms the franchise. In many cases generally, and in mine specifically these imposed alterations resulted in substantial bottom line financial loss.

Re the “good faith negotiation” clause, the current situation bestows on the franchisor a “double dip” benefit that can only be described as commercially unrealistic and unconscionable. A franchisor must have the ability to rid a network of under performing franchisees. The strength of the system that franchisees seek depends on ALL franchisees delivering that system in a manner that enhances not degrades that system. A franchisee that has effectively traded a franchise has, as such, been delivering an ongoing return to the franchisor over the period of that lease. Without the dedication and hard work applied by a franchisee, the growth of a specific franchise and an overall brand enhancement could not successfully occur. It therefore stands to reason that an effective franchisee has a very real interest in both the brand at large as well as their own franchise operation. This needs to be reflected when an individual franchise is due for renewal. The current system is geared toward getting as much as possible from the franchisee and if in the process they go broke, get someone else in until they go broke too.

Not too many years ago there was a relationship between franchisee and franchisor that was truly one of cooperation to achieve a common goal. Today, however, this has been replaced with an adversarial relationship with the franchisor exhibiting very little respect and a total disregard for the input given by franchisees.

There will always be disagreements but with the current system when the “David and Goliath” disputes occur, it is invariably the case that the Goliath Franchisor “outguns” the franchisee in every material aspect which all too often renders truth and fairness a very impotent tool in seeking recourse. The pendulum is weighted too far in favor of the franchisor. It is certainly time to bring a better balance back to the world of franchising. Just maybe if the balance is fairer there may well be a return to the system of cooperation referred to above. There is nothing more certain than give one party an overwhelming amount of power and they will use to their betterment even at the expense of their “partners” in business

Yours Faithfully,

Peter R Moon

## Parliamentary inquiry - your voice

The new Federal inquiry into franchising closes for submissions at 5pm tomorrow (Friday 12 Sep.)

I urge you to have your say (contact details below).

The situation has heated up in the past week with some inflammatory comments made by a number of MPs from WA and other parts of the country in support of proposed major changes to the Franchising Code of conduct.

The FCA has been addressing issues raised through the course of recent State-based inquiries in WA and SA, and has prepared a thorough formal submission to the new Federal inquiry (see [www.franchise.org.au](http://www.franchise.org.au)).

But I believe now is a time for a spread of voices from the sector to be heard by the inquiry, to balance some of the aggressive accusations and misleading rhetoric being aired in Parliament. We need to push back.

The biggest issue is the suggestion that franchisees are being ripped off at the end of term by not having mandated access to agreement renewal or a goodwill or other form of end-of-term payout. The suggested Code change to accommodate this is introduction of an unspecified 'good faith negotiations' clause - a move the FCA strongly believes would infer an immediate transfer of value for existing agreements, a major opportunity for legal argument and a consequent major disincentive for future investment. In short, an upheaval in franchising which would threaten to stop the strong growth of the past decade dead in its tracks, especially at a time of economic slowdown.

Accusations which have been raised in Parliament in the past week include:

- 'Predatory rogue franchisors, bullying and exploiting' - manipulation of the financially weaker and 'legally disadvantaged' franchisee.
- 'Churn collusion' - conspiracy between franchisors and banks to force franchisees out of business enabling low-price buy-back and resale. Deliberate pushing of franchisees into breach of agreement and 'denial of justice' by refusal to participate in mediation.
- 'Negotiating imbalance' - meaning inability of franchisees to effectively negotiate - especially when agreements are approaching an end.
- 'Collusion and apathy re shopping centre lease costs' - shopping centre landlords and franchisors allegedly agreeing on lease terms regardless of impact on the franchisee tenant.

The FCA has addressed these claims in the WA and SA inquiries, but it appears likely they will be regurgitated in the Federal inquiry, to be led by Government MP Bernie Ripoll (Qld).

If you are as annoyed as I am at these continuing smears against franchising, I urge you to email or write to the committee handling the inquiry right away.

It doesn't have to be a formal submission. Your views are valid no matter what form or length.

Send them to the Committee Secretary, Parliamentary Joint Committee on Corporations and Financial Services, Department of the Senate, before 5pm tomorrow. A model of suggested words follows if you wish to use it as a prompt for your own comments.

Let's not let turkeys kill the goose that laid the golden eggs.

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

Email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

JOB

Model

I wish to reinforce the concerns of our representative body, The Franchise Council of Australia, regarding emotional and inaccurate statements that have been made in Federal Parliament and in State inquiries regarding conduct in the Australian franchising sector.

The FCA has made well-researched and considered submissions to the WA and SA inquiries on behalf of members. I trust the Corporations Committee will take these thorough submissions into account rather than rely on the emotive and inflammatory hearsay which has been presented in the House of Representatives recently.

In my experience in business and life, emotive attacks do not support thoughtful and positive solutions. The aggressive style of such attacks often masks a lack of substance. My view is that the real substance is the success of franchising. People in business and wanting to get into business are voting with their feet every day. Disputes occur, yes - they always will. But they are a very small percentage. Trying to change the rules in the ways suggested in Parliament recently will, in my view, only serve to undermine the whole sector - to the detriment of franchisors and franchisees.

Yours faithfully,

Kind regards,

John O'Brien  
FCA Chairman