



Australian
Competition &
Consumer
Commission

Franchising Council of Australia

ACCC Report

Deputy Chairman, Dr Michael Schaper

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CHECK AGAINST DELIVERY

1. INTRODUCTION

It has almost become tradition at this event that the Australian Competition and Consumer Commission provides a report on the Franchising Code of Conduct and our activities in the sector.

The ACCC regulates franchise relationships through the Franchising Code, which is a mandatory code under the *Competition and Consumer Act 2010*. Both the Code and the Act provide a range of protections for current and prospective franchisees in their dealings with franchisors.

Basically, the Franchising Code of Conduct plays a key role in the life of franchise. Before buying into a franchise, the Code ensures prospective franchisees get the key information they need about the franchise business, which they may not otherwise be able to obtain (or obtain easily).

When the franchise agreement is up and running, the Code ensures ongoing disclosure and outlines a process for resolving disputes should they arise.

At the end of the agreement, the Code is about ensuring open disclosure of termination and end of term arrangements. For example giving the franchisee notice about whether or not the franchisor intends to renew the agreement.

In the past, compliance with the Code has been a central theme for the ACCC. I will continue down that path today. I will provide you with an update on past and current activities and finish by providing you with some observations on enforcing the Franchising code.

2. UPDATE ON PAST ACTIVITIES

2.1 Complaints

Firstly, an update on franchising complaints and enquiries. The ACCC now provides a bi-annual report which neatly captures the types of contacts we've received. These complaints

are recorded by the ACCC's Infocentre. The report also provides a summary of the ACCC's work in the small business and franchising sector.

In the 2011/2012 financial year, the ACCC received 636 franchising complaints and 226 enquiries. The second page of the snapshot provides a breakdown on the types of issues raised – and it continues to be a mix of consumer protection, competition and Franchising Code related issues.

One trend which stands out is the significant decrease in the number of contacts about the termination of a franchise agreement.

Franchisees not receiving a disclosure document (or receiving an inaccurate disclosure document) remains the subject of a large number of complaints. Misleading conduct also continues to be a big issue, with many franchisees alleging that they relied on false claims made by their franchisor when buying their franchise.

2.2 Inflated income claims

Inflated claims about income is an area of complaint which we see from time to time.

In July, the ACCC put out a warning urging people who are considering buying a franchise to take steps to check and substantiate claims made about potential income.

This warning was sparked by complaints relating to franchisors in the cleaning and home services industry. The complaints related to allegations that people had been promised a minimum 'guaranteed' income but then derived little or no income from their franchise.

The ACCC issued the warning because it was particularly concerned that the franchisors appeared to target people from non-English speaking backgrounds who may not fully understand the agreement they are entering into.

The ACCC is investigating whether franchisors in the cleaning and home service industry engaged in misleading or deceptive conduct by making claims about potential earnings.

The overarching message here is that purchasing a business should not be a quick decision. People should seek business and financial advice before they make any decision.

2.3 Carbon price claims and the franchising sector

Next I will explain where you stand in terms of carbon price claims.

It is business as usual. You are free to increase your prices as you see fit. However, if you make claims about the impact of the carbon price these claims need to be **truthful** and have a **reasonable** basis.

The ACCC does not have a formal price monitoring role, nor is it responsible for calculating what the carbon price will be for business.

Our role is to ensure claims do not mislead or deceive. Under the *Competition and Consumer Act 2010*, you must not make false, misleading or deceptive claims about the price of goods or services. This includes false, misleading or deceptive claims linking price rises to the impact of the carbon price.

So far franchising has featured in two enforcement outcomes relating to misleading carbon price claims.

Brumby's: Retail Food Group, owner of Brumby's bakery, gave court enforceable undertakings in relation to comments made by Brumby's to its franchisees in an internal newsletter suggesting that franchisees link retail price increases to the carbon price.

Retail Food Group took prompt action to redress any impact of the Brumby's statement. This included writing to franchisees and outlining their legal obligations. It is also started developing training for staff and franchisees.

Retail Food Group provided an undertaking to the ACCC that it will not engage in similar conduct.

Genesis: GFC Berwick Pty Ltd, trading as Genesis Fitness Club – Berwick, paid an infringement notice in the amount of \$6,600 in relation to claims made about the cost of gym membership fees. Genesis is a franchisee.

One important lesson you can take from these and other matters is that franchisors need to ensure they take steps to train franchisees and their staff and make sure they are aware of law and what they can say to customers. At the ACCC we call this a compliance program.

The ACCC has received allegations of misleading carbon price claims against hairdressers, cafés, bakeries, supermarkets, and drycleaners. Many claims had been made by staff who had jumped to conclusions in explaining a price increase.

In these instances an educative letter informing the business of the potential for confusion has yielded positive outcomes and ensures that the business is aware of how their claims could be perceived.

As you can see from this approach as well as the Brumby's and Genesis outcomes the ACCC's enforcement response is appropriate and proportionate to the conduct.

Overall, the majority of businesses understand their obligations and have performed well when making claims about price increases attributed to the carbon price. For this you can thank those at the Franchising Council who have been working to make sure you get the ACCC's latest advice.

As those who took part in the recent small business webinar know, the ACCC has a wealth of information available on carbon price claims directly tailored for small business. The

ACCC has the carbon price claims hotline, 1300 303 609, and an online form to make it easier for you to complain or ask a question. That hotline number again is 1300 303 609.

3. UPDATE ON CURRENT ACTIVITIES

3.1 Franchising Consultative Committee

The Franchising Consultative Committee was set up by the ACCC to provide a way to consider and address competition and consumer concerns relating to franchising.

It is a collaborative forum which meets twice a year. The committee is made up of a mix of industry people including franchisors, franchisees and industry associations [including Mr Steve Wright, Franchise Council of Australia] as well as people who have a special interest in franchising from the legal and academic field. This gives us a breadth of different views.

Every two years we revitalise our committee membership. We do this by calling for expressions of interest. At the end of 2011 we had a lot of interest, in fact we had more than twice as many applications as spots to fill. We think this is very encouraging.

From the ACCC's perspective the consultative committee is a good opportunity to share ideas and get feedback and intelligence from the sector.

3.2 Audit powers

This time last year, I provided you with a detailed explanation on the audit powers (under section 51ADD) and how they work. Let me quickly remind you of how it works. You will recall these are not financial audits. I say that because many people still think it is only limited to accounts.

The audit powers, which came into play on 1 January 2011, enable the ACCC to compel a franchisor to provide information or produce documents that it is required to keep, generate or publish under the Code. This includes things like disclosure documents and franchise agreements. This info must be provided to us within 21 days.

In short, the audits enable the ACCC to quickly determine whether traders are complying with particular aspects of the industry codes that apply to them. As ACCC Chairman Rod Sims said last year, the audit powers give us a window into the businesses that did not exist before.

With the background out of the way, I would like to provide you with an update on how we have used these audits powers so far.

22 franchisors and 9 horticulture traders have been served audit notice since January 2011. It is pleasing to see that the majority of the 31 businesses have been compliant. Where the audits reveal shortcomings, the ACCC engages with the business concerned to bring about compliance.

To date our approach has been to use the audits to focus on franchisors where there has either been a history of complaints against them directly or a disproportionate number of complaints in the industry in which they operate. However, the ACCC is moving to cast its net out further and serve the audit notices on a broader basis to test compliance within the broader franchising sector.

I know there is some nervousness on the part of franchisors about being served one of these notices. Just because you get a notice doesn't mean you have done something wrong. We may just be taking a closer look at your industry.

Again, the ultimate goal here is to ensure a more compliant franchising sector.

If you want to know more about these audits and how they work, I encourage you to visit the ACCC's website [www.accc.gov.au/industrycodeaudits] for more information.

3.3 Griffith University pre-entry franchise course

As many of you would know, the ACCC has funded a free online education program, run by Griffith University, to help prospective franchisees make more informed decisions.

New research reveals franchisees who complete the Griffith University pre-entry franchise education are more likely to have positive franchising experiences. The preliminary research was conducted by the Asia Pacific Centre for Franchising Excellence.

This is good news as more than 3000 people have registered in the program since it started in 2010.

I have no doubt the program will continue to provide potential franchisees with a better understanding of their rights and obligations under the Franchising Code. Most importantly it provides an insight into some of the practical issues they could face.

4. ENFORCING THE FRANCHISING CODE

We've been administering the Franchising Code for 14 years and during that time we've had the opportunity to reflect on what works and what doesn't. It has become apparent that the absence of meaningful penalties makes it more difficult for us to successfully enforce the Code.

For example, on occasions over the years, business systems or chains have attempted to pass themselves off as not being a franchise. In fact they are a franchise and they should be compliant with the Code.

This produces an unfair trading environment, because honest franchisors who are doing the right thing are put at a comparative disadvantage by those who subvert or avoid their obligations.

Even when these situations are uncovered the ability to impose penalties are limited. Stronger sanctions for breaches of the Code would act as a deterrence in these types of matters.

5. CONCLUSION

Whether it is enforcement or education, the ACCC's overall aim is ensure the franchising sector continues to thrive in a fair and compliant environment. As I said at the outset compliance is a core objective for the ACCC.

The ACCC looks forward to continuing to work constructively with the franchising sector and your Council.