Submission

to the

2013 REVIEW OF THE FRANCHISING CODE OF CONDUCT

Conducted by Mr Alan Wein

Franchising Code Review Secretariat
Department of Industry, Innovation, Science, Research and Tertiary Education
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2013 REVIEW OF THE FRANCHISING CODE OF CONDUCT

This submission to the Franchising Code Secretariat seeks to address four areas of the terms of reference of the review:

- The need for a "good faith "clause in the Franchising Code of Conduct (FCC)
- The need for penalties for breaches of the FCC
- The rights of franchisees at the end of the term of their franchise agreements, including recognition for any contribution they have made to the building of the franchise
- The operation of the provisions of the Competition and Consumer Act 2010 as far they relate to franchising

Background

Shortly after I was elected to the WA state parliament in Sept 2008, various franchisees became aware of my interest in small business, and my philosophical commitment to the need for business to be conducted in an ethical manner.

Over a fairly short space of time I had various franchisees come to me and tell me their stories of woe, which they claimed were the result of unethical conduct by the franchisor or his agents. I read widely on the subject, and discussed the issues with dozens of franchisees and with some franchisors. What became quite evident was that a small number of franchisors were engaging in what I term "rogue" conduct, and which the franchisees lawyers said bordered on unconscionable conduct. But as the courts take a very narrow view of unconscionable conduct, very few prosecutions have been successful.

In many cases, there had been a clear breach of the FCC, yet the ACCC refused to action the grounds that the franchisor was not breaching the FCC in a "systemic" way, but only in isolated instances. This left the franchisees with the option of copping it sweet, or taking legal action against their franchisor. Some franchising agreements that were shown to me included clauses such as: if a franchisee took the franchisor to court, the franchisee had to cover the legal costs of the franchisor, while others had a clause prohibiting franchisees from taking joint legal action against the franchisor. With the high cost of litigation, the franchisees felt they had no one to turn to, other than me as a Member of Parliament.

Given the fact that franchisees put their life savings at risk, and often also borrow money secured against their own home and that of their parents or other relatives, the failure of a

franchise is a devastating situation, made even more so, when it is caused by the actions of a franchisor who is in breach of the FCC, or who is not acting in good faith.

Initially I discussed this issue with state colleagues but as WA had largely ceded its corporations powers to Canberra it was considered more appropriate for this matter to be dealt with by the federal government. However having met so many small business people who had suffered the dire consequences of a combination of unconscionable behaviour and legislative shortcomings, I eventually decided to pursue a Private Member's Bill. As your discussion paper notes, in October 2010 I introduced into the WA Parliament the "Franchising Bill 2010" as a Private Member's Bill. The Bill passed the second reading stage on the voices, and was then referred to the Economics and Industry Committee. The Bill was defeated at the third reading stage by the casting vote of the Speaker.

A copy of the Bill and my second reading speech are attached as an annexure to this submission.

The need for a "Good Faith "clause in the FCC

In my Second Reading Speech, I pointed out that there are significant risks facing any prospective franchisee.

Most franchisees are normally aware of the extent of these risks and the reason why they are prepared to assume them is because they believe that the support and guidance of an experienced franchisor will minimise their chance of business failure, partly because they see the franchisor/franchisee arrangement as symbiotic. In other words if the franchisee fails to run a successful business the franchisor will also suffer financially.

Owing to the peculiar nature of franchising, franchisees enter their franchise agreements trusting that their franchisor will deal with them not only with good faith but with the utmost good faith.

If asked, most franchisees would say that their franchisor has an implied duty to act in good faith even though their franchising agreement does not spell this out.

It is therefore particularly disconcerting to note that some franchisors have been able to "write out" an implied duty to act in good faith through an express clause in the franchise contract for quite some time now. Franchisors should not be allowed to "contract out" of good faith requirements, just as employers cannot "contract out" of basic employment requirements such as annual leave or occupational health and safety.

This would seem to be contrary to the intent of the FCC which states that:

"Nothing in this Code limits any obligation imposed by the common law, applicable in a State or Territory, on the parties to a franchise agreement to act in good faith"[1]

In any event, a statutory obligation for good faith appears in many pieces of Australian legislation, such as the Native Title Act 1992 (Cth); the Fair Work Act (Cth); the Insurance Contracts Act 1984 (Cth) and the Corporations Act.

"Good faith "also appears in over 160 Commonwealth Acts.

A large number of foreign jurisdictions have also statutory good faith provisions. In 2006, the Matthews report to the Federal Minister for Small Business made mention of those countries that had already inserted good faith provisions in their franchising legislation[2]. Such countries included several members of the European Union, the USA, Malaysia and Canada.

The 2010 amendments to the FCC now require the disclosure of prescribed information by franchisors to their franchisees, such as disclosure of rebates and benefits, disclosure of business experience, disclosure of financial reports and disclosure of material facts

It is however naive to expect that these disclosures will result in parties acting in good faith. It is rather <u>the manner</u> in which this information is presented which will be conclusive evidence as to whether or not franchisors have acted in good faith.

It is important to note that franchise agreements are relational contracts i.e. contracts where the parties are incapable of reducing important terms of their arrangement to well defined obligations such as would be the case in a sale of land contract. Relational contracts have an element of cooperation or partnership in them and can only "work" if both parties deal with each other in good faith.

The Franchising Bill 2010 defined acting in good faith as acting fairly, honestly, reasonably and cooperatively.

These words are all ordinary English words which are not difficult to understand and negotiate on a day-to-day basis.

This definition reflects the view of Sir Anthony Mason who stated that good faith comprised three elements: an obligation on the parties to cooperate in achieving the contractual objects,

[1] Franchising Code of Conduct , sec. 23A

[2] Review of the Disclosure Provision of the Franchising Code of Conduct, Report to the Hon. Fran Bailey MP Minister for Small Business and Tourism, Secretariat Office of Small Business, Canberra, Oct. 2006

compliance with honest standards of conduct and compliance with standards of conduct that are reasonable having regard to the interest of the parties [3].

I understand also that his definition has been cited with approval in a number of cases including *Burger King Corp v Hungry Jack's Pty Ltd [2001]NSWCA 187* and *Hughes Aircraft Systems International v Airservices Australia (1997) 76 FCR 151.*

Acting fairly, honestly, reasonably and cooperatively   also sits well with the comments of Rein J in the case of *J F Keir Pty Ltd v Priority Management Systems Pty Ltd* (administrators appointed)2007 NSWSC 789:

"A franchisor is required to act reasonably and honestly (to an objective standard), not to act for an ulterior motive, to recognise and have regard to the legitimate interest of both parties in the enjoyment of the fruits of the contract, and to avoid rendering the franchisee's interest under the agreement nugatory or worthless or seriously undermining it".

The need to include an express duty of good faith in contract agreements and to define it has also been raised by a Judge of the Supreme Court of New South Wales, Robert McDougall[4]:

"*Whilst the courts will seek to imply a duty of good faith in the performance of contractual obligations, they cannot do so inconsistently with the express language of the contract, or necessary implications there from. It follows that if parties to a contract wish to bind themselves to act in good faith.... they should make express provision for this; and because the concept of good faith is uncertain and ambulatory, they should define what it is that they mean by the term".*

There is therefore no apparent reason as to why the FCC should include the obligation to act in good faith.

The Franchising Code must indeed demand that both parties act in good faith at all times and prohibit any express clause to write it out.

The need for penalties for breaches of the FCC.

From my discussions with franchisees they all feel that the FCC is a "toothless tiger" because it depended on the franchisees taking court action against the franchisor, as the only means of redress.

[3]'Contract, Good Faith and Equitable Standards in Dealing (2000) 116 Law Quarterly Review 66, Sir Anthony Mason
[4]The Implied Duty of Good Faith in Australian Contract Law, Robert McDougall, http://www.lawlink.nsw.gov.au/lawlink/Supreme_Court/ll_sc.nsf/vwPrint1/SCO_mcdougall210206

I was shown correspondence from franchisees where they reported clear breaches of the FCC to the ACCC, and yet the ACCC declined to take action, in some cases taking 18 months to come to that conclusion. My own phone calls to the ACCC on such cases revealed that its policy was not to pursue "isolated cases" of breaches, but only if a franchisor had a "systemic" problem. This arbitrary and selective approach to upholding the law has given franchisors the assurance that they can violate individual franchisees with impunity, if those franchisees do not have the financial resources to seek legal redress.

The absence of a body that can launch prosecutions for breaches of the Code, was something that my Franchising Bill 2010 sought to remedy.

The need for penalties for breaches of the FCC was highlighted by Prof Frank Zumbo in his submission on the Franchising Bill to the Economics and Standing Committee of the Western Australian Parliament[5]:

"*If someone has engaged in a breach of the code... the remedies are limited to an injunction, damages or other orders. If someone has failed to give you a disclosure document, there is no effective remedy... We have had cases where there have been breaches of the franchising code established, but there was no effective remedy. There was a Seal-A-Fridge case where, basically, the remedy was to require the franchisor to go to a trade practices seminar on the code"* (p.2)

These examples highlight that the FCC in its current form is a "toothless tiger" which does not deter rogue operators from breaching the rules. Indeed, the vehemence with which the Franchising Council of Australia opposed penalties for breaches of the code was a clear indicator to me, that they were well aware of the fact that many franchisors are breaching the code. If the FCA had a genuine interest in lifting the integrity of franchisors, it should have supported penalties. Clearly, good franchisors would abide by the FCC, and therefore penalties would have no impact on them. Their fear of penalties is a clear indicator of the need to implement these penalties.

In my Bill, I made provisions for the Commissioner for Consumer Protection to be given the power to prosecute parties who fail to adhere to the franchising code of conduct. I believe legislative change is required to allow for an "enforcement agency" to prosecute breaches on behalf of plaintiffs. This is so because a large majority of "mums and dads" franchisees do not have the financial resources to launch a civil action in the courts. While the FCC encourages a process of mediation through an official mediator, many of the accounts I received were of franchisors not turning up for mediation, or turning up and not saying anything at all in the process. This was done in the knowledge that the franchisee does not have the capacity to

[5] Transcript of Evidence, Franchising Bill 2010, Economics & Industry Standing Committee, Session Two, Monday April 11 2011

pursue them through the courts, also points to the need for mediation to be backed up by an enforcement agency that can prosecute if there is breach of the Code.

Were this to happen, I have no doubt that the number of breaches of the FCC would be substantially reduced

The rights of franchisees on expiry of their agreement

I understand that one of the aims of the 2010 amendments to the FCC was to provide greater protection to franchisees at the end of their franchise agreement.

The disclosure document which now has to be issued by the franchisor ***does not*** remedy this situation.

The franchisor can merely advise in the disclosure documentation that the franchise will not be renewed or that it might be renewed or that the intention at this stage is that it will be renewed but there is no undertaking that it will be so. Following the introduction of the 2010 amendments requiring disclosure of the end of agreement information, I was shown contracts which clearly stated that the franchisee has no rights whatever, neither explicit nor implied of any kind. Yet the franchisor, I was told, said to the franchisee that of course if he did a good job, they would renew the agreement. Because most franchisees trust the franchisor at the commencement (otherwise they would not enter the agreement!) and are often commercially naïve, the disclosure rules have not resulted in a fairer outcome for franchisees at the end of their term.

Whilst acknowledging that a franchisor may not want to be obligated to renew an agreement with a poorly performing franchisee, the fact is that the franchisor can terminate a poorly performing franchisee long before the end of the agreement. There is nothing in the current FCC that prevents a franchisor not renewing an agreement, and simply taking over the thriving business that the franchisee has established through his own hard work and investment.

Consequently, I believe that justice demands that, where a franchisor declines to renew the franchise agreement, and either takes over the business or sells it on to a third party, the FCC should require franchisors to pay to the departing franchisee the value of the goodwill developed by the non-renewed franchisee.

The FCC should also require reasonable notice to be given to the franchisee if a franchisor believes he has good reason not to renew the agreement at its expiry

A number of states in the US make provision for such notice to be given and/or prevent an arbitrary refusal to renew:

”It shall be a violation of this subchapter for a franchisor to fail to renew a franchise except for good cause or except in accordance with the current policies, practices and standards established by the franchisor which in their establishment, operation or application are not arbitrary or capricious” (Arkansas Franchise Practices Act 1977)

“No franchisor may fail to renew a franchise unless such franchisor provides the franchisee at least 180 days prior written notice of its intention not to renew and... permits the franchisee to sell his business...” (California Franchise Relations Act 1980)

“No franchisor shall... fail to renew a franchise ,except for good cause...” (Connecticut, Chap. 739, Trading Stamps, Mail Orders, Franchises, Credit Programs and Subscriptions 1972)

Other issues relating to the operation of the FCC

Demands for Capital Expenditure

The FCC should also include a provision to prevent unscrupulous franchisors from demanding unreasonable and unforseen capital expenditure as a condition to renewal of the franchise agreement.

Again, the 2010 amendments to the FCC do not require the franchisor to quantify the amount of the investment required. Therefore although a franchisee might know at the outset that some refurbishment might be required, he may totally underestimate the investment in question and therefore be reluctantly forced to relinquish his franchise.

The problem is compounded by the fact that some franchisors are usually the head tenants in a lease and that the franchisee has therefore no contractual relationship or bargaining power with the owners of the leased premises from which he operates.

This situation could be remedied by amending the Code to oblige franchisors and owners of leased premises to accept franchisees as “joint head tenants” in a commercial lease.

An example of the unscrupulous behaviour of one franchisor was given to me: The shopping centre in which the franchisee operated was struggling to attract customers. To assist tenants, the owner reduced the rent. The franchisor, as head tenant, did not pass on the cost savings to the franchisee. This contributed to the eventual financial failure of the franchisee.

Restrictions on acquiring goods and services from other sources- Competition & Consumer Act 2010

Discussions with franchisees prior to the introduction of my Private Member's Bill revealed that many have serious concerns about the restrictions imposed by franchisors on franchisees in relation to acquiring goods and services from other sources. While the FCC allows franchisees to purchase goods of equal standard from other suppliers, the ACCC seems to rather freely allow franchisors to require franchisees to purchase exclusively from the franchisor.

A significant number of these franchisees do not trust their franchisor.

These concerns were expressed to me in a number of contexts where several franchisors failed to act in good faith in their dealings with their respective franchisees.

The inability some franchisees have in acquiring goods or services from other suppliers than those supplied through the franchisor can be viewed as an unfair restraint of trade which is contrary to the intent of the Competition & Consumer Act 2010.

Anecdotal evidence suggests that such restraint of trade means that prices paid by franchisees are often excessive and eventually lead to their businesses failing. Under these circumstances, the franchisor then terminates the franchise, resells it to a new franchisee and collects another substantial franchise fee. The process is then repeated resulting in a churn out of franchise agreements which only benefit the franchisor.

The franchisor has a vested interest in restricting sources of supplies to the franchisee when the franchisor receives a rebate or other financial benefit from its own supplier. The fact that franchisors are now required to disclose from whom they receive rebates and financial benefits begs the question as to why the franchisee cannot obtain a supply of equivalent quality from another source.

CONCLUSION

I believe that the franchising model of doing business has much to commend it.

The nature of franchising requires the powers in the contract to be weighed very heavily in the franchisor's favour, to enable him to respond to changing market conditions etc. However, to prevent this power imbalance from being abused, the franchisor should be required by law to act in good faith towards his franchisees. Likewise, a franchisee should also be obligated to act in good faith towards the franchisor.

I believe the FCC must impose a duty to act in good faith, namely: fairly, honestly, reasonably and cooperatively on both parties.

For the FCC to be useful, there need to be penalties for breaches of the Code. With the power imbalance between franchisor and franchisee, it is unacceptable for franchisors to be able to thumb their noses at the FCC, knowing that the vast majority of franchisees do not have the financial capacity to take them to court to seek damages. The ACCC or some other body should be given the long overdue power in the Code to enforce appropriate penalties for non-compliance. Doing so will also enhance the franchise sector's generally good reputation, making it more difficult for rogue operators to abuse this business relationship for their own benefit but to the detriment of the other party.

PETER ABETZ MLA

Appendix 1

FRANCHISING BILL 2010
Second Reading

Extract from *Hansard*
[ASSEMBLY - Wednesday, 13 October 2010]
p7651b-7654a
Mr Peter Abetz; Deputy Speaker

MR P. ABETZ (Southern River) [4.01 pm]: I move —
That the bill be now read a second time.

Before I commence my speech, I would like to express my appreciation to those members of the public who have shown interest in this issue and are in the public gallery.

Franchising is a very rapidly growing section of the small business sector. It was estimated that in 2008 there were some 70 000 franchise units operating in Australia employing some 413 000 people. Most franchisees are people who are entering the world of running their own business for the first time. In Australia only 10 per cent of franchisees have more than one franchise, thus the Australian franchise market is very much a mum and dad investor market.

The franchisor–franchisee relationship has the potential to be mutually beneficial. It allows the franchisor to grow its brand and market share by tapping into the energy of the franchisee who is keen to invest and build his own business. Likewise, the franchisee seeks to benefit from the support and business systems developed by the franchisor. However, the risks are not evenly spread between the franchisor and franchisee. The franchisor takes some risk in accepting a new franchisee. However, if the franchisee does not perform satisfactorily, the franchisor can usually terminate the contract without much difficulty and put in a new franchisee. On the other hand, mum and dad franchisees have usually mortgaged their homes and put their life savings into the purchase of the franchise. If they fail through lack of support from the franchisor, or for any other reason, they often lose their life savings, their home and, more often than not, their self-esteem and confidence, which at times steadily deteriorates to the point of even suicide. Franchisees are prepared to take the risk of getting into a franchise because they believe that the support and guidance of an experienced franchisor will minimise the risk of business failure.

New franchisees always start out trusting their franchisor; otherwise, they would not invest in one of its franchises. They trust the franchisor, and they trust that the franchisor will provide them with management advice and support, and they trust that the business systems of the franchisor will assist them in running a successful small business. This element of trust is an essential component of a successful franchisor–franchisee relationship; indeed, it is what makes the franchisor–franchisee agreement so different from any other commercial contract. Many franchisors live up to these high expectations of trust, which are essential for a franchise agreement to be mutually beneficial.

However, there are a small but significant number of rogue franchisors in the market who are undermining confidence in the franchising sector by their unethical and predatory conduct. This leads to ordinary mum and dad investors losing everything through no fault of their own.

At the heart of this ongoing problem in the franchise industry is the lack of real reform that addresses the fundamental inequities that exist between franchisees and franchisors and the abuses of those inequities by rogue franchisors. Although there inevitably needs to be disparity of power in a franchisor–franchisee contract, to allow a franchisor to adjust the business model according to market opportunities and changes, the various parliamentary and government inquiries conducted to date have concluded that franchisees need further protection from rogue franchisors. As the federal parliamentary Joint Committee on Corporations and Financial Services report "Opportunity not opportunism; improving conduct in Australian franchising", which was published in December 2008, reported—I will refer to it as the Ripoll inquiry—this disparity of power has led to

> an unacceptable level of predatory and opportunistic behaviour, including encroachment; kickbacks; churning, which is the franchisor terminating the agreement for no good reason or trivial reasons and then reselling the business to a new franchisee; non-renewal; transfer, termination at will; and unreasonable unilateral variations to the agreement. Other examples of opportunistic conduct include grossly inflating the price of the goods the franchisee is required to purchase from the franchisor.

The Ripoll inquiry made 11 recommendations, but to date the federal government has failed to act on most of them. The Franchising Bill 2010 addresses the issues addressed in the Ripoll inquiry's recommendations 8 and 9; namely, that the Franchising Code of Conduct be amended to include the requirement for all parties to act in good faith in relation to all aspects of a franchise agreement, and that there should be financial penalties for breaches of the franchising code. The South Australian Parliament has also conducted an inquiry into franchising and also included recommendations for these two reforms. In Western Australia, Mr Botham was appointed by the Western Australian government to conduct an inquiry into the operation of franchise businesses in Western Australia, which was reported on in the report "An Inquiry into the Operation of Franchise Businesses in Western Australia" to the then Western Australian Minister for Small Business. Mr Botham stated on page 13 of the report that allegations of misconduct put to the inquiry were serious and involved devastating financial and family costs. He further stated in his covering letter to the minister that submissions to this inquiry reveal that further improvements to the Australian franchising operating environment are not only desirable, but necessary. Mr Botham further stated in his report at page 5 that there is still a governmental duty to ensure that an appropriate legal framework exists to protect the interests and rights of parties to the contract.

The Western Australian state government's response to the Botham report was to take to the Small Business Ministerial Council in May 2008 the proposition that a well-defined obligation for parties to bargain and negotiate in good faith should be part of the Franchising Code of Conduct. This was endorsed by all state ministers. The Federal Labor Party went to the 2007 election promising to bring in a good-faith provision in the franchising code but failed to act on this promise. Inquiries to the office of the new Minister for Small Business in the Gillard government indicate that the federal government does not intend to act on the remaining recommendations of the Ripoll report. Indeed, the federal Minister for Small Business announced on Monday that the federal government was not planning to review or make any changes to the Franchising

Code of Conduct until at least 2013. In the light of this federal government inaction, on Friday, 1 October 2010 the South Australian Minister for Small Business, Tom Koutsantonis, announced a small business package that centres around providing franchisees with a more level playing field, including the provision of good-faith and financial penalties for breaches of the Franchising Code of Conduct.

The Franchise Council of Australia, which mainly represents the interests of franchisors, has consistently opposed any moves to provide further protection to franchisees. The FCA made a submission to the Ripoll inquiry, and paragraph 8.44 of that inquiry's report reads —

> … the FCA later indicated that they would not object to a good faith clause that simply reiterated any existing implied common law requirement to act in good faith.

However, recent public comments from the FCA indicate that they are not even supportive of this small level of extra protection for franchisees.

However, some significant franchisors, such as Jim Penman of Jim's franchises, have in recent times broken ranks with the Franchise Council of Australia and have also called for greater protection for franchisees as they consider the rogue franchisors to be damaging the franchise sector's generally good reputation, making it more difficult for ethical operators to attract franchisees. PricewaterhouseCoopers' franchise sector indicator report for 2009–10, which involved a survey of 106 franchising systems in Australia in 2010, showed that while franchising is in quite good financial health, one of the great challenges franchisors face is getting people to sign up as franchisees.

It has been argued that franchisees and franchisors should be free to enter into whatever kind of contract they wish, but franchising is, by its very nature, not a simple contract. The franchisor, through the franchise agreement, reserves for itself the power to alter the nature and the scope of the franchise relationship during the course of the relationship. While this power, in the hands of a good franchisor, can for example be used to respond to changing market conditions or to strengthen the franchise, the power can be, and is, abused by rogue franchisors to the detriment of franchisees and gives the whole franchising sector a bad name.

By its very nature, for franchising to work well, it requires a higher level of mutual trust and respect between franchisor and franchisee than would normally be required for other contractual arrangements. It is for this very reason that the franchising code of conduct was developed under the regulations of the Trade Practices Act and a statutory duty of good faith has been strongly supported by recent bipartisan parliamentary franchising inquiries.

The report "Franchising Australia 2008" produced by Lorelle Frazer and her team from the Griffith University Asia–Pacific Centre for Franchising Excellence reports that 25 per cent of franchisees do not trust their franchisors. Trust is a difficult commodity to pin down. The level of trust can go up and down, depending on the circumstances and the situations that may not have been foreseen at the time the parties entered into the relationship. Given that trust is an essential component for a successful franchisor–franchisee relationship, it is clear that many of these arrangements are currently operating suboptimally.

I want to make it clear that this bill is not about changing the structure of franchising agreements. It is about the conduct expected of those who negotiate and enter into such agreements. The bill is concerned to ensure that the parties adhere to generally acceptable standards of conduct, firstly, to abide by the franchising code of conduct or risk financial penalties under the bill, and, secondly to act in good faith in the lead-up and throughout the franchising relationship, including the renewal or possible renewal of the relationship.

The bill also codifies the term “good faith”. In common law there long has been an implied duty to act in good faith when entering into contracts. A careful review of the case law and the legal literature in Australia and overseas demonstrates that the meaning or essence of “acting in good faith” is acting fairly, honestly, reasonably and cooperatively. The bill, by stating that good faith means to act fairly, honestly, reasonably and cooperatively, intends to codify the current common law understanding of “acting in good faith”. While other words may from time to time be used to describe “acting in good faith”, the words to act “fairly, honestly reasonably and cooperatively” encompass the meaning of these other words. A clear definition in everyday terms of what the obligation “to act in good faith” means, which this bill provides, will be far more helpful for franchisors and franchisees than to try to understand what the common law obligation to act in good faith might mean from time to time.

This bill will not impose any additional costs on good franchisors, nor will it require them to change their business conduct because the essence of good franchising is to act fairly, honestly, reasonably and cooperatively. Good franchisors are already adhering to the franchising code of conduct and acting fairly, honestly, reasonably and cooperatively towards their franchisees. It is only the rogue franchisors who fail to fully comply with the code and abuse their power that will need to come into line. Their coming into line will help to protect the generally good reputation that franchising enjoys. This bill should have the effect of making the Western Australian franchising sector more appealing to prospective franchisees and help provide what Mr Botham called for; namely, an appropriate legal framework to protect the interests and rights of parties to a contract.

The bill gives the Western Australian Commissioner for Consumer Protection the power to prosecute parties who fail to adhere to the franchising code of conduct. This fits in well with the commissioner’s current responsibility under the Western Australian fair trade legislation. This responsibility can be transferred to a Western Australian small business commissioner, if such an appointment were to be made.

This bill at last gives this Parliament the opportunity to decide whether or not it wishes to provide Western Australian franchisees the protection that repeated bipartisan parliamentary and other inquiries have recommended.

In conclusion, I wish to thank the parliamentary drafting office for its work in drafting this bill and for the way that Associate Professor Frank Zumbo of the University of New South Wales has given so freely of his time to help frame this legislation, and the various legal experts in franchising who have also contributed their knowledge and expertise.

This bill will assist the franchising sector and the many small businesses within that sector to continue to grow and to develop in a more healthy and robust way.

I commend the bill to the house.

[Interruption from the gallery.]

The DEPUTY SPEAKER: You are welcome to sit in the chamber to listen to debate, but you are not to clap or make any noise or speak.

Debate adjourned, on motion by **Mr D.A. Templeman**.

Appendix 2

Franchising Bill 2010
http://parliament.wa.gov.au/parliament/bills.nsf/15AD3CD4FC5B7E57482577BB0025FB8D/$File/Bill162-2.pdf

Explanatory Memorandum

http://parliament.wa.gov.au/parliament/bills.nsf/15AD3CD4FC5B7E57482577BB0025FB8D/$File/EM162-1.pdf