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UNFAIR CONTRACTS LEGISLATION

SUBMISSION

Service Station Australia Ltd (SSAL) represents several hundred independent, commission agent and franchised service station operators in Australia and is the only industry association representing these businesses across Australia. The President is Mr Craig Glasby, former President of the NSW Service Station Association (SSA) and the CEO is Mr Ron Bowden, formerly CEO of the SSA.

SSAL welcomes the Government's proposal to extend Australian Consumer Law Unfair Contracts Legislation to include business to business contracts when one of the parties is a small business. SSAL believes this proposed reform is well overdue.

Most service station business owners in Australia are involved in contracts with big business which govern the way in which they conduct their businesses. These can include, but are not necessarily limited to, the supply of goods and services to the service station, the tenure provisions for the site and the way the business owner is required to conduct the business. By far, the most vexing issue in this industry relates to the terms of the contract governing tenancy rights and obligations. These can be a franchise agreement, a commission agency agreement or a supply and provision of branding agreement.

Most service station business owners are classic small business operators – family affairs with one or more family members engaged in the running of the business and often with the family home providing security for the finance required to own and run the business. The difference in the financial might between these owner/operators and the suppliers of the goods, services and/or tenure rights is immense. Tenure agreements in particular are based on standard form contracts where only the incoming business value, or goodwill, or key money cash payment varies from one agreement to another.

The petroleum products retailing industry is currently subjected to a mandatory code of conduct – the Oilcode. However, the Oilcode does not address the issue of unfair contracts. It is mostly concerned with issues of petroleum products supply and minimum franchise tenure time lengths. It does not contemplate the fairness of these contracts nor the fairness of any contract variations imposed on the agreement by the franchisor. Therefore, to address these issues, additional protection is required.

Petroleum products retailing in Australia is undergoing substantial changes. Traditionally, this aspect of the industry had been dominated by the major multi-national oil companies

who for many years operated substantial Australia wide franchise networks. Over the past decade however, in the face of intense competition from the supermarkets and against a backdrop of declining refining competitiveness, these oil companies are withdrawing from direct involvement in retailing. In some cases, whole networks have been sold off as in the case of the Mobil 7- Eleven sale. In their place, branded independent networks have achieved levels of critical mass in the industry never seen before, and new overseas operators have also secured significant holdings in Australia. Oilcode does not apply to these arrangements and business owners have only the protection of contract law to assist them deal with often heavy handed landlords. Petroleum products retailing is still dominated by master – servant relationships.

It is not unusual for new entrants to the industry to be newly arrived business migrants who often lack the ability to make balanced assessments of the worth of these business opportunities and all too often rely on unenforceable undertakings from the master franchisor/supplier/landlord regarding the financial viability of the business they are about to purchase. Most of these agreements, if subjected to independent legal advice, would not receive a favourable assessment and yet the “take it or leave it’ approach of the big business offering is difficult for these vulnerable people to resist.

In too many cases, the incoming franchisee, commission agent or independent operator is simply buying a job.

SSAL has been advised of many instances where it has assessed contracts as being unfair. These take various forms. They include:-

- Revenue splits between franchisor and franchisee weighted so heavily in favour of the franchisor that the franchisee cannot make even a small profit without underpaying his/her staff. This is an all too often occurrence in certain networks and certain groups.
- Rent levels for new entrants being set far in excess of the ability of current business conditions to service, thus requiring substantial improvement in trading performance, promised by the franchisor but never actually achieved.
- Contracts that require the franchisee/commission agent to comply with the franchisor’s operations manual which the contract allows to be changed at the whim of the franchisor/landlord.
- Performance standards set by the franchisor being excessively onerous in terms of business operating hours, hours of attendance at the business, stock levels, stock ranging and price settings.

SSAL has examples of what it considers to be unfair contracts which it is happy to provide on an “in confidence” basis.

Furthermore, SSAL would be keen to engage with the CANNZ industry stakeholder consultation process to give further details of the unfair practices that persist in our industry.

We can be contacted at the address shown on the letterhead or by email on:
servicestationaustralia@live.com.au.



Please feel free to contact me at any time.

Ron Bowden

Chief Executive Officer