

Franchising Sector Reforms

Interdepartmental Taskforce

Regulation Impact Statement

Response from:

The Australian Association of Franchisees (AAF)

A. Introduction

1. The JPC Inquiry report, amongst its many findings, concluded that franchisees had been historically underrepresented in the franchising policy debate. It went further to say that the lack of a franchisee voice in policy development had contributed to the massive power imbalance and consequent exploitation that characterizes the sector. The *franchisor friendly* Code of Conduct, in all its iterations, has enabled scamming and exploitation on a scale that has become a national scandal.
2. The JPC Inquiry called on the franchisee community to create and develop a peak body capable of representing franchisee interests in the public policy debate. Franchisee groups had also reached this conclusion. As a result, the Australian Association of Franchisees (AAF) has been formed and will meet that need. Until now, franchisees have remained largely silent on policy and regulation. This has left a serious vacuum that has been filled by the narrow perspectives and interests of the franchisor lobby.
3. The challenge for AAF is that the very perception of what franchising is, and how it should be governed, has not been the subject of serious consideration. The Code of Conduct, 2104, which governs the sector does not even attempt to define what franchising is.

4. One extreme and cynical view is that franchising is a way of buying yourself a job. However, franchisees are clearly defined in law as business proprietors and are excluded from the protections of employment law.
5. There are other ways of thinking about franchising. It has elements of a partnership, a co-operative or a joint venture. Technically, while it has elements in common with each of these, franchising does not sit within the definition of any of these business models. It is a business model of its own.
6. AAF experience suggests that, amongst policy makers, the most common way of perceiving franchising is that it is a paternalistic system. A system wherein franchisees live under the umbrella of the franchisor who has created the intellectual property and made the investment. In this construction, franchisors enable less visionary or able folk to benefit from their great initiative. The overarching theme here, is that the franchisor is initially bringing more to the table, and therefore is the prime consideration in terms of whose needs are a priority. The current code is ample evidence of this world view.
7. The AAF perspective, on the other hand, is that franchising is a co-investment model. It is true that the franchisor has had an idea, developed a system and brand and made some start up investment. However, our analysis shows clearly, that by the time a franchise system reaches maturity, franchisees are far and away the major investors and have been the enabling factor in making the good idea into a commercially viable reality.
8. In our response to the RIS therefore, we are coming from the position that the status and rights of franchisees as both investors, and providers of sweat equity, need to be enshrined in appropriate legislation. Franchising represents nearly 10 percent of the Australian economy. It is three times the size of farm gate agriculture and employs as many Australians as the manufacturing sector. The RIS on Page 10 and the JPC Inquiry

at Chapter 22 raise the question of whether or not franchising is a co-investment scheme. This should not even be in question, franchisees provide the lion's share, we estimate 80 percent or more, of the total capital investment in franchising.

9. In light of the above, the existence of potential franchisors with ideas and brands is not the major challenge. Hearing so much about the ongoing scandals that plague the franchising sector, keeping the faith of Australians that they can safely enter a franchising relationship, is now the key policy challenge for government.
10. Measured in this way, the Franchising Code of Conduct approach has been a complete failure for more than twenty years and should be scrapped forthwith. AAF is advocating for legislation, reflective of the characteristics of the co-venture arrangement that is franchising
11. Our response to the RIS is informed by the need to redress at least 20 years of failed policy in franchising. Failure which has allowed such an important part of the Australian economy to be experiencing an ongoing image crisis of epic proportions.

B. Overall commentary on the Franchising Regulation Impact Statement 2019

12. For AAF, the Taskforce process and the resulting RIS were very disappointing. We were confused as to why it appeared that the Taskforce was revisiting conclusions of the JPC Inquiry. We were concerned that, in so doing, Taskforce members were missing the critical evidence provided to the JPC Inquiry in confidential submissions and evidence. There was also a strong sense that the breadth of the Inquiry's findings was being arbitrarily reduced.
13. In coming to a better understanding of where the RIS process sits in the regulatory process, the concern increased. How could a complex rethinking of franchising regulation be reduced to a series of cost benefit questions?

14. The RIS that has emerged from this process is, in our view, a very narrow and limited discussion document. Particularly concerning is that it does not address the underlying causes of many of the symptoms that it does attempt to address.
15. As an association, we made a submission to the Taskforce. It was primarily based on draft principles 3 and 4. These principles raised the questions of collaboration and mutual accountability. We were also guided by Chapter 22 of the JPC Inquiry report which raised the topic of co-investment.
16. Our input on this subject was ignored entirely, save for a one paragraph reference to co-investment on Page 10 in the RIS. In our view, the defining of the franchisor franchisee relationship and its associated rights and obligations is the central question in the current franchising discussion. It provides the key to a better power balance, a more equitable relationship and the avoidance of disputes. We are very concerned that it has not been given the prominence it deserves.
17. Given that it still appears to be a question in the minds of regulators, our feedback on the RIS will therefore focus again on the undeniable reality of franchising as a co-investment model. A model which should give rise to rights and obligations and necessitate a collaborative and inclusive management model.

C. RIS Page 10 para 4

18. This paragraph refers to Chapter 22.1 of the JPC Inquiry report. The question raised is *'as to whether franchise systems and their agreements involve sufficient co-investment and risk sharing in an enterprise, such that they should be regulated in a similar nature to financial products'*.
19. There is no question that franchising is a co-investment business model. The average Australian franchise business has 50 outlets. At that stage of maturity, AAF calculates

that, on average, franchisees have contributed around 80 percent of the total capital employed in the shared enterprise. (see attachments 1-3)

20. At the start, the seed capital comes from the franchisor. Registering a brand and a corporate entity, fitting out an office, purchasing enterprise software, initial market entry and documenting proof of concept, all fall to the cost of the franchisor.
21. However, as with all other small business start-ups, the major problem is not getting started, it is getting access to the capital to grow. Where the business in question is suited to it, franchising is the obvious solution.
22. Franchisees not only pay an initial entry fee to the franchisor, they also pay for leases, the fitting out of premises, the purchase of equipment, signage and the working capital associated with stock. All costs and risks that are the basis for growth in any enterprise and would otherwise fall to the brand owner. As franchisees are added, the balance of capital input rapidly swings towards franchisees. Where individual franchisees are unsuccessful, the associated losses, which include ongoing issues like leases, can easily exceed \$1m, sometimes multiple millions, for a single outlet. Under the current arrangements, franchisors are largely insulated from such failures. The risks are borne by individual franchisees.
23. The JPC Report refers to franchising potentially being a financial product. AAF sees it as a collaborative investment model with parallels in cooperatives, joint ventures and partnerships. All of these cooperative investment forms are covered by ASIC legislation. Such legislation gives rise to rights and obligations, the right of shareholders to be properly informed, the power of shareholders to replace directors, the fiduciary duty of Boards and CEOs, oppressed shareholder provisions, all talk to the need for clarity, and a management model that reflects equitable and ethical governance, and addresses conflicts of interest.

24. In the case of franchising, we believe this line of thinking will give rise to a proper legislative framework for franchising. Properly formed, it will foster the types of management models that recognize that franchisees have put their careers their life saving and their houses on the line. Franchising does not require overregulation which is the consistent cry of the franchisor lobby. It does however, require appropriate regulation, given the relative investment of the parties, and far more effective insulation against scamming and exploitation, practices that are unfortunately, quite common amongst franchisors.
25. AAF is strongly urging the government to endorse the reality that franchising is a form of capitalisation. As with other major business models, franchising needs its own legislative arrangements. It is our belief, from experience, that a code of conduct approach is far too weak a form of regulation for such an important sector.

D. Characteristics of proper oversight

26. As a co-investment arrangement, franchise enterprises consist of two equally important parties, franchisors and franchisees. Each should have clear rights and obligations enshrined in legislation. Franchise enterprise boards and CEOs need to be charged with a fiduciary duty to both parties, the franchisor and franchisees individually and collectively.
27. Decisions with a significant impact on franchisees economic viability or their equity in their businesses should be canvassed in a fear free environment and through a meaningful consultative process. Franchisees have interests in common. They should be free, if they so choose, to form associations to represent their interests. Any manipulation or other interference in the independent representation of franchisees by the franchisor should be a serious offence. Franchisee representative organisation should be entitled to formal recognition and clear rights. Unilateral changes by franchisors to operation manuals, franchise agreements, or trading terms, which have

the effect of changing the contract, should be unlawful.

28. In the current code, it is acceptable for franchisors to unilaterally impose minimum performance standards on franchisees. These standards can be used to issue breach notices and terminate agreements. Such standards can be entirely arbitrary and unrealistic. Franchisees should have the right to participate in the setting of targets for their business. Franchisors must be subject to independent scrutiny, if required, as to the basis for their target setting.
29. Franchise agreements typically do not specify what the franchisor will deliver in return for the various imposts placed on their franchisees. It must be a requirement in franchise agreements that franchisors specify the deliverables they are responsible for, and the standards or service levels that will be maintained over the life of the agreement. Any change to franchisor deliverables should only be with the agreement of franchisees.
30. Where franchisors are in breach of their franchise agreement, and such breach is serious and not remedied, franchisees individually and collectively should have the right to opt out of the relationship. In this event, the franchisor should be obliged to compensate them fairly for their businesses, if they choose to leave and cannot realistically sell on the open market.
31. If such arrangements are legislated, it is our contention that the franchising sector would flourish due to a dramatic reduction in failures, scandals and unresolved conflict.

E. Specific feedback on the RIS

32. It was a question for AAF as to whether a response to the issues and choices identified in the RIS would be interpreted as an endorsement of the process. We need to be

clear about this. We do not believe the policy discussion around franchising is ready for detailed solutions. In our terms, it is like renovating a house with rotting stumps. We need to address the underpinnings of franchising first. AAF will not support or endorse any incremental improvements to a regulatory system that is fatally flawed.

33. Having qualified our position, AAF recognizes that we cannot stop a symptomatic response, if that is ultimately the government's choice. We provide the following feedback on elements of the RIS based on the understanding that while the RIS is focussed on symptoms not the causes, the matters that are identified within it, are important in the broader policy discussion which we are promoting.

F. Pre-purchase and Disclosure

Problem 1.1 Disclosure process and documentation

34. AAF believes the current disclosure requirements of the code are its best feature. The improvements required are not extensive. The issue is more around the openness and honesty in their compilation and communication. We believe the penalty regime should reflect the seriousness of any misleading conduct as regards disclosure.
35. The JPC evidence, and our own experience, suggests that there is a big problem in the reading and interpretation of information provided, or not provided. Consideration should be given to accrediting advisors and requiring prospective franchisees to discuss the disclosure documentation with such advisors, even to require franchise vendors to meet with potential purchasers accompanied by their accredited advisors. Such a compulsory meeting could be used to overcome the commercial in confidence issues the franchisor lobby is concerned about.
36. AAF is supportive of the minor improvements recommended in the RIS Options 1.1.2 – 1.1.3. AAF also acknowledges the concerns of franchisors in Option 1.1.2 (c). Our suggested advisor process above could be useful in overcoming these concerns.

37. With respect to disclosure, our major concern is that franchisors and their brokers employ good sales personnel. Franchisees are very enthusiastic to create a positive future for themselves. They are not necessarily commercially literate at this point. This is a dangerous combination, because caution can be thrown to the wind. No amount of written material, however presented will completely overcome this problem. The case for compulsory accredited advisors at this point in the decision-making process is strong.

Problem 1.2 Reliability of information

38. AAF is wholly supportive of Option 1.2.2 and very strongly supports the need for the registration of franchisors and franchisees. Concerns raised by franchisors that this is would be a burden on them are self-serving and designed to avoid scrutiny and oversight of the sector. Concern from government agencies that the collection of information might be interpreted as endorsement are equally off the mark. There are any number of examples of government agencies holding information that no-one expects them to verify or endorse.
39. AAF is also supportive of Option 1.2.3 pre-entry education should be compulsory. It should be provided both at a general level and at the accredited advisor level, as previously recommended when prospective franchisees are negotiating a franchise purchase.
40. The organized franchisor lobby should not be accredited and should play no role in this activity.

Problem 1.3 Lack of commercial literacy amongst potential franchisees

41. AAF is supportive of Option 1.3.3. Buying a franchise business usually involves committing your life savings, borrowing money and risking your house. We refer back to our comments on accredited advisors and pre-entry education. Many potential franchisees are on a steep learning curve and history tells us that there are many

unscrupulous individuals in the franchise sales business. Online education, while useful, is a totally inadequate response.

G. Cooling off period

42. Draft Principle 2 talks about a cooling off period after the franchise agreement has been signed. From a franchisee perspective, this would only be useful if the franchisor was obligated to reimburse all set up costs and release the franchisee from all obligations as to leases etc. AAF is not convinced that this is a fair obligation to place on franchisors.
43. Conversely franchisors who see that, after a short period of operation, the new franchisee was not a good choice, should have the right to a trial period wherein they can terminate the agreement and reimburse the franchisee's costs.

H. Verification of mutual obligations

44. AAF believes that marketing funds are simply a specific example of a broader problem. The broader problem is, that once a franchisee signs up, he or she, is totally disempowered, the obligations are not mutual. Apart from providing a brand, the franchisor has no other clear obligation. Playing at the edges of the administration of marketing funds is pointless.
45. The management of any specific purpose funds, such as marketing funds, should be jointly managed by the parties and all franchisees should have access to full disclosure on the use of marketing funds. Marketing funds should be exclusively used for the payment of third- party costs associated with promotional activities. The payment of salaries or administrative costs of the franchisor out of specific purpose funds, as well as borrowing from such funds, should be prohibited. Marketing or other pool funds of this type should be held in trust for the benefit of contributors, and not be available as franchisor assets in the event of administration.

46. As franchisors claim exclusive ownership of the franchise brand, franchisees should not have to pay for brand advertising. Marketing funds should be limited to paying for advertising or other activities aimed at directly generating business, such as market research, special offers or sales events.

I. Mutually beneficial cooperation

47. The franchising code of conduct does not give franchisees any right to a say in the franchise enterprise, nor does it require franchisors to contractually commit to the specific deliverables they will provide. Words like “may” and “best endeavours” abound. The code of conduct talks of acting in good faith. In practice this means that if a franchisor is behaving badly the franchisee must prove this through the courts. Our research confirms that such a legal action would take more than one year and cost more than \$1m. In the Pizza Hut case it was in the region of \$6m. This is not a feasible option for franchisees.
48. The RIS attempts to work on some specific symptoms of this problem, supplier rebates, conflicts of interest and unilateral variations.
49. Because franchising involves co-investment and therefore the commercial interests of both parties, AAF is strongly supportive of Option 4.3.2 There are no circumstances where a franchisor should be able to unilaterally change the contract, including the franchise agreement, the operations manual or commercial terms, without consultation and at least a majority agreement.
50. The arguments against this proposition, such as slowing down decision-making are laughable. This argument harks back to a paternalistic management model, which ceased to have currency in the 1980s. That model sees the boss as all seeing and all knowing. Best practice firms operate collaboratively, even when they do not need to consider the interests of two major stakeholders. Today’s world is too complex for

exclusively top down thinking. This objection is a smoke screen, and reflects a simple desire to be able to act without inhibition in the interests of the franchisor.

51. The Pizza Hut five-dollar pizza is a classic example. A decision was made quickly and unilaterally, against the unheeded advice and pleading of franchisees. In that case, an estimated eighty franchisees, lost their businesses and their livelihoods. Even in this extreme case, under current law, the Federal court found that it might have been a stupid, hasty and ill thought though decision, but there was no obligation to consult and it was not in bad faith.

J. Dispute resolution

52. The Taskforce has not included an option that includes speedy compulsory, transparent and low-cost arbitration. There is therefore no option that AAF could support.
53. Option 5.1.2(c) asserts that there is an option under the current code for multi-party mediation. This is only the case where the parties agree. Franchisors have an easy ability to frustrate this option. They can and do, divide and conquer.

Further in option 5.1.2

54. AAF believes that the acknowledgment of franchisees as a legitimate co-investor in franchise businesses with appropriate rights to inclusion in decision-making will greatly assist in circumventing the occurrence of dispute events. However, where disputes do occur the nature, cost and accessibility of a dedicated three stage dispute resolution process is a critical component of any effective franchise legislation.
55. Key elements of a dispute resolution regime would include
- (a) Franchise specific tribunal including arbitration capability;
 - (b) Three stages, mediation conciliation and arbitration;
 - (c) Easily accessed quick, and inexpensive;

- (d) Conciliator empowered to issue binding interim orders;
- (e) Franchisees to determine whether the parties should be legally represented;
- (f) Each party to pay own costs;
- (g) No prohibition on class action in Franchise agreements (UCT);
- (h) Franchisees free to nominate their representation including associations; and
- (i) Multi party mediation where more than one Franchisee is involved.

K. Exit arrangements

56. AAF is not supportive of any of the exit options put forward in the RIS
57. The key point here is that with very few exceptions, franchisees intend to buy a business for life and in which to work. They are not looking for a temporary arrangement. They believe and should be entitled to, that they are buying a business for the long-term, subject only to satisfactory performance, or the occurrence of unforeseen circumstances, such as a disruption event. The default position in all franchise agreements should be that Franchisees have a right to security and continuity. Therefore, franchise renewal should be a basic right of franchisees.
58. In this context, we make the following points:
- (a) Clause 28 of the Code is inherently unfair, there should be no termination of Franchisees without cause or agreement;
 - (b) Where infrastructure investment is required, the Franchise period should be extended to allow full amortisation;
 - (c) Franchisees if forced out should be fully compensated for loss of remaining useful life of fixed assets;
 - (d) Lease periods should be linked to franchise term;
 - (e) Compulsory purchase by franchisors to be on a formula at least equivalent to market valuation;
 - (f) Goodwill in brand belongs to franchisor;

- (g) Goodwill in Franchisee business belongs to franchisee; and
- (h) Restraint of trade by franchisor to be disallowed unless there is agreed and specific compensation and only where the franchisor buys the business.

L. Regulatory Framework

59. Franchising is a \$150 billion sector of the Australian economy with 50,000 franchisees 80,000 outlets and at least 500,000 employees it is estimated to represent approximately 10 percent of the Australian economy It is currently governed by a code which is utterly useless from a franchisee perspective. The code enables franchisors to act at will, irrespective of the interests of franchisees. The notion of good faith as underpinning franchising has been useless. It is hard to think of any other group in the Australian economy as powerless as franchisees. Franchisees in many instances live in fear of their franchisors. More than 200 confidential submissions were received by the Inquiry, the evidence of the unhealthy climate in franchising is obvious. This was clearly recognised by the JPC Inquiry in its bipartisan report.
60. For all of these reasons, AAF is committed to achieving a level of legislative oversight consistent with the scale and importance of the sector.
61. We are asking that the taskforce endorse and give life to the need for a separate Act of Parliament or an extension of the corporation law, to provide an appropriate and sustainable framework for this sector.
62. We believe the legislation should reflect at least the following:
- (a) The need for a franchising Commission to oversee the sector;
 - (b) Within the commission, a comprehensive dispute resolution capability;
 - (c) Registration of franchisors and publicly accessible registry of disclosure documents and franchise agreements;
 - (d) Registration of franchisees;
 - (e) Lodgment of disclosure documents and notification of any changes;

- (f) Franchising to be recognised as a form of capital raising (investment scheme);
- (g) Franchise enterprises to be seen as co-investments by franchisors and franchisees;
- (h) Franchisees to have rights consistent with being investors;
- (i) Franchisor boards and executives to have fiduciary duty to franchisees;
- (j) Penalty regimes to reflect a \$150Billion industry;
- (k) Franchisor levies to fund the Commission;
- (l) Registration of franchisee representative associations; and
- (m) Clear and enforceable rights for franchisee representative organisations.

M. Issues Otherwise not Addressed

63. In addressing the seven points of the Issues Paper and now the RIS, AAF noted some important matters that did not easily fit under the headings provided. They are summarised as follows. We are committed to ensuring that the full reform agenda remains on the table.

64. Some areas we wish to discuss further with government and policy makers:

Franchisors as landlords

65. It is very common for successful franchisors to buy the properties their franchisees operate from. Where this occurs, there is pressure to remain in that location even when the premises are no longer suitable. There are also many instances of rent gouging where the landlord raises the rent above the market rate without justification. Franchisees are frequently intimidated into accepting their fate.

66. Where franchisors are the franchisee's landlord the entire relationship should be managed independently and at arms-length. Pressure by a franchisor landlord on a franchisee tenant to remain where a franchisee wishes to move should be a serious offence, as should any coercion to pay exorbitant rents.

Shopping centre lease arrangements and liability

67. It is common for a franchisor to hold the head lease of a franchisee's premises, a condition that is invariably non-negotiable. It is another mechanism by which a franchisor controls the franchisor franchisee relationship and maintains the power imbalance.
68. The franchisee will have no input in respect of the terms and conditions of the lease of premises the franchisee will pay for and trade from. Furthermore, the franchisee is often compelled to pay the franchisor for negotiating the lease.
69. Notwithstanding that the franchisor holds the lease and has negotiated all the terms and conditions in the absence of the franchisee, the franchisee will bear all liability in respect of the lease by virtue of the terms and conditions contained in the licence or sub-lease the franchisee enters with the franchisor.
70. If a franchisor prohibits a franchisee from entering into a lease and compels a franchisee to enter into a licence or sub-lease the franchisor should be the party that provides the guarantee, not the franchisee.

Restricted supply options and third line forcing

71. Franchisors frequently have house brands or wholesale product to their franchisees, sometimes both. Where such products are commodities or easily comparable in the market a reasonableness test should be available. This could be on the basis of a basket of goods approach over a suitable period. Franchisors should be required to be cost competitive with whatever alternative sourcing options a franchisee might otherwise have. The alternative is a continuation of the price gouging currently occurring.

Franchisors competing with their Franchisees

72. Many franchise businesses operate company outlets as well as franchisee owned outlets. This can include internet-based selling. Where company outlets are similar in nature to franchisee outlets, there needs to be an even playing field. All costs/fees incurred by franchisee outlets should also be paid at the same rate by company outlets, no promotions or discounting should be allowed for company stores only. All sales data and market intelligence should be available to franchisees on the same basis as it is for company stores. Clearance or discount outlets should be specifically banned unless co-ventured with franchisees. Where clearance activities are required this should be through all outlets on an equal access basis. Where franchisors operate internet selling sites, they should be co-managed with franchisees and should be complementary rather than competitive.

Franchisee options where Franchisor fails or wishes to sell

73. Many franchise agreements contain clauses which give the franchisor first and last right of refusal where a franchisee wishes to sell their business. These rights should also be available to franchisees collectively, or even individually, where a franchisor fails or wishes to sell.
74. Given the high level of interdependency franchisees, should also have the right to be recognised as stakeholders in the sale of a franchise business and, in particular, should have the right to veto a sale to an unsuitable purchaser. Obviously, such a right should be subject to reasonable justification and a majority of franchisees supporting such a position.

Geographic exclusivity

75. Where a franchise business is purchased and a part of the value of the business is based on an exclusive territory, this exclusivity goes to the heart of the contract and should in no circumstances be compromised through physical or on-line territory incursions without the franchisee's agreement. If any change is agreed to, it needs to

be on the basis of an independent valuation as to the economic impact of the loss and full financial compensation being paid.

Royalties

76. Many franchisors charge franchisees a percentage royalty on an ongoing basis for the benefits of the brand and services provided by the franchisor. In most instances this royalty is levied on the franchisee's gross turnover. This created a totally unacceptable perverse incentive situation. Deep and wide discounting can be enforced. In this scenario it is very likely that gross revenue will increase resulting in increased royalties. For the franchisee gross margin is lost which often results in a nett loss situation. This perverse incentive scenario was well illustrated in the Pizza Hut five-dollar pizza case. The losses incurred by franchisees by this deep discounting, resulted in an estimated 80 franchisees losing their businesses. Conversely, as sales increased, the franchisor benefitted from increased royalties.
77. Royalties, where they are the basis for franchisor income, should be levied at a higher rate, ideally on the nett margin line. Both parties should benefit from franchisees being profitable, not on any other basis. Royalties on revenue are an open invitation to exploitation and should be unlawful.

Direction of money flows

78. There are examples of franchise operations where some or all of the franchisee's customer payments are paid directly to franchisors, who are then supposed to pass them through to franchisees. This arrangement presents unacceptable risks including the risk of franchisees being unsecured creditors in the event of franchisor insolvency. This practice should be unlawful. Customers must pay the franchisee for products or services provided and, in turn, franchisees should then pay their dues to franchisors.

Freedom of Association

79. The current franchising code recognises the right of franchisees to form representative brand-based associations. It stops there. There is no endorsement of any kinds of rights for such associations. It is still legitimate for franchisors to refuse to speak to franchisee representative associations and to refuse to attend multi-party mediation. In the U.S there are standard form franchise agreements that require franchisees to sign away their rights to partake in a class action against their franchisor. The JPC Inquiry was even confronted with a scenario in Melbourne involving 7- Eleven, where the franchisee witnesses who attended, claimed that the originally nominated representatives had been bribed or otherwise coerced not to attend.
80. If the massive power imbalance in franchising is to be redressed, this is a key area for reform. Where brand associations exist, Australian franchising legislation needs to give clear representational rights to such associations and provide strong sanctions against interference with their autonomy. There also need to be very clear and strong protections, including access to damages claims, for franchisees who take on leadership roles in such associations.
81. We would value the opportunity for further engagement with the Taskforce to seek practical regulatory solutions for these matters

N. Summary

82. Franchising can be a very effective way for entrepreneurs with good ideas to raise capital and grow quickly. In that process, they are engaging other people's capital, other people's skills and labour, and creating a co-venture.
83. As rightly identified in the JPC Inquiry Report, the legislative framework needs to reflect the reality that both parties contribute, and that rights must be equitably shared. There needs to be acknowledgement that circumstances change over time

and that there needs to be a balance between consultative internal decision-making processes and the need to be agile in quickly managing situations as they arise.

84. Relatively speaking, franchising is a new organisational form. It has grown enormously and is experiencing massive problems relating to power imbalance and the easy opportunity for exploitation that currently exists. Other jurisdictions are being faced with similar issues to Australia and appropriate reform needs to be visionary and far reaching. Australia now has the opportunity to get it right. AAF will strongly support government in getting it right. Conversely, we will not accept the type of minimalist approach which has created the current crisis of confidence in franchising.
85. AAF is keen to work with Government and other industry participants in creating an environment that is enabling, but at the same time, avoids the easy exploitation that has been a feature of the past.

Matt Wheatley
President

Mike Sullivan
CEO

Case Study 1 - Retail Store Sports and Leisure - Medium Size

		Franchisee Operated			Franchisor Operated
Ingoing Capital or	Item	\$ Range			\$
Startup Expenses		Minimum	Maximum	Typical	
	A. Franchise Fee	\$ 50,000	\$ 100,000	\$ 75,000	
	B. Store Fitout	\$ 95,000	\$ 250,000	\$ 200,000	\$ 200,000
	C. Signage	\$ 5,000	\$ 10,000	\$ 7,000	\$ 7,000
	D. IT Hardware	\$ 5,000	\$ 20,000	\$ 10,000	\$ 10,000
	E. Inventory Cost	\$ 150,000	\$ 450,000	\$ 225,000	\$ 225,000
	F. Lease Security Deposit	\$ 10,000	\$ 50,000	\$ 10,000	\$ 10,000
	G. Lease of premises - Franchisor legal fees	\$ -	\$ 2,500	\$ 2,000	\$ 2,000
	H. Lease of premises - Franchisee legal fees	\$ 1,500	\$ 3,000	\$ 2,500	
	I. Business name/Company Setup	\$ 1,000	\$ 2,000	\$ 1,500	
	J. Working Capital - initial	\$ 10,000	\$ 25,000	\$ 20,000	\$ 20,000
	K Insurance	\$ 2,000	\$ 5,000	\$ 4,000	\$ 4,000
	L. Franchisor Legal & Accounting Fees	\$ -	\$ 5,000	\$ 3,000	
	M. Franchisee Legal & Accounting Fees	\$ 3,500	\$ 15,500	\$ 7,500	
	N. Opening Promotional Expenses	\$ -	\$ 7,500	\$ 7,500	\$ 7,500
	O. Initial Training	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000
	P. It Training - 25 hours at per hour \$120 to \$250	\$ 3,000	\$ 6,250	\$ 5,000	\$ 5,000
	Total Estimated Ingoing Costs	\$ 351,000	\$ 966,750	\$ 595,000	\$ 505,500
	Capital Saving to Franchisor Per Store (say)				\$ 500,000
	Network of 50 stores Capital Saving to Franchisor				\$ 25,000,000
Franchisor Capital	A. Intellectual Property registrations				
Setup Costs	B. Intellectual Property development				
Consisting Of	C. Software development and implementation				
	D. Premises lease commitment				
	E. Office equipment for office setup				
	F. Working capital to point of initial income flow				
	(covers wages & other opex)				
	Best estimate total				\$ 5,000,000

Case Study 2 - Home Services - Small Size

		Franchisee Operated				
Ingoing Capital or		Item	\$ Range			
Startup Expenses			Minimum	Maximum	Typical	
	A.	Franchise Fee	\$ 15,000	\$ 25,000	\$ 20,000	
	B.	Vehicle Purchase	\$ 30,000	\$ 50,000	\$ 40,000	
	C.	Signage	\$ 1,500	\$ 2,500	\$ 2,000	
	D.	IT Hardware	\$ 2,000	\$ 4,000	\$ 3,000	
	E.	Equipment Cost	\$ 7,500	\$ 12,500	\$ 10,000	
	F.	Lease Security Deposit	\$ -	\$ -	\$ -	
	G.	Lease of premises - Franchisor legal fees	\$ -	\$ -	\$ -	
	H.	Lease of premises - Franchisee legal fees	\$ -	\$ -	\$ -	
	I.	Business name/Company Setup	\$ 1,000	\$ 2,000	\$ 1,500	
	J.	Working Capital - initial	\$ 4,000	\$ 6,000	\$ 5,000	
	K.	Insurance	\$ 2,000	\$ 5,000	\$ 4,000	
	L.	Franchisor Legal & Accounting Fees	\$ -	\$ -	\$ -	
	M.	Franchisee Legal & Accounting Fees	\$ 2,000	\$ 4,000	\$ 3,000	
	N.	Opening Promotional Expenses	\$ 1,000	\$ 1,500	\$ 1,250	
	O.	Initial Training	\$ 2,500	\$ 5,000	\$ 3,750	
	P.	It Training - 25 hours at per hour \$120 to \$250	\$ -	\$ -	\$ -	
		Total Estimated Ingoing Costs	<u>\$ 68,500</u>	<u>\$ 117,500</u>	<u>\$ 93,500</u>	
		Capital Saving to Franchisor Per Store (say)				\$ 93,500
		Network of 3500 franchisees Capital Saving to Franchisor				\$ 327,250,000
Franchisor Capital	A.	Intellectual Property registrations				
Setup Costs	B.	Intellectual Property development				
Consisting Of	C.	Software development and implementation				
	D.	Premises lease commitment				
	E.	Office equipment for office setup				
	F.	Working capital to point of initial income flow				
		(covers wages & other opex)				
		Best estimate total				\$ 5,000,000

Case Study 3 - Retail Furniture - Medium/Large Size

		Franchisee Operated			Franchisor Operated
Ingoing Capital or		Item	\$ Range		
Startup Expenses			Minimum	Maximum	Typical
	A.	Franchise Fee			\$ 50,000
	B.	Store Fitout			\$ 200,000
	C.	Signage			\$ 5,000
	D.	IT Hardware			\$ 5,000
	E.	Inventory Cost			\$ 250,000
	F.	Lease Security Deposit			\$ 70,000
	G.	Lease of premises - Franchisor legal fees			\$ -
	H.	Lease of premises - Franchisee legal fees			\$ 1,500
	I.	Business name/Company Setup			\$ 1,000
	J.	Working Capital - initial			\$ 25,000
	K.	Insurance			\$ 4,000
	L.	Franchisor Legal & Accounting Fees			\$ -
	M.	Franchisee Legal & Accounting Fees			\$ 3,500
	N.	Opening Promotional Expenses			\$ -
	O.	Initial Training			\$ -
	P.	It Training - 25 hours at per hour \$120 to \$250			\$ -
		Total Estimated Ingoing Costs			\$ 615,000
		Capital Saving to Franchisor Per Store (say)			\$ 550,000
		Network of 92stores franchisees Capital Saving to Franchisor			\$ 50,600,000
Franchisor Capital	A.	Intellectual Property registrations			
Setup Costs	B.	Intellectual Property development			
Consisting Of	C.	Software development and implementation			
	D.	Premises lease commitment			
	E.	Office equipment for office setup			
	F.	Working capital to point of initial income flow			
		(covers wages & other opex)			
		Best estimate total			\$ 5,000,000