

A woman with long brown hair and glasses, wearing a light blue and white striped long-sleeved shirt and dark trousers, is smiling and talking on a mobile phone. She is leaning over a wooden table in a warehouse or storage room, surrounded by numerous cardboard boxes. The lighting is warm and focused on her and the table.

# The Franchisee Guide

A publication by the  
**Franchise Council of Australia**

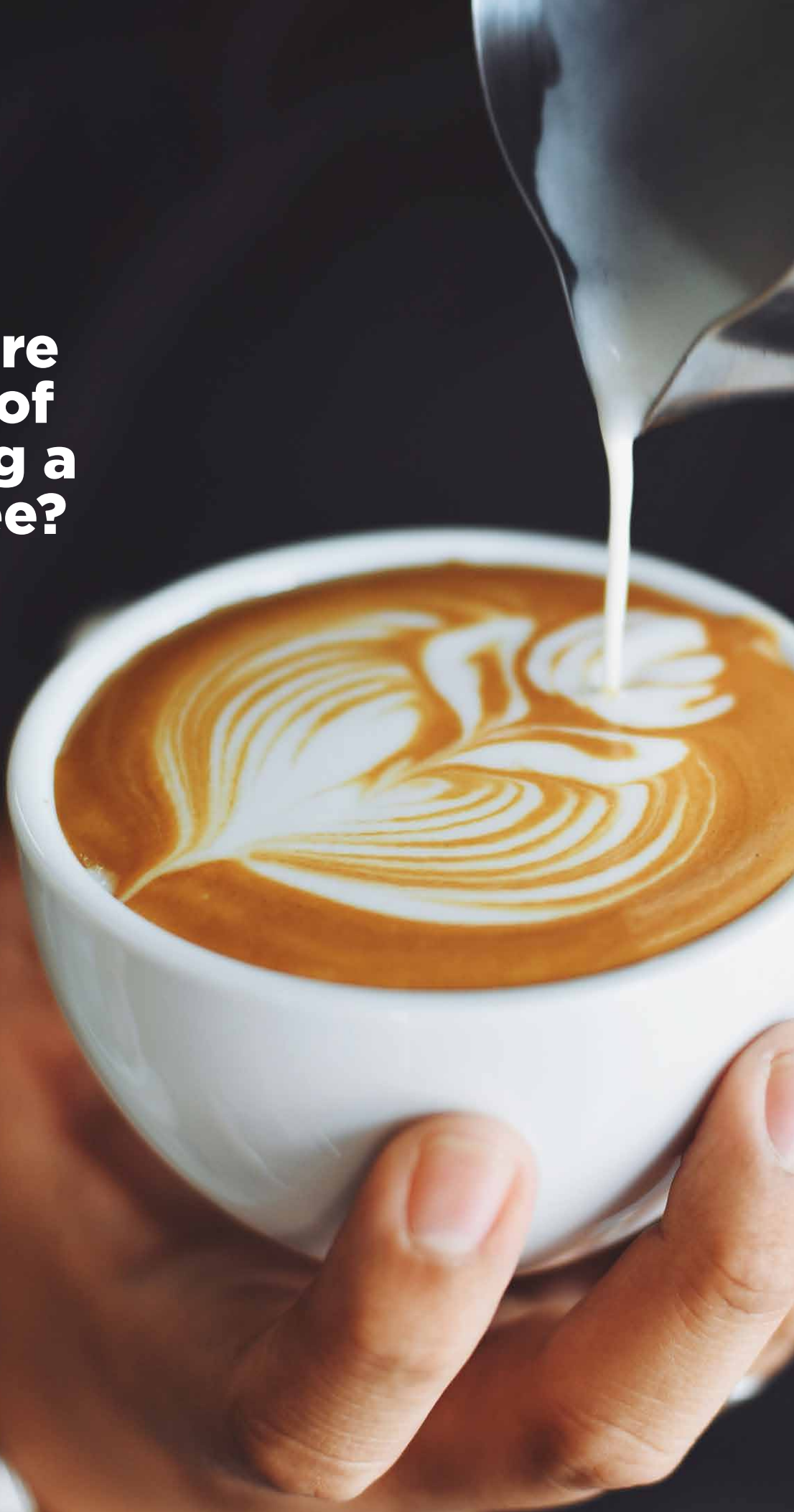


FRANCHISE COUNCIL OF AUSTRALIA



## CHAPTER 1

# **So, you are thinking of becoming a franchisee?**



Welcome to the FCA's Franchisee Guide. The FCA is strongly focussed on providing prospective franchisees and existing franchisees with accessible education resources that support them to make informed decisions about buying a franchise business, and to understand their rights and responsibilities. In considering whether or not buying a franchise business is the right decision for you, the most important thing you can do is research, analysis and read as much information as you can get your hands on. This will go a long way towards ensuring you get the right business for you.

Those of us at the Franchise Council of Australia are very keen for you to be as well informed as possible before you make any commitments. We encourage you to absorb the contents of this small publication and any other materials specific to your business interest that are available. There are lots of other bits of useful information available on our website, [www.franchise.org.au](http://www.franchise.org.au)

We believe there are two key elements to the commencement of a successful franchise relationship – responsible franchisor behaviour and effective franchisee due diligence. The Franchising Code of Conduct, the Competition and Consumer Act and the activities of the Franchise Council of Australia will aim to promote responsible franchisor behaviour. The initial chapters of this book explain franchising, and outline the regulatory environment. Your legal and business advisors will help you understand how these matters apply to your circumstances.

This book focuses on due diligence – meaning the things you need to do to ensure you make an informed decision. Although the success rate of franchised businesses is higher than other small businesses, of course not all franchised businesses succeed. Not all franchises are the same. Some businesses will be better suited to your skills than others. And not everyone wanting to go into business is suited to do so. Take your time, do your homework and get advice. You have to ensure your expectations match the reality of what you are buying.

The first step is self-evaluation. This issue is discussed in Chapter 6. Do you really want to run a business, or are you just unhappy with your current life? Do you enjoy serving customers? Few franchised businesses are back office jobs. Are you prepared to work long hours, particularly in the first couple of years? Does your spouse or partner agree this is a good idea? You will need their support. Sometimes a close friend or family member can help you make an honest self-assessment.

Once you have checked out the types of franchised businesses that interest you and either made a decision or narrowed down the alternatives you should then get some unbiased expert advice. Typically you will need accounting/business advice and legal advice on the agreements and documents. We suggest that you do not listen to “Eddie the Expert” characters whom we all know, but that you obtain proper professional advice from those that practice regularly in the sector. Check that these professionals are members of our organisation and are bound by our Member Standards.

In the remainder of this book we talk about the sorts of questions to ask, and the best people to ask. Don't be afraid to ask lots of questions. Reputable franchisors welcome questions and want you to make an informed decision. Entering a business is a major, and often life changing, decision frequently involving most or a significant portion of your worldly assets, so it should never be taken lightly. Buying a franchise is no guarantee of success, and operating a business is generally a lot harder than working in a 9 – 5 job.



It doesn't matter if you are entering a lawn mowing franchise or a large retail franchise. The investment levels for each may differ greatly, but the necessary investigations conducted prior to commitment are virtually identical.

Make your decision with your head not your heart, and if your decision is to proceed and you do acquire a franchise, then we extend a warm welcome to you from the franchise community and especially from the Franchise Council of Australia.



#### TIP 1 FOR PROSPECTIVE FRANCHISEES

Go to the Franchise Council of Australia web site at [www.franchise.org.au](http://www.franchise.org.au), and have a browse through the website. It will give you a good "feel" for franchising.

#### TIP 1 FOR FRANCHISORS

Be prepared to answer all of the questions in this book in a professional and thorough manner. The modern day franchise enquirer is well educated, expects a rigorous recruitment process and is well informed. If you are not in the position to give sound responses to all of the issues this book raises then perhaps you should not be offering franchises at all.



## CHAPTER 2

# What is franchising?

Franchising is not a business in its own right, but is simply a way of conducting business. The word “franchising” tends to conjure up an air of mystique about it but it is surprisingly uncomplicated in form.



Without doubt, franchising has evolved over the years to become the world's most successful business model. Have you heard and dislike the often overused expression "Win, Win"? Well, if franchising is done well, it's hard to think of a more appropriate expression to describe this business relationship. In fact, it is really "Win, Win, Win, Win"! How so? The franchisor only does well if his franchisees are successful, consequently the suppliers to the system benefit together with the general public. Win, Win, Win, Win!!!! But how and where did this amazing business growth vehicle start?

Some say modern franchising began with an arrangement put together by the Singer Sewing Machine Company in the mid nineteenth century in the United States where distributors paid fees for the rights to sell the machines exclusively within a defined geographic area. There are, however, considerable arguments suggesting that franchising existed in some form many years, even centuries, before that!

In the Middle Ages, churches franchised other local churches to open and operate and take a percentage of the types or collection. Monarchs then franchised tax collectors who kept part of what they collected. Moving forward a few hundred years and Ray Croc's story of how he saw a simple hamburger operation when selling milkshake machines is legendary. The McDonald brothers didn't know what they had but Ray Croc saw the enormous potential and McDonald's incredible expansion began when Ray bought them out.

His use of the franchise model has made the fast food restaurants the world wide phenomenon they are today. It isn't possible to write this book without paying tribute to McDonald's for what they have contributed to franchising in the way of brand value and consistency of delivery of product and service. Indeed, the average person would most likely refer to "McDonald's" if asked to name a franchise because the business has become synonymous with the franchise model.

Everyone seems to have a different idea of franchising. However this has been clarified quite a bit since the introduction of the Franchising Code of Conduct, which essentially describes a franchise agreement as the grant by an owner of intellectual property ("the franchisor") to an independent business owner ("the franchisee") of the right to sell goods or services under a trade mark or logo, in accordance with a system or marketing plan and in exchange for payment of some sort of initial and/or ongoing fee to the franchisor.

In a business sense franchising is actually a relatively straightforward arrangement.

Franchising is in some ways a bit like a lease, as the franchisor keeps ownership of the trade marks and other intellectual property such as systems and manuals and gives the franchisee the right to use them in business for a set period of time.

OK, so that still sounded a bit legalistic?

Well, in an everyday example, it is one person (the franchisor) showing another person (a franchisee) how to make and sell great donuts and sharing in the resulting income stream.

Now we need to add a few things to make this "definition" more reflective of what actually happens.

The franchisor is usually a company, often set up by the person that invented the particular concept or business. The most well known example is probably Colonel Sanders with Kentucky Fried Chicken. Now KFC is a global corporation, and Colonel Sanders is long dead. However his concept lives on. Franchisors are rarely happy just with a small business, they have a goal of having their concept spread across the country and sometimes the world. They turn to franchising as a means of helping them to realise their dream. Entrepreneurial and determined Australians who persisted with a great idea and are still active in the businesses they founded or substantially developed include Roger & Leslie Gillespie (co-founders of Baker's Delight), Diana Williams (co-founder of Fernwood Fitness Centres), Jim Penman (Jim's Mowing), Bill and Rose Vis (VIP Home Services), Bob Jane (Bob Jane T-Marts), Bill McGowan (Fastway Couriers) and John O'Brien (PoolWerx).



The franchisor will then grant (but not give up ownership of) the right to use their system and intellectual property to another person to follow and operate at a specific site. The franchisor will normally charge an up-front Franchise Fee and grant a license for use of the rights for a set period of time.

There is generally also a regular Royalty Fee which may be payable weekly or monthly. This “royalty” is sometimes called a Management Service Fee or something similar and is commonly a percentage of turnover (in a retail business) or a flat fee (in a service business). The difference is largely due to the fact that in retail systems, sophisticated point of sale systems can track every dollar but in a cash economy, tracking true turnover can be very difficult. Therefore, rather than create a system where a franchisee is able to cheat their franchisor by not declaring true sales, a set fee is easier and far simpler to manage. This ongoing fee may also take the form of a mark-up on goods provided (or be a combination of all three).

In this way, a franchise is actually very similar to a property lease. The franchisee (tenant) pays a rent to the landlord (franchisor) for the right to occupy the premises (the franchised business) for a set period of, perhaps three or five years.

There are usually other fees that are collected from the franchisee by the franchisor. An Advertising or Marketing Levy is applied to various advertising and marketing techniques to assist in overall brand development and is controlled by the franchisor.

There may also be fees related to attending seminars or conferences, IT fees or other fees specific to the business. Sometimes franchisees receive a rebate from suppliers based on group purchases, or a margin on goods or services the franchisor supplies to the franchisee.

In return for these payments the franchisee should get ongoing training and support to help them grow their business and maximise profitability.

The above describes what is known as Business Format Franchising.

There are other types of franchising that you will come across in every day life, so if you are thinking of becoming a franchisee it is important you understand what they are. The Franchise Council of Australia web site at [www.franchise.org.au](http://www.franchise.org.au) describes these variations very succinctly;

**Manufacturer – Retailer:** where the retailer franchisee sells the franchisor’s product directly to the public, for example, a motor car dealership (occasionally with a distributor involved in the chain);

**Manufacturer – Wholesaler:** where the franchisee, under license, manufactures and distributes the franchisor’s products, for example, soft drink bottling and home delivery arrangement;

**Wholesaler – Retailer:** where the retailer franchisee purchases products for retail sale from a franchisor wholesaler such as some of the hardware chains; and

**Retailer – Retailer:** where the franchisor markets a service or a product under a common name and standardised system through a network of franchisees. This is the classic Business Format Franchise illustrated by the likes of Gloria Jeans or Clark Rubber.

The oil industry operates under its own Code. The standard practice in that industry is basically outlets buying a product to sell. Coca Cola is a type of franchise, although it probably does not quite fit the definition of a franchise under the Franchising Code of Conduct. The owners of the Coca Cola brand in Australia (AMATIL) buy a syrup from the United States and manufacture Coca Cola under a license agreement, but they don’t get the ongoing help and assistance that a business format franchisee would get from their franchisor. You may also hear of football teams or basketball teams being referred to as franchises, but they too are not the Business Format Franchises that represent most of the systems in Australia.



The point of this discussion is to show that franchises come in various shapes and sizes and forms. Some franchises offer a lot of support, others are set up on the basis that the franchisee does not obtain support. There are different fee structures, different lengths of the agreement, different terms and conditions. That is why it is important to shop around, check out websites such as [www.franchise.org.au](http://www.franchise.org.au) and get expert advice from people who understand franchising.

So if the business is so good, why franchise the business and give away some of the profits?

People usually franchise their business for one (or all) of three main reasons. Firstly, if they have a new concept or way of doing things they need to grow very quickly so that they have “first mover advantage” in the marketplace. Time is of the essence. They need to capture their market segment before too many people can copy them. Franchising allows the franchisor to grow far more quickly than he would otherwise.

Secondly, and tied to the first reason, a franchisor may not have enough capital to open a large number of new outlets. Retailers who face large shop fit out costs and cash deposits for landlords need to use other people’s money – franchisees’ money (your money) - to grow their business. This presents some problems, but done well and in a morally sound manner, this is not a major issue for concern.

A third reason is that it is often easier for a franchisee to manage local staffing issues than for a franchisor to try and do so from head office. A franchisee who has invested their savings in a business will work much harder than most employees, will ensure better customer service, will monitor and manage operating expenses more carefully and if working in the business will often save the costs of having a store manager. The enthusiasm and energy that a franchisee brings to a business due to having their “skin in the game” or “hurt money on the table” is without doubt the most important reason to franchise. Whilst it certainly cannot be guaranteed, there are many examples of company owned outlets being franchised and immediately having sales increase by 20% or more. They are the same products, in the same location, at the same prices, the only difference being the effort of the owner (franchisee).





## CHAPTER 3

# What franchising isn't...

What other structures compare with franchising and how do they differ?

## DISTRIBUTORSHIPS

A distributorship is normally set up between a manufacturer and a localised business to distribute the products in a specified locality or region. In other words, it is a simple vendor and purchaser agreement between two legally independent parties with the vendor profiting from the sales made to the distributor and the distributor in turn profiting from the sale of the products to the reseller or retailer. The purchaser receives no support from the vendor, just the right to stock and sell the product. For example, the purchaser would leave all the marketing and merchandising to the vendor. Distribution Agreements are generally much less complicated than Franchise Agreements, may not give the purchaser any exclusivity or give as long a term as a Franchise Agreement. They are also generally far weaker in terms of branding, consistency of tenure saleability and value.

## AGENCY

An agency relationship is in effect an arm of the one business. An Agent is an independent manager of the business and fully accountable for their actions and business decisions with no duty to the franchisor other than to comply with the Agency Agreement. An Agent normally gets paid a commission on sales or handling of administrative duties but all profits and losses incurred by the Agent fall to the Principal (or business owner).

## CO-OPERATIVES

Co-operatives (or “Co-ops”) are conceptually similar to franchise structures and many of these arrangements may well be “franchises” under closer inspection. The major difference between a cooperative and a franchise is that in a cooperative the individual members run their own businesses fairly independently, but under a common brand. This gives the member greater flexibility, but the flip side is that cooperatives often lack leadership and cannot generate the same supplier loyalty (and therefore discounts) as a franchise model. Co-ops used to be a very popular method of running a business but are generally recognised these days as being a “dinosaur” model where a problem can be that far too many chiefs are unable to reach agreement. There is also the problem of the brand being diluted because in most Co-ops every member wishes to retain their name as part of the advertised brand e.g. “Phil Blain’s Electrical Discounts”.

## LICENSES

In a franchise relationship the franchisor allows the franchisee use of the franchisor’s trade marks and systems and has very tight control on the way in which the franchisee conducts all facets of the business. A licensee gets use of the trade marks and other Intellectual Property (IP) but the licensor does not control the manner in which the licensee uses that IP or how the business is run. Licensing is common in relation to product distribution and software, where the intellectual property essentially relates to the product rather than the business. A licensor is not expected to provide much, if any, support to the licensee. Sometimes under a license arrangement the licensee is allowed to manufacture and distribute products using the IP, but a franchisee is generally only authorised to sell the product or service using the IP of the franchisor. The same negative factors attaching to distribution and Co-op arrangements also apply to licences in most instances.

### **MULTI-LEVEL MARKETING**

This method of running a business is often referred to as multi level marketing and is illegal in Australia if it amounts to pyramid selling. Pyramid selling is defined in the Competition and Consumer Act, but in day to day terms means a structure where only those at the top of the pyramid make money, because the main source of revenue is in selling off lower levels and the underlying business is not sustainable. Multi-level marketing basically involves a distributor granting certain rights to purchasers who then sub-divide the supply of the product to "sub-distributors" who in turn sub-divide again with commissions flowing back up the line. Some multi-level marketing schemes have attracted adverse publicity because door-to-door high pressure selling is involved and the practice in reality involves the selling of distributorships to unwary and uninformed people. These people then discover there is no real market for the product(s) no matter how many hours they put in, particularly if they are later entrants to the scheme.

Some times unscrupulous people try to characterise their multi-level marketing scheme as a franchise to try to gain credibility. Great care needs to be taken if multiple levels are involved in a business to ensure the business itself has substance.

### **THE COMMERCIAL AND PRACTICAL DEFINITION OF FRANCHISING**

Any business that has a dictatorial, uncaring and unsharing environment will never be a successful franchise, franchisors must be prepared to be patient, educate, encourage, persuade and persist. Both franchisors and franchisees must be flexible and LISTEN to each other's viewpoints and ideas. Closed minds lead to a closed business.

The franchisor-franchisee relationship is a close and involved relationship and in the end the franchisor has the final say in most instances. However, decisions made without the franchisee's input and involvement are more difficult to implement and enforce.

We will look at the importance of being a team player within the franchise in Chapter 6, but it goes beyond that. The whole franchise community incorporates the core values of sharing and education for self improvement. By way of example, at a Franchise Council of Australia function some years back the writer was sitting next to the CEO's of two major bedding firms, both highly respected FCA Members,

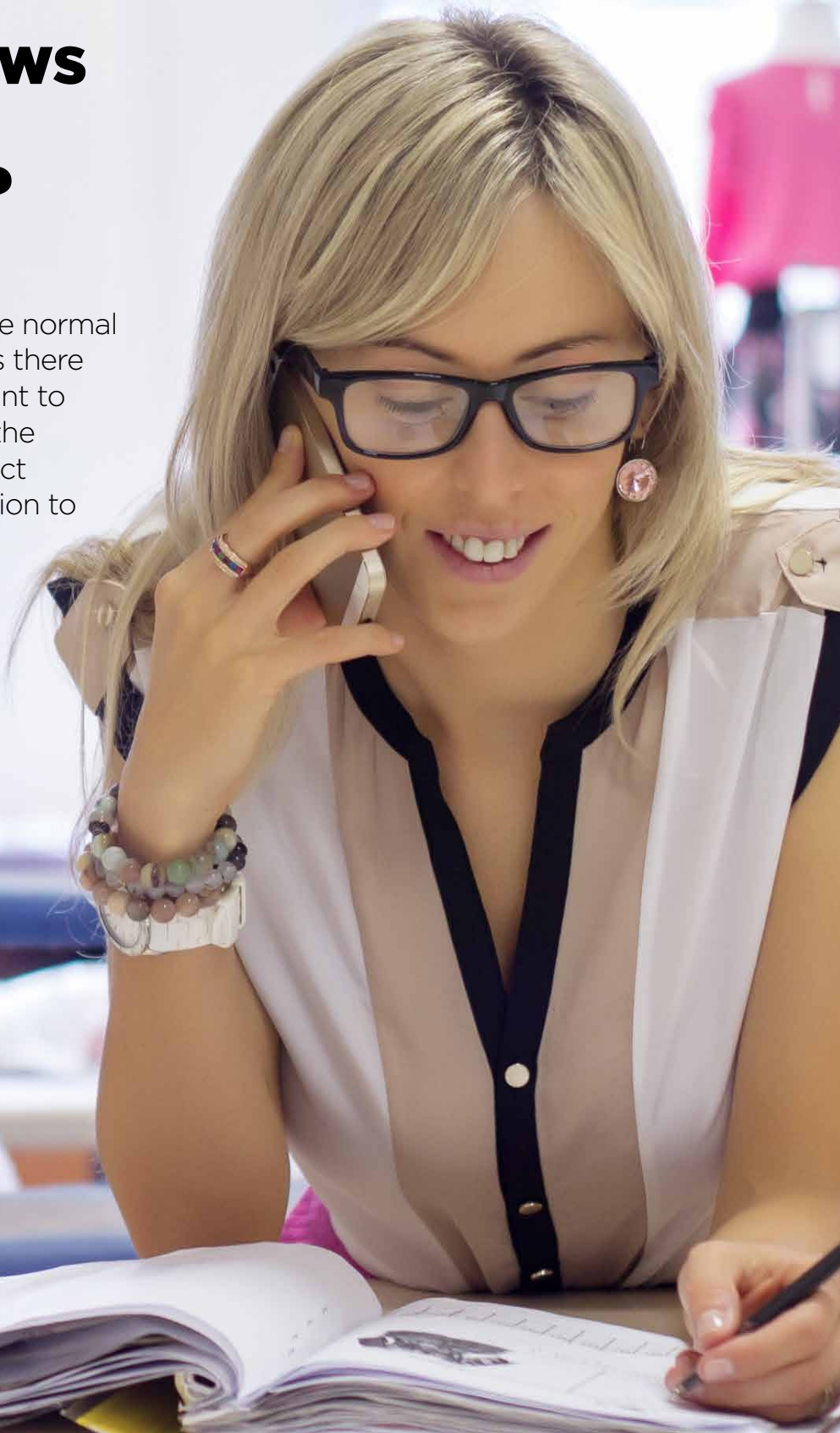
Both of these fine executives have since retired, but they were openly discussing and sharing information about their respective stores in one particular suburb. They weren't giving away trade secrets, and neither were they colluding in any way, but in what other industry would competitors share information in a genuine effort to improve their whole industry?



## CHAPTER 4

# Are there laws regulating franchising?

Yes there are. In addition to the normal laws applying to all businesses there is legislation specifically relevant to franchising, and laws such as the Competition and Consumer Act which have particular application to franchising.



The Franchising Code of Conduct applies to agreements that come within the definition of a “franchise agreement”. The legal definition is quite detailed, but the following four step test is useful:

- 1 Is there is a written, oral or implied agreement?
- 2 Are goods (or services) supplied under a system or marketing plan?
- 3 Is the business substantially associated with a trade-mark, advertising or commercial symbol?
- 4 Does the franchisee pay a fee (directly or indirectly)?

If there is a tick against all four of these elements then a business is classified as a franchise for the purposes of being regulated by the Code. This is the case whether or not the business explains itself as a “franchise”. In the context of the previous chapter, franchisees and cooperatives are generally caught by this definition, but most agency, distribution and licence agreements are not.

The Code's primary function is to protect franchisees and prospective franchisees from unscrupulous operators, and provide a framework for business people to reach an informed commercial agreement. The Code does not guarantee your business success or regulate what commercial terms can be included in the deed. This is up to you to agree with the franchisor,

The Code aims to ensure that:

- 1 prospective franchisees receive important information before deciding to enter a franchise agreement;
- 2 certain terms are included in all agreements; and
- 3 a way of resolving disputes without using the courts can be used by the parties.

The Code essentially relies on two principles:

- 1 responsible and lawful franchisor behaviour; and
- 2 effective franchisee due diligence.

Franchisors have to meet minimum compliance obligations, provide proper disclosure and avoid misleading you or acting unconscionably. They cannot pressure or bully you. If they do, this is where the ACCC come in, as they have to make sure that if a business is a franchise that it complies with the Code and the CCA. They are the franchising sector's watch dog and have successfully run many cases against sham businesses.

The Franchise Council of Australia is a strong supporter of the Code and insists that all of its Members comply with it.

If you are to become a franchisee it is absolutely imperative that you read and understand the Code and have a suitably qualified, franchise solicitor explain it to you. Such advisors can be found at [www.franchise.org.au](http://www.franchise.org.au) (Franchise Directory).

Your franchisor must give you a copy of this Code well before you sign anything but you can get a copy from the following links.

[www.franchise.org.au](http://www.franchise.org.au)

[www.accc.gov.au](http://www.accc.gov.au)

In this small publication it is not possible to go through all of the issues that the Code covers but the main principles are:

## DISCLOSURE

The provision of a comprehensive written disclosure document to assist you to make an informed decision by providing you with a lot of what you will need to get started in your investigations and due diligence.

Under the Code, franchisors and master franchisees (or sub-franchisors as they are sometimes known) must create and maintain a disclosure document which requires the franchisor to provide about 250 items of information.

The disclosure document is required to be in the form and the order set out in the Code. A franchisor must, under the Code, give a disclosure document to a prospective franchisee or a franchisee proposing to renew or extend a franchise. A franchisor must give a copy of the Code and a disclosure document to a prospective franchisee at least 14 days before the prospective franchisee enters into a franchise agreement or an agreement to enter into a franchise agreement or pays non-refundable money to the franchisor or an associate of the franchisor in connection with the proposed franchise agreement.

Importantly, the Code also requires the franchisor provide the prospective franchisee with a copy of the franchise agreement in the form in which it is to be executed at least 14 days before the franchisee enters into, renews or extends a franchise agreement or pays a non-refundable deposit.

In simple terms, the Disclosure Document sets out important details of both the franchise system and taking on a franchised business such as the set-up costs, relevant fees and the names and contact details of all existing and previous franchisees.

Please note: No-one checks that the disclosure is accurate before it is given to you. It is your responsibility to check the material. If there are errors, or even fraud, there are legal consequences. However that may not help you recover any money you have lost. Don't treat the disclosure document as the gospel truth – check things for yourself.

## THE DISCLOSURE PROCESS

The Code time periods help ensure you have ample opportunity to consider your decision, obtain information and get advice. The Code emphasises the importance of getting legal and business advice, and requires franchisors to receive a certificate from you that you have obtained advice, or declined to do so. There is even a 7 day cooling off period if you change your mind after signing.

A franchisee may terminate a franchise agreement within 7 days after entering the agreement, or paying any non-refundable money, whichever is earlier. If the franchisee chooses to exercise their cooling-off rights, they must be given a refund minus any reasonable expenses incurred by the franchisor within 14 days. This is most important for prospective franchisees to remember, that even after they have signed and paid, there are still ways to change their mind and withdraw from the arrangement. However, it could prove costly exercising this right because solicitors will need paying regardless and the franchisor would be entitled to retain some money to cover their legitimate costs. As a point of interest, because of this Code requirement, most franchisors will not commence training until after this seven day period has elapsed. Quite simply, they don't want to train a franchisee only to have them exercise their cooling off rights and then go and set up in opposition! There are other restrictions here too of course but that is the real reason for what can be a frustrating delay for a franchisee who just wants to get started.

## THE FRANCHISE AGREEMENT

The franchise agreement is typically quite a long document which deals with the way in which the business is to be run and intends to cover most conceivable issues. The principles of freedom of contract apply, so you and the franchisor can decide what you want in the agreement.

The Code requires that franchisors provide their franchisees with certain basic rights in relation to franchise agreements. In particular:

- 1 All franchise agreements must provide for a mediation based complaint handling procedure that complies with the requirements of the Code (see below, page 18);
- 2 A franchise agreement cannot contain a provision that requires, or require, franchisees to sign a general release of liability or waive any verbal representation made by the franchisor.
- 3 If the franchisees contribute to a central marketing fund, franchisors must prepare an annual financial statement accounting for all of the fund receipts and expenses, have the fund audited (unless 75% of franchisees vote not to require an audit) and send the statement and audit report, if applicable, to all franchisees within 30 days of preparation;
- 4 Franchisors must not unreasonably withhold consent to a transfer or novation of a franchise;
- 5 Franchisors must abide by the statutory termination procedures, which generally require the franchisor to provide reasonable notice and an opportunity to cure, except in situations such as the franchisee's insolvency, fraud or abandonment;
- 6 Franchisors cannot prohibit franchisees or prospective franchisees from forming an association or associating with other franchisees or prospective franchisees for a lawful purpose. Most medium to large franchisors will have a Franchise Advisory Council or other established means whereby franchisees can meet and discuss all issues freely, as this is a valuable source of new ideas that can benefit everyone in the system. It is important to note that most franchise agreements are reasonably consistent these days, but there are still very significant differences in the commercial terms. Franchisors will be keen to have a standard agreement across all franchisees, but they will generally negotiate some changes or provide other written comfort if you make a reasonable request. The parties are otherwise free to agree on whatever terms they wish, and to document their agreement in the franchise agreement. There is no legal requirement that the franchise agreement has to be fair or even-handed or include provisions to protect you. That is why you need to think about what you need from the franchisor, read the agreement and get advice.



## DISPUTE RESOLUTION

Every franchise agreement must contain the dispute handling procedure set out in the code. Any party to a franchise agreement who has a dispute with another party regarding an issue under the franchise agreement must then use this procedure to resolve the dispute.

The Code basically stipulates that a mediation process must be activated by the aggrieved party. Mediation is a process involving the resolution of disputes by consensus. This has worked extremely well within Australia and has kept disputes out of costly court proceedings and provided quicker solutions in many instances. If mediation does break down then the parties may still decide to go to court.

In a long-term business relationship disputes will inevitably arise. However regular surveys of Australian franchising have consistently found that the rate of disputation between franchisors and their franchisees is around 2%. This is a very low number when compared to disputation and failure rates across small business in general.





## CHAPTER 5

# Who polices the franchising laws?

The Franchising Code of Conduct was enacted pursuant to the Competition and Consumer Act. Without getting too technical, this means that the Australian Competition and Consumer Commission, or the ACCC as it is commonly known, is the official regulator of the franchise sector. The ACCC monitors the operation of the Code, and handles any complaints concerning breach of the Code.

The ACCC also has a much broader role, being to monitor competition, fair trade and consumer protection. The ACCC describes its purpose on their web site as follows:

“The ACCC promotes competition and fair trade in the market place to benefit consumers, businesses and the community. It also regulates national infrastructure services. Its primary responsibility is to ensure that individuals and businesses comply with the Commonwealth competition, fair trading and consumer protection laws.”

So the ACCC exists to ensure business dealings in Australia are fair. They also monitor the franchise sector and deal with any complaints concerning breach of the Code or the Competition and Consumer Act.

The Code is not the only part of the Competition and Consumer Act relevant to franchising. The prohibitions on misleading or deceptive conduct, unconscionable conduct, price fixing and exclusive dealing also often apply to franchising. As a consequence the Franchise Council of Australia believes Australia has the world’s most comprehensive regulatory environment for franchising.

The ACCC has produced its own guide for franchisees which contains much useful information, and includes details of the various laws affecting franchising. The guide also outlines the ACCC’s enforcement processes, and contains information on how to make a complaint or handle a dispute. For more information see [www.accc.gov.au](http://www.accc.gov.au)



## CHAPTER 6

# **Am I a suitable franchisee?**

This is perhaps the most important question to ask and sometimes the hardest to answer objectively.

Franchising is very much a team and family environment. If you:

- 1 are not a team player;
- 2 are stubborn;
- 3 don't like working with others; or
- 4 are overly entrepreneurial and want to do everything your own way,

then franchising may not be for you.

However, if you enjoy being part of a team that is well coached and has the ability to cross-pollinate ideas and concepts for mutual gain, then franchising may be your best option to enter the small business arena. Done well, franchising allows a franchisee to focus on customer service and day to day operations, with the franchisor focusing on brands, systems, product supply, innovation and the bigger picture. Franchising suits people who want to follow a system as customers of networks want a consistent retail experience.

Franchising is not risk free. It is not like working in a job. Entering any small business, including a franchised business, carries with it a degree of risk. Businesses take time to get established, so you need to have adequate working capital and perseverance for the early times. Some areas are more affluent than others, there are different ethnic mixes, some areas have greater competition, etc. And the economy has its ups and downs. If you are the first franchisee in a system it stands to reason that your level of risk is higher than for later franchisees, due to the inexperience of the franchisor. They may have proven their concept over several sites or locations but they are still new at franchising. If there are more franchisees in a system it would be logical to assume that the degree of risk is reduced proportionately. BUT, every separate franchise has risks to its locality or geography that are exclusive to it and thus unquestionably some risks will remain no matter how much experience the franchisor has. Plus it is important to check that the underlying business is not a fad, but has substance and long term customer appeal.

Like any family or organisation, within a franchise there has to be ultimately a decision maker. A person who shoulders the responsibility of that final say. Most successful franchise organisations are very consultative with their approach and listen hard to what their franchisees are telling them, but it is the franchisor who will make the ultimate decisions. So, as a franchisee you have to accept from the outset the concept that sometimes a franchisor will make a decision for the benefit of the entire franchise network that may not suit you in your particular business. Most of the time this will not occur but it is a fundamental of franchising.

### WHERE DO I START?

Some basic questions need to be addressed while contemplating whether to buy a franchised business.

### WHAT DO I LIKE DOING?

There is little point in becoming a dog wash franchisee if you don't like animals or an automotive retailer if you have no interest with cars. Clearly you will be happier in a business you enjoy. Make a list of these business types and then see if a franchise already exists in this field. Usually you will find several options.

### AM I GOOD AT WHAT I ENJOY? IS THERE A BUSINESS OPPORTUNITY THERE?

Unfortunately the world is littered with failed businesses where individuals have tried to make a business out of their hobby. They proceed with their heart not their head, not recognising the hobby will not deliver the necessary income to survive. Similarly, just because you like doing something doesn't mean that you are good at it.

### **WHAT ARE MY PERSONAL STRENGTHS AND WEAKNESSES?**

You need to be brutally honest with yourself. Make a list of both your strengths and weaknesses and see if others perceive you the same way.

### **WHO DO I ASK?**

Friends can sometimes be honest with you about where your major attributes lie. Pick a friend who will be very honest with you, not one who will just say what you want to hear. Be prepared to hear information you may not like but take it in a constructive manner. What may seem like a cruel comment today could save you from a financial disaster later. Spouses are great sources of the truth – if you can handle it! Obviously your partner's opinion is vital to such a big decision and to proceed without their support would be ill advised anyway.

Please ask people that are successful in business already, not the next door neighbour “Eddie the Expert” who knows a mate that went broke because he bought a franchise. Ill informed advice that doesn't take into account all the relevant factors is highly dangerous.

### **AM I PREPARED TO FOLLOW THE SYSTEM?**

If you are trying to reinvent the wheel from day one then don't enter a franchise. The vast majority of successful franchisees are those that buy the formula and stick to it, recognising its strengths.

### **AM I PREPARED TO WORK HARD?**

To be successful hard work is unavoidable. You may think that you worked hard when you were employed by someone else, but as a self-employed franchisee you will appreciate what stress and long hours really are. The difference is that you will probably enjoy it and not even consider it a chore. You will also learn that the longer and harder you work the luckier and more successful you become! What an amazing coincidence. Working for yourself is certainly mentally rewarding and most who experience it find going back to an employed position very difficult. But make no mistake, it will be hard work and do not expect to sit back whilst the franchisor does everything for you.

### **DO I UNDERSTAND AND ACCEPT THAT EVEN AS A FRANCHISEE I COULD FAIL?**

Franchising is not a guarantee of success and you should never assume that it is. Whilst all the statistics point to franchising being many more times successful than conventional small business it can never be a guarantee. If you want a guaranteed income you are better off in employment, not in a business.

### **AM I PHYSICALLY AND MENTALLY FIT ENOUGH TO TAKE ON A NEW VENTURE?**

Do not assume that not being a service style franchisee like cutting lawns or cleaning cars reduces the need for physical fitness. If you are entering a retail franchise and you are used to sitting behind a desk all day you will find your back and legs complaining loudly until you get used to it.

Are you strong enough to make sound business decisions where you can disassociate yourself from the needs of the business and your personal desires? Put simply, are you prepared to take out another loan to buy more stock? Are you too frightened to do this despite having done the numbers to prove this makes sense? Are you prepared to tell friends that you can't play golf on Saturday as you have a big sale on and the staff won't do as well if you are not there?

### **ARE YOU TOO OLD TO TAKE THIS ON?**

Can you build the business over time to the point you can sell it for capital gain before it exhausts you? Most businesses require lots of hours in the business, particularly in the early years.

### **WHAT CAN YOU REALLY AFFORD?**

Never commit to a business that uses up every available dollar that you have. Always have some resources available to draw upon if things go worse than planned. Experience tells us that everything costs more than we expect and the last thing we need is unnecessary financial pressure when we are starting out and have so much to learn and attend to. Obviously it pays to have professional advice in this area and your accountant is a good contact.



### **HAVE YOU GOT EXPERIENCE MANAGING PEOPLE?**

If your business opportunity involves staff you will need to be able to encourage and control but also discipline and teach. Can you do that? Most business owners will say that staff selection, training, motivation and management is the most important aspect of their business.

### **WHAT ABOUT MY FAMILY?**

As previously suggested, you should not commit to a business without the support of your partner. But it goes further than that. Do the kids understand that you may not be home to play with them as you have been and that you won't be able to take them to footy or ballet because you will be working? Are you prepared to make these sacrifices?

### **WHAT WILL MY FRIENDS THINK?**

It sounds a bit strange, but what your friends think will be important to your happiness. Will it be socially acceptable to your group of friends that you have left a senior job and bought a hairdressing franchise, or a courier business? Would they think more highly of you if you had bought a book shop franchise? Is it important to you what they think - even though both could make you substantial money and both are proven and highly successful franchises?

### **WHY ARE YOU EVEN THINKING OF DOING THIS?**

Are you just desperate to get away from your current employer? What is it you are really looking for? More money? A new career? To build a saleable asset? Job satisfaction?

It is important to be comfortable that you are buying a business for sound reasons that are well thought through and understood. Franchising should not be seen as an escape from the past, it should be the starting point for your future.

## CHAPTER 7

# **Do I want to be a franchisee? The advantages and disadvantages**

There are advantages in franchising, but there is a flip side to the franchise relationship that may mean franchising is not suited to everyone. Each element or feature of franchising has a flip side. Both aspects are considered in this chapter.





## Advantages

### TRAINING

One of the great features of franchising in terms of the Australian economy is that it often helps people get into business who have never been in business before. The franchisor will train the franchisee in the new venture both at start-up and usually on an ongoing basis. The franchisee is taught a lot more in a short period of time than they would have learnt without being part of the franchise system. Mistakes are costly and a franchisee shouldn't make many with the franchisor guiding them and having faced most situations before. These days, the training is not just on how, for example, to follow the recipe in a doughnut franchise but also on general business management matters such as reading and understanding mark ups, gross and net profits, profit and loss accounts and balance sheets. The franchisor may also offer additional training to the franchisee's staff under certain circumstances. On the flip side, if you already have all the skills you need to operate this form of business you may find the training does not add the same value or you may want to do things your own way and not follow a system.

### BRAND

If an individual started up Ted's Chooks there would be no recognition of the name or brand in the marketplace. It would take years of advertising and investment to create a brand that was recognised. However, to open a Red Rooster, Chooks or KFC franchise means instant recognition. The brand value offered by a good franchise system is probably the greatest benefit of being in a franchise. A small business can never really hope to build on brand, only local goodwill.

### BULK BUYING

As a franchise system grows it is able to exert pressure on suppliers to provide more competitive pricing. Franchisees are therefore often able to buy at the best price in the market. It is possible for a franchisee to be so well placed in this regard that they save more on their purchasing costs than their management fees cost. Sometimes suppliers show their support in the form of rebates on sales volumes. If this occurs it must be disclosed in the Disclosure Document and the franchisor must indicate whether the rebates are shared with franchisees. Sometimes the supply deals do not suit everyone, or franchisees think they can cut a better deal by using their own suppliers. Rarely is this sustainable but some business owners just prefer to be independent.

### CAPITAL

In line with the bulk buying position, often the franchisor will have negotiated national pricing on supply of shop fittings or equipment that a franchisee would not have access to outside the network. Such financial advantages can even apply to financial items such as credit card rates and insurance.

### ADVERTISING AND PROMOTION

A franchisee who is part of a group will often get far more advertising than they could ever dream of planning as an independent business person. On the other hand if a business owner already has a strong local presence and good marketing skills the franchise model may not add the same value.

## Advantages

### DEMOGRAPHIC RESEARCH

Many franchisors use statistical data to ensure territories are of viable size and location. The franchisor's experience in selecting sites, stronger bargaining power in negotiating leases and contributions such as marketing or free rent can give a franchisee a magnificent start in business.

### SUPPORT

The franchise has the advantage of having a team of people to advise and assist them and is in business for themselves but not by themselves. The BDM (Business Development Manager), FSM (Field Support Manager) or in smaller systems, the franchise owner itself is available for advice on all manner of issues.

### RESEARCH AND DEVELOPMENT

Most Franchisors are continually working to improve the system, so they will try new products and services before they make them available to franchisees in the network. They will perhaps even travel overseas to source new products. All of this work is virtually impossible for an independent small trader to undertake and is a much undervalued and unrecognised area of franchising by franchisees.

### FINANCE

The banking fraternity have done their homework. They have recognised that lending to franchisees is far safer than lending to the general small business community. Accordingly, they have set up Franchise Departments within their organisations with many banks using a grading system whereby they will lend a certain amount unsecured because of the strength and history of the franchise concerned.

### TERRITORIES

Not all systems have defined geographic territories. Indeed, it is a trend in Australia not to grant territories, but where they are, a franchisee understands that normally no other franchisee from the same system will be able to solicit business within their territory and this gives them a degree of protection. This, however, may or may not apply to the franchisor operations.

### PROVEN SYSTEMS AND OPERATIONS

It is generally accepted that a franchisor should run at least one pilot operation for twelve months or more before franchising the concept. This is not always possible, but the longer a franchisor has been in business and the greater number of operatives they have, should be some indication of the fact the business is a proven and successful.

### ADMINISTRATION

Most systems have an Operations Manual containing written procedures that are available online. These Manuals are an invaluable source for instant problem solving. Web sites with security access are also used for training in some systems. The "back office support" for all day-to-day administrative functions extends to accounting systems.

### BENCHMARKING

To be able to compare business performance with peers is extremely useful.



## Disadvantages

### RESTRICTIONS

As we saw earlier, the franchisor does hold ultimate control and some franchisees find the restrictions imposed too claustrophobic. It is important for the franchisor to have control if only for one simple reason: If a franchisee is performing badly or even illegally, the franchisor must have the power to remove that franchisee as quickly as possible before they damage the brand and impact on the business of every other franchisee. The restrictions must be regarded as a trade-off with the benefits of the system. If the franchise is a strong one the restrictions will be far more palatable when this is taken into account.

### FEES

The fees never disappear. Some franchisees can become resentful of the need to pay ongoing fees. From the franchisor's perspective the ongoing fees are needed to recover the investment in building the system and undertaking the various behind the scenes activities that make it possible for the franchisee to carry on business. A successful and profitable franchisor helps the franchisee, but of course the key is that the franchisor provided value for the fees paid.

### SELLING THE FRANCHISED BUSINESS

When the franchisee wishes to sell their business there are normally restrictions placed on the outgoing franchisee including the franchisor having right of first refusal. The incoming franchisee must also pass the franchisor's application criteria to ensure ongoing franchise quality. This can prove to be a very difficult situation where a franchisee thinks they have sold the business only to have the franchisor reject the applicant. The Code states that a franchisor, however, cannot unreasonably withhold their consent to an incoming franchisee.

### COMPLACENCY

A franchisee like any other business person can become tired and lose focus. Too much success may even result in allowing staff to run the business causing performance to decline. Good franchisors may advise a franchisee it is time to sell and move on and this can be hurtful despite its practicality.

### DIRECTION

As stated earlier, some policy decisions may not impact favourably on a franchisee's area and even impact profitability in the short term which can be a point of annoyance to franchisees. Franchisees should bear in mind that franchisors are also capable of making mistakes such as a poor stock buying decisions and these can impact franchisees

### EVALUATION

It is difficult to evaluate the opportunity for a new franchise and equally difficult to evaluate the franchisor. To be the very first franchised business in a "network" takes courage and a far higher degree of risk. However, wouldn't you have liked to be the very first "Subway" franchisee?

### COMMITMENT

Long and unsociable hours can be very disruptive on lifestyle and some franchisees cannot cope with this intrusion on their lives.

The disadvantages of franchising are not so much separate disadvantages, but the flip side of some of the advantages. Or alternatively they are unfulfilled promises or advantages. It is important to ensure that a franchise delivers the promised advantages.

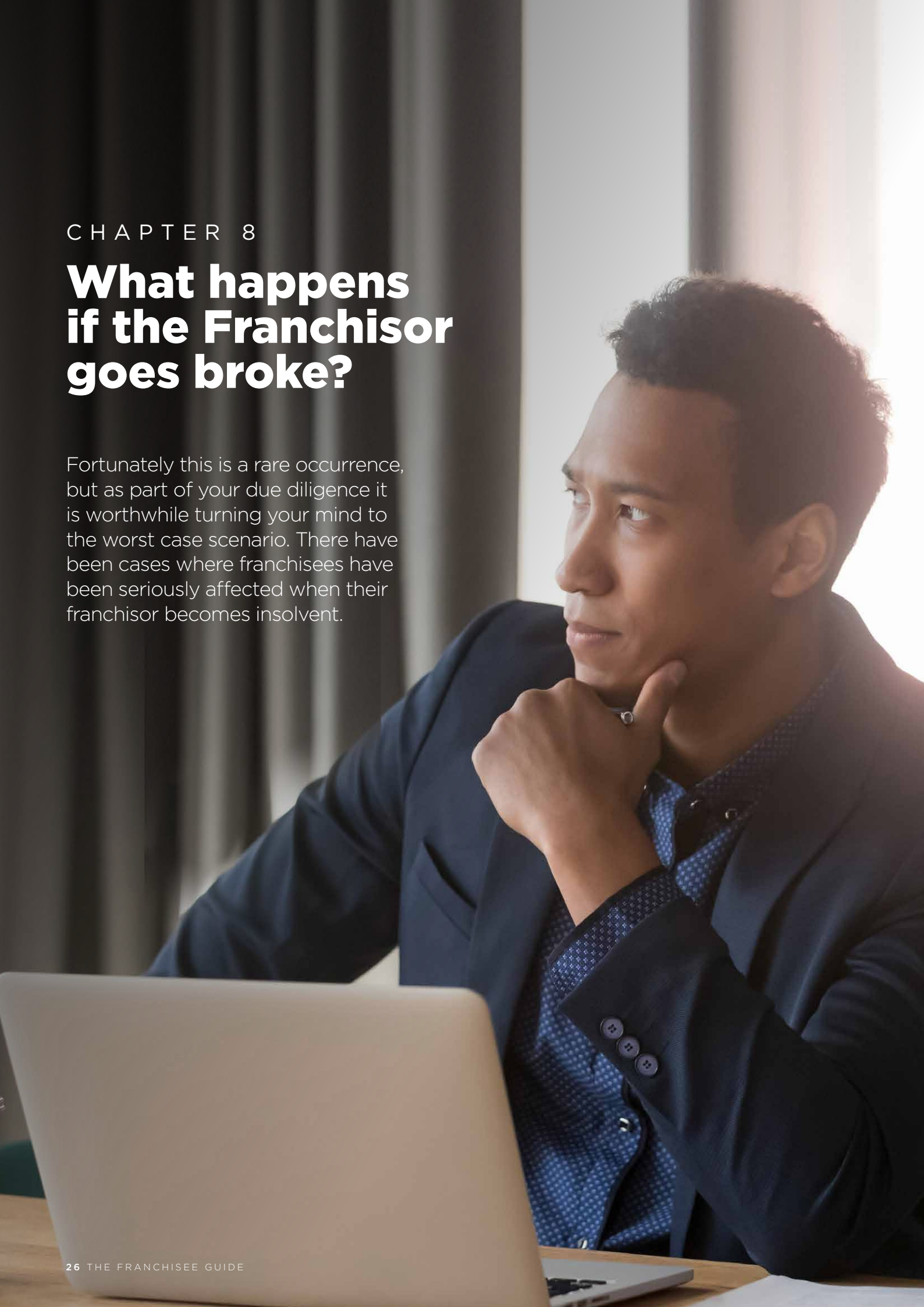
The major additional potential disadvantage of franchising is the more interdependent nature of the relationship. If the franchise system fails and the franchisee is unable to continue in business this is a significant disadvantage. Not all franchise systems are set up like this. The franchise systems that require additional due diligence are those where the franchisee is dependant on the franchisor for product supply or other things beyond the brand and the system.

So when you are looking into franchising, don't be blinded by the theory. Check out whether the franchise delivers the advantages. And if the business is more captive than normal, check out the franchisor more carefully to ensure they are strong.

## CHAPTER 8

# What happens if the Franchisor goes broke?

Fortunately this is a rare occurrence, but as part of your due diligence it is worthwhile turning your mind to the worst case scenario. There have been cases where franchisees have been seriously affected when their franchisor becomes insolvent.



The purpose of this chapter is to highlight what could occur, and some of the possible consequences. Importantly there might be some things you can do and questions you can ask to improve your situation. It may even be appropriate to ask for some amendments to your franchise agreement to protect you.

### HOW COULD YOU BE AFFECTED?

So what will happen if your franchisor goes broke, and how badly will you be affected? That depends on a number of things:

- 1 The reasons for failure. If the franchisor fails because customers no longer want the product, those same reasons would affect your business. So check your business is not a fad, and work hard in collaboration with other franchisees and your franchisor to make sure the business always remains relevant to customers. And be careful if your franchise relies on the sale of produce that needs to be imported, as exchange rate fluctuations and customs and import complications need to be built into your planning;
- 2 The extent of the failure, and whether it is terminal. It maybe that the franchisor enters into insolvency to restructure itself, or to seek relief from one or two particular obligations. This is particularly common in the US, and becoming more common in Australia. Alternatively the franchise assets may be quickly sold to another company (or even to a group of franchisees) that is keen and able to take on the responsibilities as your franchisor. In these cases the impact is likely to be less severe, but you still need to be able to ride out the storm until the franchisors comes out of insolvency or a new franchisor is established, or buys the business and is able to fully resume the relationship;
- 3 The level of interdependence between franchisor and franchisee at a business level. The higher level of interdependence, the greater the risk to a franchisee. To understand what is meant by this, consider the following example. In the event of the failure of a typical real estate franchise a franchisee may be able to simply continue trading under the brand, or (provided this is allowed under the franchise agreement or can be achieved by negotiation or legal action) exit the network and join a new network. In this case the franchisor and franchisee are not particularly interdependent.
- 4 On the other hand if the franchisor is also your supplier, holds the head lease of the premises and provides essential services or support, you as a franchisee are more vulnerable. You are dependent on the franchisor to carry out your day to day dealings with customers, so if it fails you are in more trouble. This is also the case if, instead of you paying the franchisor franchise fees and royalties, the franchisor receives money from customers and pays you a commission. Such a situation applies in some financial services companies, and was also a major problem for the franchisees of Kleenmaid when it failed. You are then often a creditor of the franchisor as well as being affected as a franchisee.

Another example of serious consequences is the failure of the Kleins business, where the franchisor was the supplier and in many cases not only held the head lease but provided substantial rent subsidies to some franchisees. When the franchisor failed the franchisees could not afford to pay the true market rent, and so the landlord terminated the leases and found another tenant.

Kleenmaid and Kleins show how franchisees can be affected. Of course the real problem in both cases was that the underlying business and products had lost their appeal to customers and the retail concepts were the subject of significant competition. The problems were not caused by franchising itself.

- 5 The skills, experience and financial strength of the franchisee. Franchisees new into the business who require training or support, are still establishing their customer base or are highly geared are more vulnerable;
- 6 The nature of the insolvency. There are various types of insolvency – receivership, administration, liquidation, personal bankruptcy. Each is slightly different, and the appointed insolvency officials have different powers and obligations. For example under administration the administrator actually has power to stop creditors such as landlords from taking action to recover their assets. A detailed analysis of the difference is beyond the scope of this chapter, but the nature of the insolvency will influence how a franchisee should act.

### ADDITIONAL PROTECTIONS

There are a few things you can do to ensure you are as protected as possible in the event that your franchisor becomes insolvent. Here is a brief checklist:

- 1 Look for warning signs in the financial statements attached to your disclosure document. Classic warning signs are that a related entity or director has been previously been insolvent, the franchisor has been making losses, there are few net assets on the balance sheet or there have been unsatisfied judgements against the franchisor;
- 2 Discuss with your legal and business advisers the possible consequences to you of failure of your franchisor;
- 3 Consider whether you will be able to continue to use the trade mark and other intellectual property if the franchisor fails. Usually you will be able to do so provided you continue to pay royalties;
- 4 Consider whether you want to negotiate any amendments to the franchise agreement to provide additional rights or protection. For example you may want to be able to renegotiate the fees or be relieved of certain obligations in the event of franchisor insolvency, or you might want to be able to exit the network. If so, you could negotiate a clause giving you the right to terminate the franchise agreement in such a case. This right would also include a release from any post-termination restraint of trade clause that might otherwise apply.
- 5 Consider if you would like to have an option to buy certain assets, although in some cases the insolvency official of the franchisor might be able to avoid being bound by such a clause.

Don't jump too hastily if problems arise. If you leave the network you will not be able to continue to use the trade mark or any other intellectual property once the franchise agreement is terminated. Be careful not to underestimate the value of the brand, or overestimate your ability to go it alone. It is not a pleasant experience when a franchisor becomes insolvent. However in most cases franchisees are less affected than employees, suppliers and creditors. Insolvency laws have been designed to encourage companies to enter into insolvency earlier. As a consequence they are better placed to emerge and continue in some form.







### WHAT TO DO IF PROBLEMS OCCUR?

There are often early warning signs of insolvency – late payment of invoices, loss of key employees, cut backs in spending. However insolvency can still occur quite quickly and franchisees could easily be caught unawares.

Here are a few suggestions as to what to do if your franchisor becomes insolvent:

- 1 Speak to the franchisor's staff and gather as much information as you can;
- 2 Find out the name of the administrator, liquidator or receiver and obtain as much information as possible;
- 3 Contact other franchisees, as they will be in the same boat. It is critical to act collaboratively, at least in the early stages;
- 4 Get expert legal advice immediately so you understand exactly the legal consequences of the insolvency. Often legal advice can be provided to the group, at considerable cost savings;
- 5 Consider your own personal position, as it may be different to the position of other franchisees. You will probably need to speak to your accountant, and possibly get your own legal advice if your position is not covered by any group advice;
- 6 Find out what other franchisees are doing, and keep in touch. If group negotiations are happening, keep informed;
- 7 Be pro-active in dealing with the insolvency firm appointed. Often they will try to placate you, as they will be keen to continue to receive royalties. However this is also a good time to negotiate, particularly if you want any concessions or wish to exit the network;
- 8 Assess your position and develop a strategy;
- 9 In due course consider your legal rights. The Code and the Competition and Consumer Act give you remedies not available to others. For example you may be able to sue the directors and other employees of the franchisor if they have breached the Code or engaged in misleading or deceptive conduct. You may also be able to gain assistance from the ACCC. In many cases when a franchisor becomes insolvent there is little left for unsecured creditors, so a damages claim against the company might be worthless. However in the case of a franchisee it might enable you to set off money you owe the franchisor, and may enable legal action to be taken against any individual aiding, abetting or being knowingly involved in any breach.

A photograph of a smiling woman with long brown hair, wearing a white blazer and a gold necklace, looking towards the right. In the background, a man with a beard and a light blue shirt is also smiling. The background is blurred, suggesting an office or business setting.

## CHAPTER 9

# **What questions should I ask the Franchisor?**

What follows is a list of questions to enable you to ascertain the strength of the system and the people behind it. This is by no means an exhaustive list and is designed for you to weigh options side by side. Whilst some of this information will be included in the Disclosure Document (and other documents) if you take matters further, it is far better to ask and confirm information than to assume anything.

Firstly, you will get a very good idea of the professionalism and atmosphere that resides within the system by the way your enquiry is treated. Are you promptly and courteously received? What is your gut feeling about the person you deal with? Just because you may not like them doesn't mean it's a bad business, but if you don't like them and they will be your main point of contact, then the relationship will make business very difficult.

In the early stages of enquiry, the professional franchisors will give you a form that describes in detail all of the steps involved in your recruitment process. For example, if and when any deposits are payable including when they are refundable. Being well informed and being part of a structured recruitment plan tends to eliminate matters being overlooked.

So here are some sample questions in no particular order of importance. Please note that some questions may not apply to your particular circumstances. And there are no right or wrong answers – the questions will just help you get a better understanding of the business. Plus in some cases you will be able to cross-check the answers given with the disclosure document.

### GENERAL QUESTIONS

- 1 Please explain to me a typical day as a franchisee – what will I be doing?
- 2 Apart from the management service (royalty) fees we pay, how else do you make money from the business?
- 3 Is there a mark-up on products supplied to us by you and if so how much?
- 4 Do you get rebates or incentives from suppliers that franchisees buy from and if so, is any of that shared with the franchisees?
- 5 Are there any minimum performance criteria such as minimum sales turnover we are expected to reach? What happens if we don't reach it?
- 6 Is there a Franchise Advisory Council or other established group of franchisees in the network?
- 7 Do you expect that I will have to buy any new equipment or make any further capital purchases during the term of the franchise? If so, what?
- 8 What time would you expect me to begin and finish a day's work?
- 9 How many days a week must I put in?
- 10 How many people do you have to support me and what roles do they play? For example, do you have a specialist operations, business development, marketing or I.T. person?
- 11 Is it possible to meet the franchisor staff that I will be dealing with?
- 12 Can I contact some existing franchisees so I can ask them some questions? Beware the franchisor that then gives you two or three of his franchisees to talk with. You should get unrestricted access to every single franchisee, including those that have left the system. See below for more information on this.
- 13 I understand not all franchisees are successful. How many franchisees have failed in the past 3 years? What caused them to fail?
- 14 If my business was not succeeding what would you do?

### OPERATIONAL QUESTIONS

- 1 What exactly will you do to help me?
- 2 Do you do any marketing to launch my new business?
- 3 What training will I get?
- 4 How often can I expect to get help – via on-line, via email, via phone and in person?
- 5 What else do I get for the payment of fees?
- 6 What are all the ongoing fees and when and how do I pay them?
- 7 What monthly sales trends or seasonal factors should I be aware of? Am I entering the business in a good phase or a weak one?
- 8 Who will be available to help me? When? What experience do they have in operations or small business generally?
- 9 Is there an operations manual? Can I see it?
- 10 How do I train my staff?

### SUPPLY QUESTIONS

- 1 Do you restrict who I can buy from? If so, how does this work?
- 2 Are you one of my suppliers and what happens if for some reason you cannot supply me?
- 3 How are prices set for what I buy?
- 4 Are there any rules about the prices I charge customers?



**COSTS AND EXPENSE QUESTIONS**

- 1 Are you prepared to advise me of:
  - a Historical revenue data of the system and individual franchisees?
  - b My expenses?
  - c Recommended prices for goods to be sold?
  - d Predictions for gross and net profit?
- 2 What financial information do you provide so I can verify the business and take this information to my financial advisor?
- 3 Do I get to see actual accounts?
- 4 What method are you using to demonstrate to me that certain turnover and profitability is attainable?
  - a Average sales or profitability across the group?
  - b Franchisee sales and profitability only?
  - c Franchisor owned franchises only?
  - d Similar location results only?
  - e Highest and lowest performance franchises?
  - f Specific site performance history?  
(Do you expect increased performance from me and if so, by how much?)
  - g Other methods?
- 5 How much is the franchise fee? What does it cover?
- 6 How much is this really going to cost me (including all the extras such as legal and accounting advice, not just the franchise fee)?
- 7 How much money should I have as a back up (i.e. working capital)?
- 8 Do you as franchisor provide any finance or do you have arrangements with banks or other lending institutions to assist me?
- 9 What cash flow issues will I face as my business grows?
- 10 What are the seasonality impacts?
- 11 What accounting system do I use and who trains me in it?

**INCOME QUESTIONS**

- 1 How long will the recruitment process take and when can I realistically expect to be earning some money?
- 2 In your experience how long will it take me to get to optimum performance?
- 3 What is the system average Turnover/gross profit/net profit?
- 4 Is the network average turnover different from company managed franchises?

**TERRITORIAL QUESTIONS**

- 1 Do I get a defined geographic territory?
- 2 What happens if another franchisee wants to come into my territory, or if I want to sell something to a customer outside of my territory?
- 3 What research can you show me that justify your rationale in breaking up the territories to these sizes?

**TRAINING AND SUPPORT QUESTIONS**

- 1 Where is the induction training?
- 2 How long is induction training going to take?
- 3 Who else can I bring to training and what are the costs?
- 4 Do you help me with general business advice?

**ADVERTISING AND MARKETING QUESTIONS**

- 1 How much do I pay for advertising and marketing?
- 2 Is it a flat fee, percentage of revenue or how is it worked out?
- 3 What do I get for this?
- 4 What am I expected to do on a local level to advertise and promote my business?
- 5 Do you have templates or packages already established for these promotional activities?

### OPERATIONS MANUAL QUESTIONS

- 1 Do you have an Operations and Procedures manual which I can read?
- 2 Is it available on-line?

### PERSONAL QUESTIONS

- 1 What do you see in me that makes you think I would succeed in your franchise?

### FRANCHISOR QUESTIONS

- 1 What is your plan for the business over the next few years? Do you plan to sell or exit?
- 2 What happens to me if you as the franchisor want to sell your business?

### LENGTH OF TERM QUESTIONS

- 1 What happens at the end of the term if I want to renew? How do I exercise my option?
- 2 What are my entitlements once the term and my options run out completely? If it all goes well would you normally give me an extension? Would there be a fee payable? Do I receive any compensation at the expiration of my term?

### SELLING MY FRANCHISE QUESTIONS

- 1 When I want to sell my franchise what happens?
- 2 Do you as franchisor buy it back? How do I find a buyer?
- 3 What is your process for approving the purchaser? Do you have any other requirements?
- 4 What do you offer an incoming franchisee (e.g. do they get a whole new agreement and term)?

If your franchise is a retail franchise then there are numerous questions you need to ask about fit out and the lease arrangements.

### RETAIL SPECIFIC QUESTIONS

- 1 Who finds the location, you or us?
- 2 Who negotiates with the landlord?
- 3 Whose name is on the lease? Does the franchisee enter the lease or do you hold the lease as franchisor?
- 4 Who do I pay the rent to?
- 5 How is the rent paid?
- 6 If the landlord gives you any inducements such as free rent or a fit out allowance do you pass that on to me as franchisee?
- 7 Do you set the store up for us in a "turn key" fashion or can I use my friends to build the store given that could save me money?
- 8 Under the Code you must give me the history of the retail site but please tell me what has happened in your own words.
- 9 What are the average rent and staff to takings ratios? For example, if my turnover is \$500,000 and my rent is \$100,000 (20%) is that acceptable within your business model?
- 10 In your experience, to get \$500,000 turnover from this location what do you expect my staff costs to be? E.g. 30% would make that \$150,000?
- 11 Would that include a wage for me? (Note: your business advisors will need to prepare a business plan and analysis specific to your requirements for you to make an informed decision.)
- 12 How often will I have to spend money to refit the premises?
- 13 Can I lease any of the equipment? If so do you have any preferential arrangements?

## TALKING TO EXISTING FRANCHISEES

It makes sense for an enquiring prospective franchisee to draw up a list of half a dozen questions (see below) and ring every single franchisee in the network. It is far better to spend two days on the phone talking to people who are operating the business to validate it, rather than just ringing a couple and taking their word for it to invest your life savings.

Just remember that it is not reality to expect every franchisee to be 100% happy all the time. But if 7 or 8 out of ten of the people you contact are positive, you have probably found a good business. You must then decide if that business is right for you. Remember, the franchisor will be making the same judgement about you being right for their business.

Most franchisees will be helpful and obliging when you ask questions because they went through the same process themselves, but it is unfair to expect them to reveal private or financial information.

Perhaps try the following questions when speaking with existing franchisees, drawing up a chart of answers to best understand the situation (and ensure extreme views or statements stand out).

- 1 Do you get the support you need and expect from your franchisor?
- 2 Was the training adequate?
- 3 Are you making the profits you expected?
- 4 If you had your time over again would you still buy this franchise?
- 5 Will you be able to sell this asset for capital gain?
- 6 Are you enjoying life as a self-employed person?

## LEGAL QUESTIONS

Unless you are an existing franchisee of the system or very experienced in business it is very important that you get legal and business advice. Indeed the Code requires you to certify you have obtained advice or certify that you chose not to do so. Don't cut corners on getting advice – speak to an expert, not just the person around the corner.

Your lawyer will know the questions to ask. Every system and agreement is different. These questions are designed to help you obtain proper advice in the best way. Ask your lawyer:-

- 1 Are they an expert in franchising? Ask them to give examples of similar situations. Ask them if they have experience in relation to the particular franchise. See [www.franchise.org.au](http://www.franchise.org.au) for a list of experts.
- 2 Clearly set out the scope of work, and then get them to give you a fee estimate. Normally the work would include reading the franchise agreement and disclosure document, providing advice in a meeting with you and possibly suggesting amendments to the agreement. This would normally take a franchise expert 3-4 hours, and a fixed fee quote should be possible. Don't be afraid to ask how long it will take, or what it will cost. Good lawyers will be happy to answer.
- 3 Ask the lawyer to verbally summarise for you the key commercial terms, so you can check this against your understanding.
- 4 Ask for the lawyer's opinion on the financial position of the franchisor and anything that seems unusual in the disclosure document.
- 5 Be careful asking for things in writing – this can add extra cost.
- 6 By all means ask for important changes to the agreement if appropriate. However, don't let your lawyer try to re-write the agreement. It is unlikely a franchisor will agree to a lot of changes as the franchisor wants each franchisee to have the same deal and agreement.

## CHAPTER 10

# The paperwork

Please expect to be completely overawed and swamped by the paperwork involved. It is a daunting being given pages of legal documents and being asked to read, understand and sign them.





However, franchising is a contract - the deal and the responsibilities of each party are set out in the franchise agreement. So you have to read it. Don't be worried - skim the documents so you get the general idea. Then get advice - much of what is in these documents is standard and an independent lawyer will know which bits to study and check in particular. Although the terms of the franchise agreement are going to be fairly standard form, your franchisor will be impressed if you have read the documents and go back with loads of questions. A good franchisor will be very wary of an applicant who has few questions. And your circumstances may justify a few special provisions.

The typical documents you are likely to see are:-

- 1 A confidentiality agreement - to ensure that the franchisor's intellectual property is protected and if you decide not to proceed you cannot compete with the system.
- 2 An application form containing all your details - make sure you are honest, as a franchisor will rely on this information.
- 3 An Information Statement, which is provided to you at the earliest opportunity when you express interest in a franchise, and is intended to give you some initial information on franchising and recommendations as to conducting due diligence and getting advice.
- 4 The franchise agreement - which sets out the deal and what each party must and must not do.
- 5 The disclosure document - which contains lots of useful information to enable you to commence due diligence.

In due course you may see an Operations Manual, which sets out the detail of how the franchise operates on a day to day basis. Although this is usually provided after you sign or during training, you should ask if it exists and can ask to see a copy.

## THE DISCLOSURE DOCUMENT

After you submitted an Application Form and possibly have signed a Confidentiality Agreement, and paid a refundable deposit, if the franchisor likes what he sees in you, you will receive a draft copy of the necessary documents. You should be reviewing three documents at this time.

- 1 The Disclosure Document;
- 2 The Franchise Agreement; and
- 3 The Franchising Code of Conduct

("the Franchise Legal Documents")

The information contained in the Franchise Legal Documents and the order in which it is presented is strictly controlled by the Code, some of the key bits of information being;

- 1 Which entities are involved in the franchise;
- 2 Who the people are that are significant and their histories and qualifications;
- 3 If there is any outstanding litigation against the franchisor or individuals;
- 4 If the franchisor is paying commissions to an agent to sell franchises. (This is of course important for you to understand if the person you are dealing with has a vested interest in selling you the business);
- 5 A detailed list of all the franchisees and their contact numbers - remember you should ring them all);
- 6 A list or table of all the franchises that have left the system and under what circumstances;
- 7 Details on the territory structures and boundaries;
- 8 How goods or services are supplied by you;
- 9 The arrangements for Advertising and Marketing (or any other funds);
- 10 How you make your ongoing royalty and other payments and how much they will be.
- 11 A very detailed set of data from which you should be able to ascertain precisely what costs you could be facing;
- 12 What financing is available to you (if any);
- 13 What the franchisor's obligations are to you and

what yours will be to him in the operation of the business;

- 14 A summary of all the conditions of the Franchise Agreement, which is a list of reference clauses to the Franchise Agreement;
- 15 Any other relevant documents such as leases; and
- 16 Any earnings information (any earnings information that the franchisor supplies must be on reasonable grounds and cannot be just guesswork or an outlandish and unsubstantiated set of numbers).

Attached to the Disclosure Document will be the franchisor's financials for the past 2 years. A strong franchisor is essential for a strong system, so read this information and get your accountant's thoughts.

Once you and your advisors are satisfied and you inform the franchisor that you wish to go ahead, you will be provided with these documents again, this time in the form in which they are to be signed, or in other words, including all of your personal details and any negotiated terms different to the standard terms.

You will also be asked to sign a receipt for this set of documents. The 14 day period under the Code begins running from when the Franchise Legal Documents are received so evidence of this is important. The franchisor cannot sign you up inside this time frame. This is another excellent measure under the Code to protect franchisees against high pressure sales and allows the prospective franchisee time to read and fully understand the document. Thankfully the advent of the Code has virtually removed fly by not operators from the franchise sector, but you should still be on your guard. You should never feel pressured. Take your time in making these very important decisions. It will typically take a couple of months for you to work through your due diligence, obtain advice and sign the various documents.



So just recapping a typical process:

- 1** Obtain general information on franchising and assess your suitability.
- 2** Choose the business and franchise best suited to your skills.
- 3** Make contact with the franchisor and proceed through the interviews and other preliminaries.
- 4** Decide to proceed, complete application form, sign confidentiality and begin the more formal process.
- 5** Obtain disclosure document, franchise agreement and other documents and read them. Begin due diligence on the business, ask key questions, contact other franchisees.
- 6** Decide to proceed, advise franchisor, receive formal disclosure as required by the Code. 14 day period starts to run.
- 7** Get expert advice and register any necessary changes to documents.
- 8** Sign franchise agreement.



## CHAPTER 11

# What happens after I sign?

When you actually come to sign your Franchise Agreement and pay all the entry fees and other costs surprisingly it can actually be a very deflating experience.

The expectation mentally, is that this day, which is likely the culmination of several weeks of intense activity and deliberation, will be a very exciting one and the bells and whistles will go off the moment that you sign and pay!

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What actually happens is ... Nothing.

For seven days you are still entitled to exercise your right to cool off, so the money will most likely be held in a solicitor's trust account until that period is over.

If you do decide to withdraw at this point there are normally substantial monetary penalties for doing so which will be clearly outlined in the Franchise Agreement (contract).

The franchisor is also unlikely to commence your induction training until this seven day period has elapsed despite the fact that both you and he will be very keen to start.

## INDUCTION TRAINING

Once the Cooling Off period is over you should receive comprehensive induction training to teach you how to conduct the franchise business. The time frame for this training will vary greatly from one system to another, as little as a week to several months. If it is the latter, it is important you have allowed yourself sufficient working capital (extra available funds) to draw upon whilst you build your new business.

It is imperative that you take your training very seriously and be prepared to work very hard at this time. Your future success depends substantially on how much you can learn in this time, so don't stay up late drinking with other inductees, concentrate very hard and please take plenty of notes to which you can refer later.

Some systems will bring in accountants, sales trainers or other specialists to assist your learning and skill development. A franchisor has a moral obligation to teach you not only their business but also to ensure you are prepared for the World of self-employed small business operator as well. BAS statements and charts of accounts, paying wages and a myriad of other knowledge must be imparted to you at this time.

You cannot be expected to remember everything and an experienced franchisor will never get annoyed or frustrated if you ask questions on matters you have already been shown. Indeed, they would prefer that you ask rather than guess and get it wrong as their brand is at stake!

The Operations Manual will most likely form the basis for your training and will be a vital source of information to you. If it is provided to you in hard copy you must keep it up to date and refer to it often – perhaps using it to train your own staff, and it is on-line, so much the better as the franchisor will keep it up to date.

During training you will probably meet other franchisees and form a bond with some who will also be a valuable source of information if you do not wish to ask Support Office.

Once you have passed training and are sufficiently competent the franchisor will then allow you to open for business. Then the work really begins! Don't sit back waiting for it all to happen in automatic mode. In every franchise system the harder the Franchisee works the more sales and profit they seem to work – no coincidence!

The Franchisor is not going to conduct the business for you, so from this point forward it is entirely up to you so go hard at it!



## CHAPTER 12

# What should I expect from the ongoing relationship?

Greg Nathan of The Franchise Relationship Institute is a respected adviser to the franchise sector and he had the foresight in 2006 to survey a large number of franchisees and asked the question “What do you want from your Franchisor?”

The results in descending order of importance were:-

- Credible Leadership
- Positive Interaction
- Responsive Support
- Profitable Business
- Effective Marketing

So the simple answer to the question of what to expect is – all of the above.

In simple terms you want a franchisor who knows their industry well and is a big picture person that is ahead of the game. They must then share that knowledge and explain their reasoning for setting the corporate strategies whilst also listening attentively to franchisees who operate at the coal face and responding accordingly. All this backed up by a marketing programme to drive new business with a solid profit return.

There are some key words that are reflective of a strong franchise relationship. Support, Encouragement, Help, Assistance, Guidance, Advice.

Every system is different. However, it is reasonable to expect a franchisor to be accessible, to provide support and assistance on request, to build and protect the brand and to visit you from time to time. In some ways it is like a sporting team. You are the player ultimately responsible for the result and the franchisor is the coach providing advice, assistance and support as required by the team plan.

A delivery driver wearing a blue cap and polo shirt is sitting in the driver's seat of a car. He is holding a white stylus in his right hand and pointing it at a tablet computer. The tablet is resting on a cardboard box. He is also holding the box with his left hand. A silver watch is visible on his left wrist. The background is slightly blurred, showing the interior of the car and some outdoor elements.

## CHAPTER 13

# What will the franchisor expect from me?

The Franchise Agreement will provide a long list of these expectations but the number one requirement a franchisor will have is for you to stick to the system.

Don't try and reinvent the wheel from day one and respect the franchisor's experience and knowledge of the business. Doing what you have been taught is far more likely to produce satisfactory results. Certainly all businesses evolve and change or they fester and die but as we saw from the previous chapter a good franchisor will listen to franchise feedback and respond accordingly. That is not to say the franchisor will make changes every time they are requested.

A typical list of franchisee requirements would be:-

- Pay all fees, marketing contributions and royalties on time. This is certainly not unreasonable and is an expectation of all business dealings.
- Start the business at the date agreed in the Franchise Agreement.
- Promote the business. What you need to establish is what this entails, is it distributing leaflets, making cold calls, advertising in Yellow Pages in your area?
- Use only authorised products and services. This is a key ingredient in most systems and serves to protect quality and consistency of delivery across the franchise network.
- Not to make any unauthorised representations; or in layman's terms don't suggest you speak with authority on behalf of the franchisor.
- To keep appropriate record. If the franchisor didn't insist on this the Tax man would regardless. It also makes great business sense if you intend to sell your business at a later date to keep these records. If you cannot prove your turnovers and profitability levels your asking price for your business will be severely limited. In many franchise systems a flat fee per week is paid to the Franchisor particularly where a lot of cash transactions are involved in daily dealings and in these instances it is very tempting for a franchisee to simply pocket the undeclared cash. This is very short term thinking and a good franchisee will quickly recognise that the business' money is not your personal money.
- Complete reports. If the franchisor is to provide educational feedback and benchmarking you must provide the data he needs.
- Attend meetings. How else can you exchange ideas and learn more from other franchisees as well as the franchisor? If there are problems a face to face meeting is always the best way to try and overcome them.
- Display correct signage. Don't mess with colours or size of logos as any deviation from the approved usage begins the dilution of brand value.
- Operate as per the Operations Manuals, because over time that has been proven to be the best way.
- Be of good character and don't lie, cheat or steal – treat others as you wish to be treated yourself.
- Operate safely and observe all laws.
- Attend training so you can keep up with everyone else and the developments affecting your business.
- Comply with the Franchising Code of Conduct because that is the law.





A photograph of two men in a professional setting. The man in the foreground is shown in profile, wearing a grey button-down shirt and glasses, looking towards the right. The man in the background is slightly out of focus, wearing a brown jacket over a blue shirt, also looking towards the right. They appear to be in a meeting or collaborative work environment.

## CHAPTER 14

# What happens if I have a problem?

The first and obvious answer to solving any problems is to face up to it and address it. Sticking your head in the sand or keeping quiet only serves to frustrate you and allow the problem to fester and grow.



Talk your issues through with your Field Manager, Business Development Manager or Franchise Manager; whoever it is that calls on you or you have first point of contact relationships with. If the problem remains unsolved then go to your franchisor directly. Don't be embarrassed or reluctant to take this step as any good franchisor will prefer that they know of problems so they can fix them quickly. Often it will turn out that the issue has been addressed and satisfactorily solved many times before or that the franchisor can offer some practical commercial advice based upon their experiences. It is unlikely that talking to another franchisee will serve to solve the problem but may at least establish if the issue is a system wide or localised problem peculiar to your franchise.

Your Franchise Advisory Council representative may also be a good source of information and assistance. Alternatively it may be productive to speak to other franchisees, as they may have had or be having the same issues. They will also give you a good idea whether your complaint is reasonable.

If it emerges that it is indeed a problem that is system wide or franchisor actions may have contravened any laws and the franchisor continues to do nothing to assist then certainly as a franchisee you have several avenues to take the matter further.

Please talk openly with your franchisor before taking any exterior action as that is frequently a defining moment when the vital relationship is strained and often to a point from which it will be difficult to recover.

It may be as simple as you deciding that this business doesn't suit you any more so you should sell and move on. Your franchisor may even encourage this action if they share the same view.

If you decide to act on principles remember this can be very costly if you finish up in court. Fortunately the Franchising Code of Conduct has provisions which insist that Dispute Resolution is undertaken prior to any court proceedings. This has proven to be a very successful way to solve many disputes in a cost effective and far quicker manner than court proceedings.

If you do need to take the matter up the following is a process worth considering:-

- 1 Write to the CEO of the Franchisor with your complaint in as much detail as possible. Importantly, set out what you would like the franchisor to do about it to fix the problem. Ask for a response in writing or a meeting to discuss your letter. Be polite, factual and as unemotional as possible. Try to avoid criticising any individual.
- 2 Consider the response or attend the meeting.
- 3 If the matter is unresolved, speak to other franchisees or the Franchise Advisory Council. Assess whether the matter is so important that you have to proceed. Get their opinion on your behaviour, conduct and operating shifts.
- 4 If you decide to proceed, speak to a lawyer experienced in franchising to assess which of the following options might be best:-
  - a Initiating mediation under the Code to try to resolve the dispute in a formal but relatively quick and inexpensive way;
  - b Selling your business. You may decide your best options to leave the system and do something else, even if you do not sell for your desired price. Disputes can be costly, and it just may not be worth the fight;
  - c Contacting the ACCC and asking them to intervene, which they will usually do if there has been an apparent breach of the Code or the Competition and Consumer Act;
  - d Taking legal action. This is generally a last resort, but a solicitor's letter may be a useful first step when combined with other options such as mediation.

Be very wary of threatening media action or stirring up unnecessary trouble in the network. This will usually just inflame the dispute and put people, including other franchisees, off-site unnecessarily.

## CHAPTER 15

# How do I sell my business?

Firstly, a small tip. Most people sell their businesses (franchise or otherwise) when things are going wrong or sales are on the decline. The wise operator sells at the top of the cycle which is a hard thing to gauge and a difficult mental decision to make. But, if you want to maximise returns, picking the right time to sell is a key to success and your accountant may well be your best adviser on the correct timing.





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Firstly you need to establish what your business is actually worth and most business brokers will quickly give you an answer on that question. It will be based primarily upon two factors, the level of provable profitability and the Return on Investment it offers a purchaser. Like the housing market, business values rise and fall according to economic conditions.

Please note very carefully that your asking price should not be drawn from getting back your original investment or covering your debts. Both of these are irrelevant to a purchaser.

Once you have established what you want for your business and have confirmed the timing is right for you personally and the business then you must go back to your Franchise Agreement. Most Franchise Agreements contain clauses that require you to offer your business back to the franchisor at a price before you place it on the open market. The franchisor is obliged to advise you within a short time frame if they do, or do not, wish to buy back the franchise. In the vast majority of cases the franchisor is more interested in granting more franchises than buying back existing ones, so don't go into a franchise believing when you wish to leave you have a ready made buyer. Each time you drop the price to encourage buyers this same obligation applies.

One aspect that will have a major impact upon the value of your business is how the franchisor treats incoming franchisees with the terms of the Agreement.

If in your business you can only sell that term remaining in your existing agreement then this may well have a detrimental effect upon the asking price. If the franchisor is prepared to grant the incoming franchisee a brand new term this can be most helpful in influencing the asking price.

The franchisor will need to put your proposed buyer through the standard recruitment and induction programme and it is possible that your buyer could be rejected upon legitimate grounds if in the franchisor's opinion they are unsuited for such reasons as financial capacity. This can be a very difficult time for franchisees who think they have got a buyer and have mentally left their business already only to find their hopes and plans dashed. The sale is never a sale until the new franchisee has been accepted and their cooling off has elapsed – exactly as you were treated when you entered the system.

You must also be aware of any outgoing fees and how they are calculated that will be levied against you as the sale is completed. These are usually called Transfer Fees and the money is used to train the incoming franchisee and other matters.

So you have sold and you are out of the system and starting your new life elsewhere, perhaps in a bigger and better franchise within the same franchise. But you must remember that under the Franchising Code of Conduct the franchisor is obliged to provide your contact details to prospective franchisees (unless you have specifically requested otherwise) so they have the opportunity to contact you and ask questions – just as you would have done upon entry. Expect to get the calls and when you receive them you are entitled to be honest but stick to facts not rumours.



## CHAPTER 16

# Other useful information and points of contact

Martin Rose, of Hydrodog the franchisor for 180 franchisees advises potential franchisees as follows:

Rule 1: Do your research.

Rule 2: Do your research.

Rule 3: Do your research.

What great advice from such an experienced franchisor. It ties in superbly with what we have tried so hard to get across to you in this publication.



### SUMMARY OF TIPS

Conduct a thorough self analysis to uncover your reasons for taking this step:

- 1 What am I good at, what do I enjoy doing? Are the two the same?
- 2 How much am I prepared to invest?
- 3 How much do I need to earn – what is my personal break even so I can pay all my bills and not go backwards in life?
- 4 Then; what is available in the way of a franchise that meets all these criteria?
- 5 Only look at franchisors who are members of the Franchise Council of Australia.
- 6 Thoroughly research the initial franchise offering.
- 7 How am I treated and how professional is the operation?
- 8 Speak to as many franchisees as you can and compile your chart covering the basic questions to validate the system you are looking at.
- 9 Always look at more than one system so it will help you balance the offering.
- 10 If one system charges 6% and another 5% it doesn't mean the lower charging fee is better value. It's what you get for your money that counts so find out what you do get in detail!
- 11 NEVER sign anything (other than a standard Confidentiality Agreement) without seeking professional advice. Lawyers and Accountants that specialise in franchising can be located at [www.franchise.org.au](http://www.franchise.org.au) and go to the Franchise Directory.
- 12 Regard professional advice as an investment as much as a cost.
- 13 NEVER enter a business without your family's support.
- 14 Does your choice of franchise have blue sky? In other words is it a fad business or will it still be in strong demand five or ten years from now?
- 15 DO NOT EXPECT that making a profit is in any way guaranteed or can be presumed as an automatic right by becoming a franchisee. Profit usually has a direct correlation with hard work, good business sense and an element of luck.





## The ultimate decision to proceed or retire from the investigation rests entirely with you!

This is never a decision you should ask your business adviser, accountant or lawyer to make for you. Do the homework and you will be able to make the decision with confidence – if you still cannot decide then perhaps it is best not to proceed with the investment. If you are very cautious or a procrastinator it's not necessarily a bad thing, but it is more difficult to make it as a franchisee where you will have to make your own business decisions, sometimes on an hourly basis.

If you do enter the wonderful world of franchising, then welcome aboard !!!



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W [www.franchise.org.au](http://www.franchise.org.au)

On the FCA website you will find the business directory where you will be able to source franchises at various investment levels and different industries to suit your taste and find out what is available.



### BUSINESS FRANCHISE MAGAZINE

Available in most good newsagents.

This is available monthly and is a good way to see which franchisors are actively seeking franchisees as well as plenty of educational material.



### FRANCHISING MAGAZINE

Available monthly, Franchising magazine is a good way to see which franchisors are actively seeking franchisees and also has plenty of educational material included.



There are numerous government organisations that produce helpful materials of enormous value to researchers such as:

**[www.businesss.gov.au](http://www.businesss.gov.au)**

which can connect you to the Australian Competition and Consumer Commission (ACCC) or the Office of Small Business run by your State Government.



# About the authors



**PHIL BLAIN**

**A.F.E., DIP BUS (FRANCHISING), FELLOW FCA**

Phil Blain began his career in the banking industry in the U.K. and after arriving in Melbourne in 1974 joined the Bank of New South Wales. He then entered the sales field by joining Cadbury Schweppes, where he spent a decade rising through the ranks to hold national roles.

A desire to own his own business saw Phil become a very successful franchisee of the Pets Paradise retail group in 1987. After owning 3 Pets Paradise franchises with his wife Lynne, Phil took on the role of General Manager of the Pets Paradise franchise network in 1990. At this time the group was only 15 stores strong but by the time he left, the group had grown to over 100 outlets and through Phil's efforts the Company had acquired two other franchise organisations.

In 1994, Phil and his business partner opened the Melbourne office of Franchise Alliance, providing advice to franchisors and franchisees in many areas of their business, including a focus upon development activity. Phil is a past Chairman of Franchise Alliance. In 2015 Phil formed a new business, Franchise Right, with Sussan Campbell and they have gone on to consult to many businesses on franchising and other matters including advising the ATO and Government.

Phil has served on the Franchise Council of Australia (FCA) Vic Chapter Committee for many years including several as President and thereby was a Board member of the FCA. He holds a Business Diploma in Franchising, Accredited Franchise Executive qualification (A.F.E.) and is a Fellow of the FCA.

Being semi retired now, Phil and Lynne enjoy travelling Australia in their caravan and spending time with their dog Toby and their grandchildren.



**STEPHEN GILES**

**B EC LLB, DIP BUS (FRANCHISING), FELLOW FCA**

Stephen Giles is a partner with Norton Rose Fulbright, where he heads the Consumer Markets and Franchising. He is described as Australia's leading franchising lawyer in The International Who's Who of Franchise Lawyers, which recognises Norton Rose Fulbright as Australia's leading franchise law firm. He has over 30 years' experience in franchising, and is co-author of the authoritative text Franchising Law and Practice, as well as a range of other publications including The Annotated Franchising Code of Conduct, The Franchisor's Manual, Going International - A Guide to Australian Franchise Systems and How to Franchise Your Business.

He has been a member of the Franchise Council of Australia since 1985, was FCA national chairman for 6 years, and has served on the FCA national board handling the portfolio of Industry Regulation and Government Relations since 1997.

Stephen has advised many of Australia's leading franchise systems on franchising strategy and legal issues. In 2009 Stephen was inducted into the Australian Franchising Hall of Fame.





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