

ACCC increases its focus on franchisee education

The ACCC has highlighted the importance of the education of franchisees by publishing a Franchisee Manual.

The Manual outlines the various stages of the franchise relationship, including the period before the purchase, the evaluation and signing of the franchise agreement, and the relationship after the agreement has been signed.

The ACCC Victorian Regional Director, Mr Weymouth, said that the Manual was created, “as part of a continued strong focus on educating prospective and existing franchisees and achieving high volume compliance with the Code...the Manual will assist prospective franchisees in understanding what franchising is all about, how to ensure they have researched an opportunity thoroughly and be aware of their rights and obligations when dealing with a prospective franchisor”.

A culture of “franchisee beware”

The case law that has emerged in the field of franchising over the past five years indicates that the onus is on the franchisee to be aware not only of its legal rights when entering into a franchise agreement, but to also understand that as the franchisee is buying a business, there is significant risk associated with such an investment.

The case of *Poulet Frais Pty Ltd v The Silver Fox Company Pty Ltd* made it clear that the franchisee shoulders much of the risk when undertaking a franchised business. In this case, the franchisee’s Lenard’s store (a franchise selling poultry products) failed through no fault of the franchisee or the franchisor. The Full Federal Court held that the nature of a franchise does not mean that the franchisee passes all the risk for the success or failure of the business to the franchisor, and therefore the franchisor was held not to be responsible for the losses made by the franchisee as a result of the failure of the business. The franchisee in this case was forced to bear the full financial loss resulting from the failure of the business.

Franchisee education – you and your lawyer

As the publication of the ACCC’s Franchisee Manual indicates, the education of franchisees throughout the franchise relationship is of the utmost importance, particularly when one considers the significant financial interest that franchisees have in the success or failure of the franchise outlet.

Guides like the ACCC’s Franchisee Manual provide good overviews for people considering entering into a franchise; however, it is important to get your lawyer and accountant to look over your documentation before entering into a franchise agreement. Indeed, the Franchising Code of Conduct mandates that the franchisor includes a section in the disclosure document advising you to get legal advice before signing the relevant documents. Franchise agreements are complicated contracts, and it is essential that you understand the effect of what you are signing, including what your rights and obligations are under the contract, before you enter into any agreement with the franchisor.

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