

Your Ref:

Quote in reply: Franchising Committee

3 August 2011

Ms Anna Fitzgibbon
President
Auckland District Law Society Inc
PO Box 58
Shortland Street
Auckland 1140
NEW ZEALAND

By email: anna.fitzgibbon@adls.org.nz

Dear Ms Fitzgibbon

PROPOSED STANDARD FRANCHISE AGREEMENT FORM

I write on behalf of the Queensland Law Society Franchising Committee in relation to the Proposed Standard Franchise Agreement Form.

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We lead a profession of more than 8,500 members throughout Queensland. The QLS is comprised of several specialist committees who provide policy advice to the QLS Council on law reform and areas of concern to the profession.

The Franchising Law Committee is comprised of specialist and experienced franchise law practitioners, who have a keen awareness and understanding of the issues affecting this area of law.

The Franchising Law Committee has had the benefit of reading the letter dated 15 April 2011 from Mr Stephen Giles, Chairman of the Franchise Council of Australia, Chair of the FCA Ethics Committee and immediate Past Chair of the FCA Legal Committee, in relation to this matter. The Committee commends the work that went into that submission and wishes to endorse the submission in its entirety.

There are a few additional comments the Society would like to make in relation to the proposed Standard Franchise Agreement Form.

Concerns for introducing a standard franchise agreement form

The Society is concerned should a standard franchise agreement form be introduced and endorsed by a companion law society. The Society notes that misconceptions amongst non-franchise law practitioners and the public may arise that the use of a 'standard' franchise agreement in one particular system justifies use of a 'standard' franchise agreement that fits all systems. The Society has found that there are as many franchise agreements as there are franchise systems. Therefore the unique characteristics, operational and other features of each franchise system demand a tailor-made agreement for each system. Whilst it is true that for some commercial transactions (for example the sale of residential property), it is more appropriate to use a standard form agreement, the same is not true for franchising.

Unidroit, the UN's International Institute for the Unification of Private Laws based in Rome has over many years attempted to come up with a so-called 'standard franchise agreement' but eventually abandoned attempts, because of the realisation that each franchise system display unique features and characteristics making it impossible to have a one fits all franchise agreement. Instead, Unidroit has published other useful titles such as the 'Guide to International Master Franchise Arrangements', the 'Model Franchise Disclosure Law' and INIDROIT Principles 2004 – International commercial contracts'.

Without exception, none of these publications attempt to propose a 'standard agreement'. Potentially the closest to a recommended 'standard' is the Model Disclosure Law which Unidroit suggested member countries adopt as part of their local laws. None of the Unidroit member countries have adopted the Model Disclosure Law as part of their national law. As you are aware, unlike New Zealand, Australia has a mandatory Franchising Code which, by and large, only prescribes the content and format of a franchisor's disclosure document. Importantly, the Australian Franchise Code does not prescribe or propose a 'standard' franchise agreement. Arguably, this serves as recognition that the form and content of a franchise agreement is best left to each franchisor.

The Society therefore calls for caution and urges the Auckland District Law Society to review and reconsider its proposal to introduce and endorse a standard franchise agreement.

Please do not hesitate to contact either myself or have a member of your staff contact our Policy Solicitor, Louise Pennisi on 3842 5872 or l.pennisi@qls.com.au if you wish to discuss these concepts further.

Yours faithfully

Bruce Doyle
President