

Newsletter

Franchising

New Code Of Conduct To Protect Potential Franchisees

A franchise is an agreement under which a person ("franchisor") grants another person ("franchisee") a right ("licence") to operate a business system which has been developed by the franchisor, or is identified with or associated with the franchisor. A franchisor generally provides ongoing assistance, guidance and systems in return for a periodic payment of fees and/or purchases from the franchisee. A franchise usually occurs in a business format where the whole business concept is licensed, including the name, appearance and method of carrying on the business.

The Government, in conjunction with the franchising industry, has developed a franchising code of conduct. The code is spelled out in the Trade Practices Act. The Franchising Code of Conduct ("the Code") requires franchisors to disclose specific information about their business and to follow specified rules when dealing with potential franchisees.

The Government recently accepted 31 recommendations to review the disclosure sections of the Code to improve franchise negotiations. Under the reforms, prospective franchisees are now able to contact past franchisees to ask for details about a franchisor.

The review of the disclosure provisions aims to enable franchisees to gain as much information as possible to make an informed business decision.

The Minister for Small Business and Tourism, Fran Bailey, has said –

"These reforms are about empowering people to make the right business decisions. It will reduce the risks for franchisees by requiring greater disclosure and will help build the long term sustainability of the industry.

For example, if you were interested in purchasing a franchise, you will now be able to contact a previous

franchisee, subject to their agreement, and ask about a franchisor. Did they deliver what they promised? Were they helpful? Did they help make your franchise a success or a failure?"

The Australian Competition and Consumer Commission (ACCC) lists a few points to be cautious of when investigating a franchise opportunity. Be wary of franchisors who:

- are reluctant to provide information in writing,
- are reluctant to give details of other franchisees within their system (required by the code),
- require full up-front payment for the business to be made before any information is released,
- claim that by purchasing the franchise, large amounts of money can be made quickly and with little effort – that is, if it looks too good to be true.

... continued on next page



... continued from front page

The Code requires a signed statement to be made available to the franchisor outlining the extent of legal advice obtained by a prospective franchisee.

The key to purchasing any franchise is to make full and complete inquiries of the franchisor and as many existing franchisees as are prepared to talk to you.

The Minister for Small Business and Tourism has announced that the Australian franchise industry is worth \$130 billion and provides 600,000 jobs. Plainly, the industry is here to stay.

If you are thinking about buying a franchise and want both business and legal advice, please call Bruce Smith or Melanie Gebbels.



DNA To Paw Print Dog Attacks

A new DNA pack has been developed to aid investigations into dog attacks. The new dog attack DNA kit will allow local councils, livestock owners and police investigators to easily gather canine DNA evidence at dog attack scenes.

The new DNA dog attack packs may help when:

- a dog attack victim is unable to identify the exact dog
- an attack happens in a park when there are multiple dogs
- a dog owner refuses to cooperate with council investigations
- the owner of the alleged dog attack has multiple dogs of the same breed at their residence
- a neighbourhood dog is wrongly accused of being involved in an attack – DNA may be able to exclude the dog



Online Shoppers Be Wary

The ever-increasing popularity of online shopping has brought many associated legal issues to the fore. Convenient shopping, wide product ranges and monetary savings are just a few advantages for consumers shopping online. It is very tempting to shop in the comfort of your own home. However consumers need to be wary when making purchases on the internet. The Office of Fair Trading offers a few simple steps consumers can follow for a safer online shopping experience. They are:

1. Consumers should only buy from businesses that are familiar and reputable. If possible, contact the company before purchasing products to verify credibility.
2. Once the credibility of the business is established, it is also worthwhile to confirm that the product being purchased is legal and will work in Australia.
3. Check for a valid guarantee.
4. Before committing to a purchase, check that the contract and accompanying details of the purchase are very clear.
5. The delivery details, return policy if the goods are faulty, and which party pays for postage on returns should also be unambiguous before committing to an online purchase.

The internet connects people from all parts of the world and consumers should be cautious of this when purchasing products from web-based businesses. If not checked out thoroughly, purchasers may have to pay unexpected currency conversions, taxes, customs duties, delivery and posting fees.

One of the pitfalls of online shopping is it provides scammers with easier access to unsuspecting shoppers. Before making a purchase, find out how personal details are used by the business online and only provide personal details if the website is secure. Online customers should

also be given the chance to confirm or reject an order before paying for goods.

Throughout the entire online shopping process, as much documentation as possible should be kept. Print out the order before sending or submitting it, note down the reference numbers and ask for a tax invoice or receipt. Upon purchase, check credit card/bank statements against the order and report discrepancies immediately.

Online businesses should only require the basic information for the purchase of goods. Don't provide any additional financial information and look for a closed padlock or 'https' address to ensure that the website is secure.

If any problems do arise, address them immediately and produce the stored documentation of the purchase process. Contact the Office of Fair Trading or relevant industry dispute schemes for help. However if something seems too good to be true, it probably is.



Smoke Alarms Now Mandatory

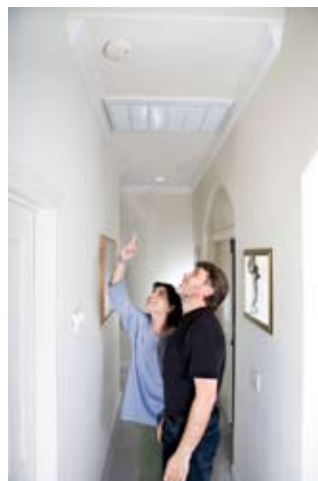
Queensland has new smoke alarm laws that now require all homes to be fitted with smoke alarms under the Fire and Rescue Service Amendment Act 2006. From July 1, all older homes (pre-1997) need to have working smoke alarms installed in the hope that the number of people escaping house fires safely will increase. The minimum recommendation is a nine-volt battery powered smoke alarm, in which the battery requires replacement annually. Home owners are encouraged to align the battery-change date with a birthday or anniversary date to make it easier to remember.

With the new legislation, when property sales occur vendors need to lodge a form with the Queensland Land Registry stating that smoke alarms are installed in the property and that the purchaser has been informed that the smoke alarms are installed. Fire officers will investigate complaints received about residences that are non-compliant with the new legislation. There will be a maximum fine of \$375 for those residents who do not have fire alarms installed right now.

The Queensland Fire and Rescue Service have determined that 78.1% of all home fire deaths are from homes that do not have smoke alarms installed. Furthermore, 47.4% of those deaths occur between 12am and 8am when residents are sleeping. These statistics have reinforced the importance of the Fire and Rescue Service Amendment Act 2006.

The new smoke alarm laws also set out some requirements for both landlords and tenants involved with rental properties. Landlords are required to install smoke alarms that meet Australian Standards in rental homes. Landlords are also required under the legislation to test and clean each smoke alarm 30 days before starting a new tenancy agreement. Tenants also have obligations under the Fire and Rescue Service Amendment Act 2006 to test and clean smoke alarms every twelve months. Tenants also have to replace batteries that are flat or almost flat, and notify their landlord or agent as soon as practical if the smoke alarms in the rented residence are not working properly.

For more information on smoke alarms and the new legislation on smoke alarms, contact the Queensland Fire and Rescue Service (QFRS) on 1300 369 003 or visit www.fire.qld.gov.au.



*“people you
can talk to”*

S M I T H & S T A N T O N
LAWYERS

Energy Ombudsman For Electricity Consumers

The Queensland electricity industry has been opened up to industry competition, creating a wave of new options for electricity consumers.

A new Energy Ombudsman (EO) has been appointed to help Queenslanders wade through the varying options for electricity supply. The EO provides a free, fair and independent service for consumers if they are involved in a dispute with their electricity retailer.

The new EO will also keep watch on electricity retailers in the market to catch any unscrupulous operators.

Other measures to protect consumers under the full retail competition include a 10 business day cooling-off period which gives customers the right to change their mind about their choice of electricity supplier and a new marketing code of conduct to protect people from dodgy marketing practices.

Energex and Ergon Energy are still the providers. If there are problems with electricity supply, they are the ones you should call.



Cancelling Gym Membership

Each year gyms undergo an advertising campaign to capitalise on the well-meaning souls who have decided that, 'this will be the year to get fit'. While those intentions were earnest at the time, by mid-year much of the initial enthusiasm has waned. Whether a loss of motivation or the slight possibility that local parks have been discovered as a viable alternative venue for exercise, many are looking to cancel gym memberships.

There are a few factors to keep in mind when going through the process of cancelling a gym membership. The original contract should be read carefully to confirm the total cancellation fee incurred. This should be stated clearly in the contract. Once the amount of the fee is established, put the membership cancellation request in writing so that it is official and documented for reference purposes.

Finally, if the gym membership is being paid for by direct debit, the final date for which money will be drawn from the respective bank account should be checked and confirmed with the gym. If due process is followed gym membership cancellation should be relatively easy.



News From The Smith And Stanton Staff

By the time this newsletter is printed we will have welcomed back Melanie Gebbels from maternity leave. Melanie had a baby girl, Ryleigh in May who by all accounts is a "good baby".

You may have seen our next door neighbour, the BiLo supermarket, has been demolished. Over the next year the site will be developed into a modern Coles top line supermarket and specialty shops. Car parking space is at a premium during the construction. Car parking for Smith and Stanton clients is restricted and we ask that you bear with us during this time.

We are all looking forward to Catherine McKenzie's admission as a solicitor of the Supreme Court on 10 September.

The Think Pink Trivia Night is an annual event to help support people affected by breast cancer. The 2007 event was held on 21 July and 644 attended. Smith & Stanton sponsored a table for this worthwhile cause – do visit the think pink website www.accentwebdesign.com.au/thinkpinktrivia to see how such a worthy cause can assist those in need.

*“people you
can talk to”*

S M I T H & S T A N T O N
LAWYERS

PO Box 41 Aspley QLD 4034
607 Robinson Road, Aspley QLD 4034
Telephone: (07) 3263 4244 Facsimile: (07) 3263 1138
e-mail: mail@smithstanton.com.au
www.smithstanton.com.au