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Stakeholder Type: Professional Advisor

1. What are the critical pieces of information that should be contained in a summary document?

1. History and experience of the franchisor
2. Actual costs of entering the franchise system including any additional on costs such as working capital and bank guarantees
3. Actual costs of running the business
4. Ownership of IP
5. Existing franchises and their contact details
6. Past franchisees and their contact details

Much of the information in the disclosure is repeated from the Franchise Agreement and therefore unnecessary.

2. If a national franchise register is established, what information should it contain? What would be the benefits and costs of a national franchise register?

Any national franchise register (NFR) must be operated independently and a not for profit enterprise. eg: operated by the ACCC.

A benefit of the NFR could be for franchisees and display public reviews / ratings for the franchise system compliance. However beyond this we do not see a significant benefit of an NFR.

Research companies such as IbisWorld and other already gather significant data and benchmarks.

3. There are a number of existing educational resources on franchising. What additional education options for prospective franchisees should be made available? If there was an online educational resource which brought together the available franchising education options, what would its costs and benefits be?

We support an online resource, similar to ASIC's MoneySmart, tailored to franchisees. We also believe that this resource should extend to franchisors.

Such a resource should include information about:

1. What makes a successful franchisee and pre-qualifications to enter the system;
2. What due diligence checks to undertake, including specific checks on the franchisor as well as questions to ask existing franchisees;
3. Explanation of key concepts in franchising, such as the Franchising Code of Conduct, franchisor's disclosure requirements, territories, minimum performance criteria, selling the business, termination etc;
4. Specific questions to ask the franchisor;
5. Information about the franchisee's specific obligations at law, including employment and tax obligations;
6. Understanding the costs of establishing and running the franchise business and how to build a financial business plan and understand outcomes;
7. Understanding the risk of entering a franchise and considering their own personal circumstances.

The online resource should be free and would provide substantial benefit to franchisees in terms of ensuring they go in with their eyes wide open. It should also ensure that franchisees have an

understanding that whilst they are buying into a franchise, they still have their own obligations as a business owner.

For Franchisors: (to many franchisors are entering the market without proving the model and structuring the system for the benefit of both parties)

1. Information about franchising your business concept. Feasibility study, research, regulatory obligations, the importance of getting the model and the balance right from the outset.

Problem 1.1: Disclosure can be hard to comprehend, critical information may be hidden in detail and some information is not provided in the disclosure document.

Option 1.1.3: Simplified disclosure requirements. Require that a simplified disclosure document, which provides all materially relevant information needed to assess the franchise business, is provided to prospective franchisees

Please give an explanation of your choice(s). This includes the reasons an option may not be suitable. What are the costs, benefits and risks of your choice(s), and what other options could be considered?

Simplified disclosure will encourage franchisees to engage with the disclosure document and assist them in understanding it.

The current form of disclosure document is lengthy and confusing. From personal experience, franchisees simply do not read it.

Educational materials and a government FranchiseSmart website should be developed where disclosure documents can be demystified and explained in layman's terms.

Problem 1.2: The reliability of information provided to prospective franchisees may be difficult to assess

Option 1.2.3: Pre-entry education

Please give an explanation of your choice(s). This includes the reasons an option may not be suitable. What are the costs, benefits and risks of your choice(s), and what other options could be considered?

Franchisees must also bear some responsibility for conducting their own due diligence and seeking advice. Pre-entry education will assist them to undertake appropriate checks and understand the information they are provided with.

From our experience, too many potential franchisees are overwhelmed with the marketing and legal documentation and require assistance to break it down and understand what it means for them personally. I.e: building their own financial model and knowing the highs and lows.

Problem 1.3: Information gaps – a potential franchisee might be unaware of which types of information are materially relevant to inform their decision to enter an agreement.

Option 1.3.3: Mandate all prospective franchisees receive legal and financial advice before entering into a franchising agreement

Please give an explanation of your choice(s). This includes the reasons an option may not be suitable. What are the costs, benefits and risks of your choice(s), and what other options could be considered?

It is essential for prospective franchisees to obtain independent legal and accounting advice from franchise-industry specialists.

Good advisers will not only review documents for compliance, but will give franchisees a deep understanding of the offer, their rights and obligations and the possible outcomes for their situation.

Specialist franchise advisors also have additional knowledge and networks about the franchise sector to ensure that franchisees make an informed decision.

Our Franchise Opportunity Report and advice provides information personalised to the potential applicant and demystifies the documentation.

4. What are the practical implications (costs and benefits) for prospective franchisees and franchisors of increasing cooling off or disclosure periods?

This could create uncertainty and most certainly and unnecessarily delay the transaction. As mentioned below, proper due diligence and understanding the obligations and the agreement is more the issue.

5. How easy is it for franchisors to provide reasonable estimates of leasing costs before they are finalised?

The franchisors should have a Site Selection Guideline to provide the franchisee. This would set out the specifics of the ideal site and a good indication of possible lease conditions.

Leases (where available) are required to be provided with the Disclosure Document, or as soon as possible thereafter.

Commencement of the business requires many activities to come together simultaneously, so any additional delays would impact negatively.

6. How often are leasing arrangements finalised after the cooling off period expires? What are the implications of having the cooling off period commence after a lease is finalised?

Franchisors are better placed to provide this information.

Problem 2.1: Cooling off rights may expire before franchisees and franchisors have adequate time to appropriately reflect on their business arrangements after entering the agreement

Option 2.1.1: Status quo, with clarification of the operation of existing cooling off requirements in the code

Please give an explanation of your choice(s). This includes the reasons an option may not be suitable. What are the costs, benefits and risks of your choice(s), and what other options could be considered?

The Disclosure period provides the potential franchisee with a prescribed timeframe to undertake due diligence activities. In practice the franchisee would keep the franchisor informed as they proceed with these activities and will take a longer period if required. Franchisors will assist the potential franchisee if they consider the candidate a good fit. In practice it is very rare that Cooling Off is exercised.

The Cooling Off period is adequate. If proper due diligence is undertaken, then Cooling Off rights are typically not activated.

Problem 2.2: Cooling off rights may expire before lease arrangements are finalised

Option 2.2.4: Improve education and awareness around leasing and franchising

Please give an explanation of your choice(s). This includes the reasons an option may not be suitable. What are the costs, benefits and risks of your choice(s), and what other options could be considered?

The other options are not workable in practice.

Commercial leasing arrangements require reform. Both franchisors and franchisees are impacted by the power imbalance towards landlords.

A FranchiseSmart website with meaningful information would also assist here.

Problem 2.3: Cooling off rights in transfers, extensions and renewals can be unclear, including with respect to franchisee to franchisee sales

Option 2.3.1: Status quo (no changes)

Please give an explanation of your choice(s). This includes the reasons an option may not be suitable. What are the costs, benefits and risks of your choice(s), and what other options could be considered?

Cooling off periods should not apply to extensions and renewals because the franchisee has a current working relationship with the franchisor and would understand the business model. The disclosure period provides enough time to reexamine the opportunity and make an informed decision.

Transfers do not typically involve franchisors apart from approval of the purchaser. The purchaser must complete the due diligence process and make an informed decision. We don't believe that applying a Cooling Off period is required

7. What would 'meaningful information' look like in terms of marketing fund disclosure?

8. How does the benefit of increased frequency of reporting of marketing funds compare to the costs of increased administration?

Problem 3.1 Marketing funds are not always transparent

Please give an explanation of your choice(s). This includes the reasons an option may not be suitable. What are the costs, benefits and risks of your choice(s), and what other options could be considered?

9. What information should franchisors disclose in relation to supplier rebates? Are there any barriers to providing this?

Franchising systems vary greatly. This is a complex issue and no one size will fit all. Current disclosure of rebates is required. Whilst the rebates are not quantified, the franchisee will be aware that they exist.

Confidentiality is absolutely key and additional disclosure may have unforeseen consequences.

10. If franchisors are required to ensure franchisees get a return on their significant capital expenditure, how might this be done in practice?

The code has Clause 30 concerning capital expenditure and franchisees should be aware of any obligations in the agreement.

Again, obtaining good advice is important.

11. If franchisees are given a right to review capital expenditure business cases (which must be presented to franchisees by the franchisor under clause 30(2)(e) of the Franchising Code for expenditure that the franchisor considers is necessary for capital investment), how would this right be exercised?

Carefully and in confidence!

Problem 4.1 Supplier rebates can lead to conflicts of interest

Option 4.1.1: Status quo (no change)

Please give an explanation of your choice(s). This includes the reasons an option may not be suitable. What are the costs, benefits and risks of your choice(s), and what other options could be considered?

Franchise models vary greatly in regard to supply chains, some are totally dependant upon markup of their own product and no royalties.

Franchisors must retain control of the supplier relationships in order to provide and retain the quality delivery of the product or service. Declarations of supply arrangements in any format could prove disastrous for the entire franchise system. Rebates are disclosed in the Disclosure Document which is issued to franchisees for their analysis and they should be fully aware of the supply conditions of the franchise system prior to entering the agreement.

Monitoring and taking action against those who abuse the current legislation needs to be improved.

Problem 4.2 Conflicts of interest in the context of capital expenditure

Option 4.2.1: Status quo (no change)

Please give an explanation of your choice(s). This includes the reasons an option may not be suitable. What are the costs, benefits and risks of your choice(s), and what other options could be considered?

We believe that Unfair Contract terms in legislation covers the issue of Unilateral variation of agreements.

It is impossible to predict future market changes and franchised businesses must have an ability to be agile and adapt.

Problem 4.3 Unilateral variations can lead to conflicts of interest and exploitation

Option 4.3.3: Increase awareness around legal rights

Please give an explanation of your choice(s). This includes the reasons an option may not be suitable. What are the costs, benefits and risks of your choice(s), and what other options could be considered?

A FranchiseSmart website should provide explanations of unilateral variations and some examples of when they may be required. Provide information in layman's terms which is easily understood.

12. A number of stakeholders have told the Taskforce that the cost of arbitration can be comparable to going through the court system, and that conciliation may be a preferable alternative alongside mediation. In what circumstances could conciliation be an effective alternative dispute resolution process?

13. Would you consider including arbitration to resolve disputes in your franchising agreement, if a clear voluntary option were provided?

Problem 5.1: Some disputes are not being resolved in a fair, timely and cost effective manner.

Please give an explanation of your choice(s). This includes the reasons an option may not be suitable. What are the costs, benefits and risks of your choice(s), and what other options could be considered?

14. Under what circumstances should franchisees be allowed a no-fault exit from the franchise system?

15. If goodwill was required to be fully clarified in the franchise agreement, how might this be done in practice? What would be the costs and benefits of this approach?

Problem 6.1 Reasonable exit arrangements may not be, or may not be perceived to be, available or accessible for some franchisees

Please give an explanation of your choice(s). This includes the reasons an option may not be suitable. What are the costs, benefits and risks of your choice(s), and what other options could be considered?

Problem 6.2 Excessive restraint of trade clauses may inhibit lawful pursuit of subsequent business interests

Please give an explanation of your choice(s). This includes the reasons an option may not be suitable. What are the costs, benefits and risks of your choice(s), and what other options could be considered?

Problem 6.3 There are different expectations around the treatment of goodwill in franchise arrangements

Please give an explanation of your choice(s). This includes the reasons an option may not be suitable. What are the costs, benefits and risks of your choice(s), and what other options could be considered?

16. What are the implications of amending the Oil Code of Conduct to increase the number of common provisions between the Oil and Franchising Codes? What would be the costs and benefits of this approach?

17. What are the implications of repealing the Oil Code of Conduct and adding specific fuel retailing provisions to the Franchising Code?

Problem 7.1: Some franchisors experience additional regulatory burden from having to comply with both the Franchising Code and the Oil Code

Option 7.1.1: Status quo (no change)

Please give an explanation of your choice(s). This includes the reasons an option may not be suitable. What are the costs, benefits and risks of your choice(s), and what other options could be considered?

Under this option there would be no changes to the regulatory framework.

The Oil industry businesses are better positioned to comment.

Problem 7.2: Compliance with the Franchising Code, Oil Code and where relevant the Competition and Consumer Act and the Australian Consumer Law, remains imperfect

Please give an explanation of your choice(s). This includes the reasons an option may not be suitable. What are the costs, benefits and risks of your choice(s), and what other options could be considered?

Are there any other comments you would like to make?

Sample of a "Franchise Opportunity Report" that Franchise Right recently provided to a potential franchisee conducting due diligence activities.

Names have been removed for Privacy purposes.

This report constitutes Business Advice for certificate purposes in a Franchise Agreement.

Reports vary according to the opportunity and the information provided.

We believe that this type advice should be mandatory. Perhaps the Franchise Smart website could also contain some of this type of information.



CLIENT X

**FRANCHISE
OPPORTUNITY
REPORT**

28 NOVEMBER 2019

PREPARED BY



FRANCHISE RIGHT
YOUR TRUSTED PARTNER IN BUSINESS GROWTH

[Redacted]

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DISCLAIMER

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This report may contain statements, estimates, assumptions and projections (statements) provided by our client in relation to projected future performance. Unless indicated as otherwise, these statements were prepared by our client using assumptions and information available before and during the preparation of this report and may or may not prove to be correct. Any statements used do not constitute any representation that the estimated results be achieved or the correctness of the underlying assumptions. The statements must also be considered as being subject to uncertainties and contingencies, which are both difficult to predict and even beyond the control of our client. It follows that final results could vary significantly from these statements.

Any models contained in this report have been prepared on the assumption that the underlying data provided by our client was correct. As all projections may be affected by unforeseen events, Franchise Right does not offer an opinion as to the accuracy of any projections nor the likely variation from the actual results.

All models will need to be continually updated as our client becomes aware of circumstances liable to affect the projections, which were not considered at the time the original projections were prepared.

This report and any models contained therein have been prepared exclusively for the use of our client and are not to be delivered to, or discussed with, any other person or party, without the prior approval of our client.

OBJECTIVES

Congratulations on the decision to examine a franchise opportunity more closely.

As with any investment, potential franchisees must be clear about their end goal – whether that is maximising income, improving job satisfaction or creating an asset to be sold or passed down to the next generation. It is important that you begin with the end in mind.

Given the substantial investment involved you need to consider the risks involved with setting up and running your own business. Completing this due diligence exercise will assist you to determine the pathway forward.

This report is designed to highlight areas within the franchise documentation that may require clarification, further consideration and understanding.

WHAT MAKES A SUCCESSFUL FRANCHISEE?

HIGH CALIBRE FRANCHISEES WILL:

- Make more money
- Deliver a better customer experience
- Will be happy being part of their franchise system
- Contribute higher royalty revenues
- Build goodwill for the brand
- Create a high return on investment.

SUCCESSFUL FRANCHISEES DO THESE THREE THINGS CONSISTENTLY AND RELENTLESSLY:

- **Firstly**, they optimise the profit potential of their business, by maximizing sales and controlling costs.
- **Secondly**, they focus on building a base of happy clients, ensuring that every client has a great experience with the brand, every time.
- **And thirdly**, they culturally fit with the role of a franchisee, supporting the franchise operating model and brand values.

TOP CHARACTERISTICS FRANCHISEE CHARACTERISTICS IDENTIFIED:

Risk aversion:

Many people think that to succeed as a franchisee, there's an element of gambling involved. Nothing could be further from the truth. If you want to gamble, go to Vegas!

The truth is that successful franchisees are risk averse. They are willing to take some risk but want that risk to be as small and controlled as possible. Any business start-up involves some risk of failure, but a strong franchise with a proven track record of success will minimize this risk. Successful franchisees do their homework, so they know what they're getting into.

System orientation:

Some shy away from franchising because they assume that there is a need for a burning entrepreneurial spirit to become a franchisee. That's simply not true. Entrepreneurs have an almost uncontrollable urge to reinvent the wheel based on their incredible confidence in their ability to figure out how things should be done to maximize results.

Successful franchisees, on the other hand, want proven systems. They don't want to have to figure out the best way to do something. They want a system of operation that tells them the best way to do anything associated with the business. They are willing to learn from others to avoid making mistakes, so they can be more successful more quickly.

Coachability:

The motto of franchising is "In business for yourself, not by yourself." Successful franchisees look for opportunities to learn from others in their franchise system.

Their philosophy is: When in doubt, ask.

They constantly ask advice of the franchisor support staff and other successful franchisees and follow the advice they get. They understand that they don't know all the answers and are willing to ask for help when they need it.

Hard-work affinity:

Successful franchisees have a willingness to do whatever it takes to get the job done. This attitude shows in their every action, putting in long hours and handling multiple tasks. They realise that it's going to take work to make it successful. The best franchisees know and accept that fact.

Strong people skills:

Successful franchisees always have excellent interpersonal skills and can effectively interact with their employees and clients. They use these skills to create loyalty, value and trust. Though this characteristic is listed last, it's probably the most important of all.

TRAITS INCLUDE:

- Higher-than-average dominance
- High energy and drive
- Focused on results
- Logical
- Tough, but fair
- Somewhat sociable
- Risk-taker
- Ambitious
- Assertive
- Collaborative

IS THIS YOU?

- Do you enjoy the idea of running your own business?
- Do you have the drive and desire to be successful?
- Do you have a passion for the service and / or product and the concept?
- Are you a team player?
- Do you enjoy interaction with people?

EXTERNAL EDUCATIONAL RESOURCES

There are many educational resources available when you are considering entering a franchise opportunity. Please take the time to research and learn more about this unique business relationship. Listed below are links to publicly available information.

ACCC

<https://www.accc.gov.au/business/industry-codes/franchising-code-of-conduct/buying-a-franchise>

<https://www.accc.gov.au/publications/the-franchisee-manual>

<https://www.accc.gov.au/publications/quick-guide-to-a-franchise-disclosure-document>

<https://www.accc.gov.au/update/buying-a-franchise-know-the-risks>

FRANCHISE ED (Free Pre-Entry Education)

<https://www.franchise-ed.org.au/online-courses/pre-entry-franchise-education/>

FAIRWORK OMBUDSMAN

<https://www.fairwork.gov.au/find-help-for/franchises>

DOCUMENT REVIEW

ITEM	COMMENTS
1. Definitions	Please read all of the Definitions and ensure that you understand them when they are mentioned in a specific clause of the franchise agreement. Cross check if required
1.2 (h) Time	<p>The franchisor is situated in Qld, so all times for meetings etc will be in Qld time. Please allow for Daylight Savings time changes when dealing with the franchisor.</p> <p>Note that the business operates the financial year as 1 July to 30 June.</p>
<p>2.1 Term</p> <p>See Item 6 in Schedule 1</p>	<p>The Template Franchise Agreement is for a term of 3 years with a further 2 x 3-year renewal period.</p> <p>Consider the return on investment in terms of a time period and the opportunity to create profit throughout the rest of the initial term. Is 3 years long enough to build a strong business, create profit and grow an asset that can be sold?</p> <p>Discuss the term of the agreement with the franchisor.</p> <p>The most common term for a franchise agreement is 5 years x 5-year renewal period.</p>
2. Exclusive Marketing Area	<p>The Franchise Agreement states that an Exclusive Marketing Area is allocated to you. This means that you can advertise and market the approved products and services within this area only and not beyond the boundaries on the map.</p> <p>It does not mean that you have been allocated an exclusive trading area. Please be aware that other Franchisor X franchisees are permitted to work within the marketing area designated to you. The franchisor may in the future grant another Franchisor X franchisees close to you and allocate another EMA on the boundary of your franchises EMA.</p> <p>We recommend that you discuss this with the Franchisor and that you fully understand the implications in the long term in particular addressing an exit strategy.</p> <p>As an example: If you wanted to sell your franchise, you do not have an exclusive <u>trading territory</u> to sell. What is the implication on the value of the asset?</p> <p>A map of the EMA in question and specific demography information would be beneficial information to have.</p> <p>MELSE11?</p>

	<p>Questions to address with the Franchisor:</p> <ul style="list-style-type: none"> • How are the marketing territories determined? • Is there data available to indicate the Franchisor X target market/s within the EMA? • What are the benchmarks for leads to jobs within other franchisees EMA's? • Can the EMA support the business and generate enough leads for success? <p>You must provide the Franchisor with consent if they want to grant another Franchisor X franchisee with the right to market and advertise in your designated EMA.</p> <p>You may also service other customers outside of the area that are referred to you directly.</p>
<p>2.3 Conditions Precedent</p>	<p>There are some conditions to be met by you prior to operating the Franchisor X franchise. There is a 3-month timeline in the Franchise Agreement.</p> <p>**We note that Law Firm X have provided commentary on this clause and a suggested amendment.</p> <ul style="list-style-type: none"> • You must ensure that you provide the Franchisor with a signed statement that you: <ul style="list-style-type: none"> 1. Received and read all of the documentation and had time to understand them 2. Obtained advice from independent advisors or that you were advised by the Franchisor to get advice and you waived the option • You must complete the initial training. Failure to do so may result in a breach of the Agreement. Induction Training can be overwhelming because of the need to intake so much information within a concentrated timeframe. How do Franchisor X grade competencies and what happens if you require or request further or refresher induction training? The training fee is \$16K and we would expect that there would be follow up and provision of extra training resources if needed. • You must take out the required insurance policies (See Schedule 1 (12)). We recommend that you also consider any further insurance policies for your personal position. Consider personal accident insurance, life insurance, health insurance, business interruption as an example. Speak to an experienced broker. • You will register a business name (Franchisor X – Location) with ASIC, as directed by the franchisor. It is very common in franchising that you then provide the franchisor with the ASIC key so that they retain ownership of the Franchisor X names.

3 Cooling Off	<p>The Franchising Code of Conduct allows for a 7-day cooling off period.</p> <p>Please read this clause carefully. You may terminate the Franchise Agreement within this period, however \$10K of paid monies will be retained for costs incurred by the Franchisor. This is very common</p>
6 Manual	<p>Please ask the Franchisor for a view of the Operations Manual given that it is referred to within the Franchise Agreement. The franchisor will probably not provide you with a hard copy at this point, however you should be able to view it with them to ensure that all systems and processes that you are required to follow, are fully documented. This is a very valuable resource and you need comfort that a comprehensive manual exists.</p> <p>The Operating Manual is accessed electronically which is very common.</p> <p>Updates must be complied with, so be aware that you may need to acknowledge the updates and take any action as required.</p>
7 Products and Services	<p>The Franchisor requires you to purchase products and services as they direct you. This should be listed in the Operations Manual and we suggest you view the list of suppliers. The Franchisor is also an Approved Supplier of products.</p> <p>Pricing guidelines will be supplied by the Franchisor. Please be aware that the Franchisor can provide a recommended resale price for the products, they legally cannot dictate the minimum price you may charge for products.</p> <p>** We note Law Firm X have also recommended an amendment</p> <p>Landing of products from the Franchisor. Please investigate how the products are shipped from Qld to Vic, where they are shipped to, and how are they to be stored? This may attract extra costs to all jobs.</p>
8 Ownership	<p>The franchise agreement can be in the name of a company, trust or partnership.</p> <p>Please ensure that you get advice from your accountant in regard to the best structure for your personal situation. Take into account protection of assets and your tax position.</p>
9 Standards of Conduct	<p>The Franchisor may have a standards evaluation or audit process in place. These may be listed in the Operations Manuals. Please discuss with them the requirements in regard to:</p> <ul style="list-style-type: none"> • Safety Standards • Service Standards • Other standards required in the operation of the business <p>How will standards be measured?</p>

10 Staff	<p>Please be aware that any staff must be engaged appropriately (Employee V Contractor). Please seek the franchisor's advice. This should be addressed in the Human Resources section of the Operations Manual.</p> <p>https://www.ato.gov.au/business/employee-or-contractor/how-to-work-it-out--employee-or-contractor/</p> <p>Other questions to ask:</p> <ul style="list-style-type: none"> • Modern Award the business falls under • Payment Levels for employees <p>It is of extreme importance that you comply with all Fair Work requirements. Seek assistance from the Franchisor as under the Franchising Code of Conduct they can also incur penalties if your employees are not remunerated correctly. They need to have a vested interest in ensuring that all requirements are met.</p> <p>There are terms around key people in the business, please read these carefully and seek clarification if needed.</p>
13 Premises	<p>Whilst there are no contractual requirements for an office or leased premises, we do recommend that a dedicated area or room in the home is set aside for you to conduct the business activities.</p>
14 Vehicle and Equipment	<p>Please request the information from the Operations Manual referring to the specifications of the required vehicle and trailer. Likewise, for the Approved Equipment.</p>
15 Computer System and Accounting	<p>The software used is Tradiepad in conjunction with ServiceM8. The bookkeeping programs are Xero and Receipt Bank.</p> <p>There are subscription fees listed in the Disclosure Document (DD) for you to factor into your financial business plan.</p> <p>We note that the DD indicates that Xero Fees and Receipt Bank Fees are to be paid to the Franchisees Accountant. These are subscription services that can be easily accessed and paid for by you directly to the provider. Please discuss with the franchisor why you would need to engage your accountant to provide access to these platforms which could attract an extra fee from the Accountant.</p> <p>We also note that Clause 15.2 requires you to engage an accountancy firm nominated by the franchisor from time to time and the accountancy firm will also be the franchisor's accountancy firm. Please investigate what this entails, what the costs would be and why? We believe that this may represent conflict of interest.</p> <p>** We note that Law Firm X have provided advice on this clause too.</p>
17. Training	<p>Additional Training will be held at a location chosen by the franchisor. We suggest that this will be Qld, so travel and accommodation costs must be factored in.</p> <p>Please clarify with the franchisor circumstances where additional training may be required.</p>

	<p>Meetings and Conferences will also attract costs for attendance. Please request a schedule of meetings and conferences you may be required to attend for the year ahead.</p>
18.2 Business Plan	<p>Be aware that you must develop an annual business plan and submit it to the franchisor.</p> <p>You are then required to undertake all strategies listed within the plan. There may be implications if this does not occur. Please check with the franchisor.</p>
18.3 Performance Targets	<p>This is an important clause in the franchise agreement, so please investigate thoroughly with the franchisor.</p> <p>Performance Targets are set by the franchisor in advance for coming the financial year. We recommend that the Performance Targets are agreed by BOTH parties.</p> <p>Note the Review Period conditions, as failure to achieve performance targets may result in termination of the franchise agreement.</p>
18.7 Reports	<p>We note that the Allocated Accountancy Firm is to provide the Franchisor the following reports. This will be at your expense. Please see comments in 15 above.</p> <p>Monthly Reports are required to be submitted on the 5th day of every month.</p> <ul style="list-style-type: none"> • Profit & Loss – extracted from Xero • Cash at Bank Report – please investigate the purpose of this report and what it will be used for • Debtor and Creditors – extract from Xero <p>Quarterly Reports by 5th at end of each quarter</p> <ul style="list-style-type: none"> • ATO Portal -we assume this is required to ensure that you have lodged and paid BAS as required • Superannuation – as above • Loan Accounts -ensuring you are meeting your financial obligations <p>Annual Report</p> <ul style="list-style-type: none"> • By 31 September: Expenditure on marketing in your EMA. You are required to spend 1% per month, so you will need to keep accurate records • By 31 December: Audited Financial Statements
19 Marketing	<p>19.1 Initial Promotion by Franchisee. 8 weeks from commencement. Please request information in regard to a launch marketing plan from the franchisor. What are the required initiatives and what resource tools are available to you? Will the franchisor support, monitor and mentor you in the initial stages? We would expect that the franchisor has had experience with the launch campaigns of other franchisees and will work with you to generate leads.</p>

	<p>19.2 Please request a copy of the LAMP Toolkit (Local Area Marketing Plan). Often this is a part of the Operations Manual. You should have access to suggested marketing initiatives and campaigns as well as documentation to track ROI. The franchisor must approve all marketing initiatives and campaigns prior to implementation.</p> <p>19.4 Group Marketing Fund Levy 2.5% of gross sales. This goes into a separate bank account held by the franchisor. All franchisees are required to contribute to the fund. The funds are typically used for brand promotion and creating awareness of the Franchisor X products and business model.</p> <p>The campaigns and expenditure will not be aimed at your individual franchise territory.</p> <p>The Franchising Code of Conduct requires the franchisor to audit the fund annually and provide the franchisees with meaningful information in regard to expenditure.</p> <p>We recommend that you request a copy of the last financial year's Marketing Fund Report and ROI as a part of your due diligence into the franchise offer.</p>
21.3 Customer List	<p>Please be aware that all customer lists, databases and details are the property of the franchisor. This may have implications if you desire to sell the business within the franchise term, as there is no ownership of clientele.</p> <p>This is common in franchising today.</p>
23.2 Franchisee Acknowledgements	<p>This clause requires you to acknowledge that you are responsible for the success or failure of the business.</p> <p>This is a franchise opportunity; however, you will be an independent small business owner and there are no guarantees. You must weigh up the risks and make an informed decision.</p> <p>The acknowledgments also ask if you have been provided with any representation from the franchisor regarding the financial success of the business. Please be aware of the implications when signing the agreement.</p>
25 Indemnity	<p>Please read this clause carefully. Typically, it would refer to any customer action against you or the products used.</p> <p>Given that products are to be supplied by the franchisor, you have no control over quality and integrity.</p> <p>** Law Firm X have recommended an amendment</p>

FURTHER QUERIES

Police Check	Are you required to undertake a Police Check prior to commencement?
Driver's License	Are there any particular requirements in regard to your driver's license i.e.: minimum amount of points available at all times?
Qualifications	Are there any trade or other qualifications required to operate the franchise?
Current Disclosure Document	Please request a current Disclosure Document, as the one provided is now out of date.
Franchisees	<p>Please check the updated Disclosure Document for existing franchisees. The provided document states 2 franchisees, however the separate list provided names 9.</p> <p>Please make contact with as many franchisees as possible.</p> <p>Suggested questions to ask. This is not an exhaustive list, please add your own questions.</p> <ul style="list-style-type: none"> • How long have they been operating? • Did the initial training cover everything they needed to know including Business Management information? • Could they comment on their dealings with the Franchisor to date? • Have they been supportive? • What is the internal culture like? • How and when do they proactively communicate with you? • What was the first years cashflow? • How many leads were provided from the Franchisor X Support Office? • What marketing are they doing and how has it worked for them? • Does the franchisor assist with Local Area Marketing benchmarks and initiatives on an ongoing basis? • Have there been any issues or disagreements? • Do you work full time in the business? • Who does your bookkeeping? • Have they attended additional training sessions, meetings or conferences? • How have they found selling the products and services to target clientele?
Vehicle	Suggest that you obtain written approval for your existing vehicle to be used in the franchised business

Trailer	Please discuss this requirement with the franchisor and obtain any decisions in writing.
Tools	Obtain written approval for all existing tools to be used in the operation of the franchise business
Initial Marketing Material	Is there an initial pack of marketing materials supplied within the \$5K Initial Promotion Amount? If not, then you will need to factor this into the Capital Investment spreadsheet

FINANCIAL MODELLING

CAPTIAL INVESTMENT

Please utilise the spreadsheet tools to determine the total cost of entering the franchise.

Fill in the table in the Assumptions tab according to the advice received from the franchisor, your knowledge and any advice received from other franchisees.

- The Initial Franchise Fee in the draft Franchise Agreement is listed as \$27.5K
- The Induction Training is \$16K
- Initial Promotion Amount is \$5K

Please insert other investment costs such as:

- Vehicle purchase (if applicable)
- Vehicle signage
- Trailer purchase (if applicable)
- Trailer Signage
- Computer, iPad
- ServiceM8 set up
- Xero set up
- Legal, Accounting and Business Advice costs
- Company registration
- Working Capital
- Building Licence Fee
- Tools
- Others.....

You need to understand the full investment outlay in terms of budgeting, especially working capital to take you through to actual cashflow generation. There is no point being under extreme financial pressure at the outset. This will only place strain and stress on you and on the Franchisor. It is best to have a clear picture of the funds required and the period of trading until cashflow is generated.

FRANCHISEE MODELLING

Please request factual data from the franchisor. What have the other franchisees managed to achieve in jobs, revenue, cost of goods, expenses and bottom line profit.

Whilst there are no guarantees that you will achieve the same or similar results, factual financials will provide a basis for you to examine the outcomes. You can also use this information to build your own business plan. Please remember that no two franchises within the same system are alike, the variables are vast in terms of marketing territories, demography, job types, marketing opportunities, and the business operators (you are the biggest variables).

We strongly suggest that you work with your accountant and develop your own personal projections.

The franchisee summary and detail tabs flow from the input into the Assumptions.

- Monthly and yearly growth projections
- A breakdown of the jobs and corresponding revenue month by month
- Cost of Goods according to the revenue allocations
- Gross Profit outcomes
- Expected expenses for running the business including the Franchise Service Fee of 3% (often known as Royalty) and the Marketing Fee of 2.5% (often known as the Group Marketing Fee)
- Net profit to Franchisee
- Corresponding Cashflow per month (please note that the data includes provision for loan repayments)
- We note that the Local Area Marketing (Assumptions Row 252) does not contain data. The franchise agreement states that 1% of Gross Sales + GST must be spent on Local Area Marketing. This should be factored into the spreadsheet.

The Assumptions must be reviewed and adjusted by you with a view to projecting your personal business plan and financial outcomes.

You must be honest with yourself and fully understand what the varied outcomes could be.

We suggest that you create a few different models for yourself depicting a great, medium and poor performance. You will then see the variances in potential earnings and fully understand what you need to do to achieve a great business performance result.

Analysis of factual benchmark data from the franchise network will indicate how other franchisees are performing. Are they hitting similar targets?

Please note the Franchise Agreement Schedule 1 requires a minimum base level turnover of \$10K per month. You must ensure that your business meets this target.

Failure to do so could result in a breach of the agreement. However, Clause 29.4 (e) speaks about a continuous six-month period of underperformance. Seek clarification from the franchisor.

YEAR 1 PROJECTIONS

Please review the Year 1 franchisee generated revenue and corresponding outcomes and assess whether the level of jobs and revenue is achievable. Talk to other franchisees about their experiences and adapt the spreadsheet accordingly.

- Did they reach that level in their first year?
- What was the category mix of their jobs? (50% X service, 25% X service and 25% x product)
- Were their jobs priced similar to the assumptions?

FUTURE PROJECTED EARNINGS GROWTH

Discuss the yearly growth in franchisee projected earnings over the 3-year initial term with the franchisor and request information from them to justify this.

You must be realistic, consider:

- Industry factors
- Economic growth
- Target Market Appeal
- Marketing Plan and Spend to generate this growth

OPERATING EXPENSES

The business incurs both FIXED and VARIABLE expenses.

Fixed costs are defined as expenses that don't fluctuate according to increases and decreases in revenue or services sold. Fixed costs get paid irrespective of whether the business is making money

Variable costs increase and decrease depending on the fluctuation of the business activity.

Most businesses incur standard operating expenses such as bank fees, accounting fees, computer expenses repairs and maintenance.

Input these into your model.

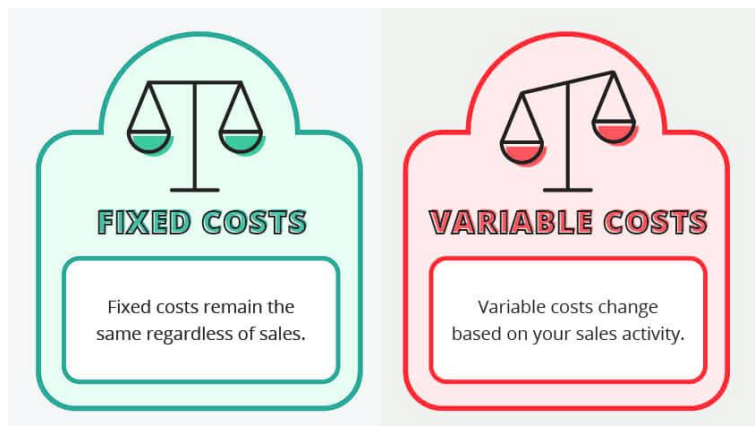
All expenses must be monitored on a month by month basis to ensure that benchmarks are achieved, and that any anomaly can be identified and assessed.

MARKETING

The Franchisor has a Group Marketing Fund in place to grow the brand.

Please note that the Group Marketing Fund typically does not spend money on individual franchisees. There is a provision for a Local Area Marketing spend of 1% by every franchisee.

This is to be spent by you within your Exclusive Marketing Area to generate local jobs for you. Input 1% of gross revenue into the spreadsheet.



RETURN ON INVESTMENT

The projections will provide you with yearly net profit outcomes. (see Franchisee Detail – Row 47, Columns BJ, BL, BN etc)

You must ensure that the return on the original investment is achieved within as quickly as possible. Given that the initial term of the Franchise Agreement is only 3 years, we would expect ROI within the first 1.5 years of operation.

Note that the model does not have an expense line for franchisee wages. This is a common format, as franchisees will only be able to draw monies if there are positive Net Profit outcomes

COMPLIANCE

BUSINESS REGISTRATIONS

All business owners in Australia have to register before commencing any business activities.

As well as registering a business name, there are a variety of taxes that your business may need to register for. These may include:

- an Australian Business Number (ABN)
- the Goods and Services Tax (GST)
- a tax file number (TFN)
- Pay as you go (PAYG) withholding.

INDEPENDENT CONTRACTORS

It's important to know whether you're hiring an independent contractor or an employee, so you can be sure you're complying with your legal obligations.

Use the [independent contractors' decision tool](#) to find out if someone is more likely to be an independent contractor or an employee.

EMPLOYING PEOPLE

There are many legal obligations for employing people. They include:

- [paying your employees](#) correct wages
- reimbursing your employees for work-related expenses
- abiding by [work health and safety \(WHS\) regulations and codes of practice](#)
- ensuring you have [workers' compensation insurance](#) for each employee
- not acting in a way that may seriously damage an employee's reputation or cause [mental distress](#) or humiliation
- ensuring you have a Working with Children check if you work or volunteer in child-related work. Find out more in our page about [employing young workers](#).

You can read more about employment laws, industrial awards and contracts here: [Legal obligations for employing people](#) page.

THE FRANCHISING CODE OF CONDUCT

All franchise businesses, including franchisors and franchisees, must comply with the mandatory industry code, Franchising Code of Conduct (the Franchising Code).

Find out more about [Franchising Code of Conduct](#) on the Australian Competition and Consumer Commission (ACCC) website.

SUMMARY

The opportunity in this industry certainly appears to have scope to grow. This must be planned and then applied to a strategy developed for continual customer acquisition.

(Franchise Right does not profess to have any specific knowledge of this industry and can only comment in terms of the principle elements we look for in franchise systems).

Your business must be constantly monitored, metrics measured, and funds reinvested in marketing for continual growth.

You have indicated that both you and your partner plan to work in the business, which is preferred. Both of you will need to be fully trained by the franchisor.

Back at home, you will need to divide up the business roles required according to skillset, and the available timeframes.

RECOMMENDED ACTION PLAN

DUE DILIGENCE

1. Complete the provided Potential Franchisee Questionnaire. Do you have an aptitude to become a successful franchisee?
2. Compile a comprehensive list of questions matrix to ask ALL franchisees. Note their responses and grade them accordingly.
3. Request financial data from the franchisor and compare what the other franchisees have told you with the factual reports. This will paint a picture for you.
4. Compile a list of questions, requests for further information for the franchisor. Submit in writing and ask for written responses.
5. Please make the franchisor aware that you have never operated a business before, and you may require extra assistance particularly in the early stages. This should not be an issue, as the franchised model is one of interdependence. Your success is their success and they must be willing to invest time with you.
6. Conduct a Risk Assessment: working long hours, impact on lifestyle and family, assess the risk with your new knowledge in mind.
7. Read the draft Franchise Agreement and Disclosure document 3 times. Highlight areas for clarification. Then read it again in conjunction with the Franchising Code of Conduct.

FINANCIAL PROJECTIONS

8. Develop the Capital Investment (Cost Estimate) so that you fully understand ALL of the costs required to enter the franchise system.
9. Continue to develop your financial model in conjunction with your accountant and according to your personal circumstances.
 - Review the revenue streams in terms of business growth and what products and services create the best mix for ROI.
 - Address the Cost of Goods and expenses and ensure that you clarify the cost to operate.
 - Observe projected bottom-line outcomes and ensure that the business grows month on month.
10. Complete your due diligence and make an informed decision about your future.

Thank you for the opportunity, we trust that this report has been useful.

Regards,

A handwritten signature in black ink that reads "Sussan Campbell". The signature is written in a cursive, flowing style.

Sussan Campbell

Director

Franchise Right Pty Ltd

Contacts

Marianne Marchesi
[Redacted]
[Redacted]

Sussan Campbell
[Redacted]
[Redacted]

10 December 2019

Franchising Taskforce

By Email: Franchising@employment.gov.au

Dear Sirs/Madams,

Response to the Franchising Regulation Impact Statement

Thank you for the opportunity to comment on the Franchising Taskforce's Regulation Impact Statement.

Our response is as follows:

PRINCIPLE 1. Prospective franchisees should be able to make reasonable assessments of the value (including costs, obligations, benefits and risks) of a franchise before entering into a contract with a franchisor

1. What are the critical pieces of information that should be contained in a summary document?

- History and experience of the Franchisor;
- Actual cost of entry (including any additional on-costs such as third-party fees);
- Actual ongoing costs of running the business;
- Ownership of intellectual property;
- Existing franchisees and their contact details; and
- Past franchisees and their contact details.

Much of the information in the current form of disclosure document is repeated from the franchise agreement and therefore unnecessary.

2. If a national franchise register is established, what information should it contain? What would be the benefits and costs of a national franchise register?

Any national franchise register (NFR) should be operated independently and not as a for-profit enterprise (eg by the ACCC).

A benefit of the NFR could be to publicly display reviews/ratings of franchise systems by their franchisees. However, beyond this, we do not see a significant benefit in having an

NFR. Much of the trends or data that would be gleaned from an NFR can already be obtained via research entities (such as IBIS world).

3. There are a number of existing educational resources on franchising. What additional education options for prospective franchisees should be made available? If there was an online educational resource which brought together the available franchising education options, what would its costs and benefits be?

We support an online resource, similar to ASIC's MoneySmart, tailored to franchisees. We also believe that this resource should extend to franchisors.

Such a resource should include information about:

- What makes a successful franchisee and pre-qualifications to enter the system;
- What due diligence checks to undertake, including specific checks on the franchisor as well as questions to ask existing franchisees;
- Explanation of key concepts in franchising, such as the Franchising Code of Conduct, franchisor's disclosure requirements, territories, minimum performance criteria, selling the business, termination etc;
- Specific questions to ask the franchisor;
- Information about the franchisee's specific obligations at law, including employment and tax obligations;
- Understanding the costs of establishing and running the franchise business and how to build a financial business plan and understand outcomes; and
- Understanding the risk of entering a franchise and considering their own personal circumstances.

The online resource should be free and would provide substantial benefit to franchisees in terms of ensuring they go in with their eyes wide open. It should also ensure that franchisees have an understanding that whilst they are buying into a franchise, they still have their own obligations as a business owner.

For Franchisors: (too many franchisors are entering the market without proving the model and structuring the system for the benefit of both parties)

Information about franchising your business concept. Feasibility study, research, regulatory obligations, the importance of getting the model and the balance right from the outset.

Problem 1.1: Disclosure can be hard to comprehend, critical information may be hidden in detail and some information is not provided

Option 1.1.3: Simplified disclosure requirements. Require that a simplified disclosure document, which provides all materially relevant information needed to assess the franchise business, is provided to prospective franchisees

Comments:

Simplified disclosure will encourage franchisees to engage with the disclosure document and assist them in understanding it.

The current form of disclosure document is lengthy and confusing. From personal experience, franchisees simply do not read it.

Educational materials and a government FranchiseSmart website should be developed where disclosure documents can be demystified and explained in layman's terms.

Problem 1.2: The reliability of information provided to prospective franchisees may be difficult to assess

Option 1.2.3: Pre-entry education

Comments:

Franchisees must also bear some responsibility for conducting their own due diligence and seeking advice. Pre-entry education will assist them to undertake appropriate checks and understand the information they are provided with.

Problem 1.3: Information gaps – a potential franchisee might be unaware of which types of information are materially relevant to inform their decision to enter an agreement

Option 1.3.3: Mandate all prospective franchisees receive legal and financial advice before entering into a franchising agreement

Comments:

It is essential for prospective franchisees to obtain independent legal and accounting advice from franchise-industry specialists. Good advisers will not only review documents for compliance, but will give franchisees a deep understanding of the offer, their rights and obligations and the possible outcomes for their situation. Specialist franchise advisors also have additional knowledge and networks about the franchise sector to ensure that franchisees make an informed decision.

PRINCIPLE 2. Franchisees should have time to consider whether the relationship is right for them before committing to an agreement

Problem 2.1

Option 2.1.1: Status quo, with clarification of the operation of existing cooling off requirements in the Franchising Code.

Under this option there would be no substantive changes to the regulation surrounding cooling off periods. However, clarification would be provided in the Franchising Code that the cooling off and disclosure periods are measured in calendar days (Recommendation 10.1) and that the 14 day disclosure period must begin at least 14 days before the signing of a franchise agreement (Recommendation 10.3).

Comments:

The Disclosure period provides the potential franchisee with a prescribed timeframe to undertake due diligence activities. In practice the franchisee would keep the franchisor informed as they proceed with these activities and will take a longer period if required. Franchisors will assist the potential franchisee if they consider the candidate a good fit. In practice it is very rare that Cooling Off is exercised.

The Cooling Off period is adequate. If proper due diligence is undertaken, then Cooling Off rights are typically not activated.

Problem 2.2

Option 2.2.4: Improve education and awareness around leasing and franchising

Stakeholders have stated that they have often been unaware of the importance of leasing costs, and their rights and obligations in relation to these costs.

Under this option action would be taken to improve awareness amongst franchisees of their rights under the Franchising Code and other legislation in relation to leasing arrangements, bearing in mind that leasing arrangements are within the jurisdiction of states and territories.

Comments:

The other options are not workable in practice.

Commercial leasing arrangements require reform. Both franchisors and franchisees are impacted by the power imbalance towards landlords.

A FranchiseSmart website with meaningful information would also assist here.

Problem 2.3

Option 2.3.1: Status quo. Under this option there would be no changes to the regulation surrounding cooling off rights in transfers, extensions and renewals.

Comments:

Cooling off periods should not apply to extensions and renewals because the franchisee has a current working relationship with the franchisor and would understand the business model. The disclosure period provides enough time to reexamine the opportunity and make an informed decision.

Transfers do not typically involve franchisors apart from approval of the purchaser. The purchaser must complete the due diligence process and make an informed decision. We don't believe that applying a Cooling Off period is required.

Questions

1. What are the practical implications (costs and benefits) for prospective franchisees and franchisors of increasing cooling off or disclosure periods?

This could create uncertainty and most certainly and unnecessary delay the transaction. As mentioned below, proper due diligence and understanding the obligations and the agreement is more the issue.

2. How easy is it for franchisors to provide reasonable estimates of leasing costs before they are finalised?

The franchisors should have a Site Selection Guideline to provide the franchisee. This would set out the specifics of the ideal site and a good indication of possible lease conditions.

Leases (where available) are required to be provided with the Disclosure Document, or as soon as possible thereafter.

Commencement of the business requires many activities to come together simultaneously, so any additional delays would impact negatively.

3. How often are leasing arrangements finalised after the cooling off period expires? What are the implications of having the cooling off period commence after a lease is finalised?

Franchisors are better placed to provide this information.

PRINCIPLE 3. Each party to a franchise agreement should be able to verify the other party is meeting its obligations and is generating value for both parties

7. What would ‘meaningful information’ look like in terms of marketing fund disclosure?

Recent guidance from the ACCC and the Ultra Tune case have provided further clarity in regards to what “meaningful information” might include. For instance, details of specific campaigns and their duration, reach and return on investment (if known). Less significant costs, such as administrative costs, can have less descriptive detail.

Generally, franchisees want to be able to see that marketing funds are being applied towards marketing the brand on a national level.

Some franchisors use the marketing fund to promote the franchise system to potential franchisees. This should be prohibited as it provides no benefit to promoting the franchisees’ businesses.

8. How does the benefit of increased frequency of reporting of marketing funds compare to the costs of increased administration?

Increased frequency of reporting should not be an unnecessary burden. Franchisors are gathering data in relation to their marketing fund anyway, therefore more frequent reporting should not be too onerous. Half-yearly or quarterly reporting would be sensible.

Problem 3.1

Marketing funds are not always transparent

Option 3.1.3: Increase awareness and provide guidance around existing legal obligations

The Code is also sufficient in regards to marketing fund obligations. More education and awareness around franchisors’ obligations is needed. A website such as that proposed by the committee, FranchiseSmart, would be an ideal source of information.

PRINCIPLE 4. A healthy franchising model fosters mutually beneficial cooperation between the franchisor and the franchisee, with shared risk and reward, free from exploitation and conflicts of interest

Problem 4.1

Option 4.1.1: Status quo. Under this option, there would be no changes to the Franchising Code in relation to supplier rebates.

Comments:

Franchise models vary greatly in regard to supply chains, some are totally dependent upon markup of their own product and no royalties.

Franchisors must retain control of the supplier relationships in order to provide and retain the quality delivery of the product or service. Declarations of supply arrangements in any format could prove disastrous for the entire franchise system. Rebates are disclosed in the Disclosure Document which is issued to franchisees for their analysis and they should be fully aware of the supply conditions of the franchise system prior to entering the agreement.

Monitoring and taking action against those who abuse the current legislation needs to be improved.

Problem 4.2

Option 4.2.1: Status quo. Under this option, there would be no change to regulatory settings.

New provisions placing constraints on capital expenditure introduced in 2015 will remain in place for all new franchising agreements.

Comments: We believe that Unfair Contract terms in legislation covers the issue of Unilateral variation of agreements.

It is impossible to predict future market changes and franchised businesses must have an ability to be agile and adapt.

Problem 4.3

Option 4.3.3: Increase awareness around legal rights

Under this option, additional efforts would be made to educate the franchising sector on legal rights and obligations around contract and business change.

A number of stakeholders were unclear about their legal rights in relation to unilateral contract variation.

New regulation of unilateral variation would not be introduced, but parties to a franchise agreement would be better informed of their rights and ability to negotiate. This additional education and awareness raising could be made through the use of government and industry association websites, as well as professional advisors.

Comments:

A FranchiseSmart website should provide explanations of unilateral variations and some examples of when they may be required. Provide information in layman's terms which is easily understood.

Questions

1. What information should franchisors disclose in relation to supplier rebates? Are there any barriers to providing this?

Franchising systems vary greatly. This is a complex issue and no one size will fit all. Current disclosure of rebates is required. Whilst the rebates are not quantified, the franchisee will be aware that they exist.

Confidentiality is absolutely key and additional disclosure may have unforeseen consequences.

2. If franchisors are required to ensure franchisees get a return on their significant capital expenditure, how might this be done in practice?

The code has Clause 30 concerning capital expenditure and franchisees should be aware of any obligations in the agreement.

Again, obtaining good advice is important.

3. If franchisees are given a right to review capital expenditure business cases (which must be presented to franchisees by the franchisor under clause 30(2)(e) of the Franchising Code for expenditure that the franchisor considers is necessary for capital investment), how would this right be exercised?

Carefully and in confidence!

PRINCIPLE 5. Where disagreements turn into disputes, there is a resolution process that is fair, timely and cost effective for both parties

12. A number of stakeholders have told the Taskforce that the cost of arbitration can be comparable to going through the court system, and that conciliation may be a preferable alternative alongside mediation. In what circumstances could conciliation be an effective alternative dispute resolution process?

Conciliation is a very similar alternative dispute resolution process to mediation. Introducing another process would be confusing and unnecessary.

As a lawyer, I have seen many disputes go to mediation that have been successfully resolved. It is a fair and impartial process which should be encouraged.

Problem 5.1

Option 5.1.3: Clarify the complaint handling procedure requirements in the Franchising Code, to require dispute resolution processes be included in franchise agreements. Provide best practice guides for these processes (including options and timeframes)

Most parties to an agreement seem to be aware of the dispute resolution processes in the Code and/or franchise agreement.

Providing more education around these processes, and encouraging franchisors to develop their own processes that are tailored to their system, would greatly assist in minimising disputes. Other processes such as internal complaints-handling procedures, whistleblower hotlines and mandatory legal advice could further assist in minimising disputes.

PRINCIPLE 6. Franchisees and franchisors should be able to exit in a way that is reasonable to both parties

14. Under what circumstances should franchisees be allowed a no-fault exit from the franchise system?

Exit options should be very limited given that the parties have committed to a fixed term contract. Allowing early exits may cause substantial damage to the franchisor, whereby their initial investment in the franchisee and disclosure of sensitive information can be wasted.

Perhaps one of the only circumstances where franchisees should be permitted to exit is where the franchisor becomes insolvent. Specific advice from insolvency specialists should be sought on how this can be managed from an administration/liquidation point of view, given that liquidators will often seek to sell the franchise system to a third party (with existing franchise agreements being assigned).

15. If goodwill was required to be fully clarified in the franchise agreement, how might this be done in practice? What would be the costs and benefits of this approach?

Goodwill of the brand and franchise system needs to be differentiated from goodwill tied to customers.

The former is developed and owned by the franchisor, whereas the latter can be as a result of the franchisee's running of the business.

Differentiating between the two would allow franchisees to recoup their investment and obtain tax advantages where they sell the business.

Problem 6.1

Option 6.1.3: Clarify the termination processes available to franchisees and support greater awareness of negotiation pathways

Termination processes must be explained to franchisees from the outset by their professional advisers. This further endorses the view that legal advice should be mandatory. Professional advisers will also explain the post-termination obligations, such as restraints of trade, which in our experience, many franchisees have been unaware of.

Problem 6.2

Option 6.2.3: Codify common law that restraints of trade should go no further than reasonable to protect legitimate interests

We fully support the view that common law principles on restraints of trade should be codified. It should be made clear that restraints must be reasonable and go no further than is necessary to

protect the franchisor's legitimate business interests. Some examples of "legitimate business interests" should also be provided - such as to protect confidentiality and to prevent clients or staff from being solicited.

Problem 6.3

Option 6.3.2: Clarify the franchisees' rights in regard to goodwill, if any, in the franchise agreement

Goodwill relating to the brand and goodwill relating to customers should be clarified. Further, franchisees should obtain independent advice to understand their rights in relation to goodwill as well as how goodwill can be treated from a tax/accounting point of view on sale of the business.

PRINCIPLE 7. The framework for industry codes should support regulatory compliance, enforcement and appropriate consistency

Option 7.1.1: Status quo. Under this option there would be no changes to the regulatory framework.

The Oil industry businesses are better positioned to comment.

Yours Sincerely,



Marianne Marchesi



Sussan Campbell