
From: Kerry Schedue [Redacted]
Sent: Friday, 6 December 2019 18:30
To: Employment - Franchising
Subject: RIS

Follow Up Flag: Follow up
Flag Status: Completed

Dear Sir/Madam

I wish to inform you that I endorse the AAF's position.

Kind regards

Kerry Schedue

Sent from my iPad

Name Kerry-lee Schedue
State Queensland
Stakeholder Type: Current franchisee
Industry Type: Convenience

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

Profit and Loss statements from the previous 3 years of an existing site provided by the Franchisor not the current Franchisee selling the business.

A full report of all levies collected and how these are spent - marketing/ development/ special levies introduced.

Clear and concise obligations of the Franchisor.

Disclosure of current no. of Franchises and how often they have turned over and it what circumstances.

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?

Transparency of information of all franchises including fees and charges to enable a comparison. Summary of what the Franchisor is obliged to provide.

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?

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 1.1.2: Changes to the Franchising Code to increase disclosure

- (a) Electronic and hard copy disclosure
- (b) Separate information statement
- (c) Increased and formal financial disclosure
- (d) Provision of the ACCC's Franchisee Manual
- (e) Leasing disclosure

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?

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

Option 1.2.2: Requiring franchisors to verify financial statements and introducing a national franchise register

- (a) Franchisors would be required to include a statement about the accuracy of financial statements
- (b) National franchise register

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 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 1.3.2: A new Government online educational resource for the franchising sector

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?

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

Cooling off periods should be increased to allow the prospective franchisee an opportunity to work within the business for 2 weeks prior to being committed to the franchise.

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

Estimates should be easily available through a market review process to establish the average lease costs.

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?

Generally the Franchisor holds the head lease and has selected the site themselves. This being so, there should be no implications other than finding another franchisee to purchase the business.

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 2.1.2: Extend cooling off to 14 days and modify the circumstances which trigger the commencement of the cooling off period

Option 2.1.3: Amend the code to extend the disclosure period to 21 days, with the ability to waive part or all of this period with written agreement of both parties

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

Option 2.2.2: Extend cooling off periods, transparency, and termination rights in relation to leases

Option 2.2.3: Provide a new cooling off period of seven days where lease terms are 10 per cent above maximum estimates provided in disclosure documents

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?

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

Option 2.3.3: Extend cooling off to transfers only

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?

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

A clear, concise document detailing where marketing funds have been spent and the benefit this provided to franchisees.

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

I would expect that a Franchisor would keep an updated account of all funds, therefore the increase in costs should be negligible.

Problem 3.1 Marketing funds are not always transparent

Option 3.1.2: Address inconsistency in the Franchising Code on the treatment of marketing funds and increase reporting standards

- (a) Improve consistency within the Franchising Code about the treatment of marketing funds, particularly clauses 15 and 31
- (b) Introduce civil pecuniary penalties for a breach of clause 31
- (c) Increase the frequency and standards of reporting of marketing funds
- (d) Require master franchisors to meet requirements of marketing funds
- (e) Clarify the distribution of marketing funds in the event of franchisor insolvency

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

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?

All supplier rebate terms and conditions should be made available and declared if they are being paid to the Franchisor without distribution to franchisees.

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

By clearly outlining what they are obligated to do to ensure the success of the franchise business. The generalised nature of the franchise agreement does not provide enough information on standards and expectations of what the Franchisor must provide. It is very skewed toward what is required from the franchisee.

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?

Problem 4.1 Supplier rebates can lead to conflicts of interest

Option 4.1.2: Address conflicts of interest in the handling of supplier rebates to franchisors by requiring increased disclosure

Option 4.1.3: Prohibition of supplier rebates in circumstances where franchisor specifies maximum franchisee sale prices

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 4.2 Conflicts of interest in the context of capital expenditure

Option 4.2.2: Modify the Code to define significant capital expenditure and provide rights for franchisees to recoup the value of significant capital expenditure

Option 4.2.3: Clarify franchisee rights when significant capital expenditure is required

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 4.3 Unilateral variations can lead to conflicts of interest and exploitation

Option 4.3.2: Banning or limiting the circumstances in which franchisors can unilaterally vary franchise agreements

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?

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?

Yes

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

Option 5.1.2: Expand options for dispute resolution, and streamline mediation procedures and services

- (a) Merge OFMA and ASBFEO
- (b) Strengthen third party involvement in dispute resolution including pathways for binding dispute resolution
- (c) Clarify the availability of multi-party mediation
- (d) Require that mediation and then arbitration commence within a specified time period once a mediator or arbitrator has been appointed

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)

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?

When they have complied with all necessary processes and procedures and have been unable to achieve profitability due to external influences.

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

Option 6.1.2: Limit termination in circumstances where the franchisee seeks mediation, and/or breaches have occurred for fraud or public health and safety reasons, and introduce statutory termination rights into the Franchising Code

- (a) Additional requirements where the franchisor is terminating in special circumstances
- (b) Provide statutory termination rights to 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

Option 6.2.2: Amend franchising agreement requirements and clarify wording of Clause 23 of the Franchising Code

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

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

Option 6.3.3: Increase awareness of how goodwill is handled in 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?

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

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 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?