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| Name | Anonymous |
| **1. What are the critical pieces of information that should be contained in a summary document?** |
| All potential major & minor costs. Any ongoing minor costs such as sundry expenses for mystery shoppers, franchise conference etc Any legal disputes matters and its details whether its in the past or current.Full financial documents of the franchisor which shows marketing funds, suppliers rebates , corporate store expenses etc.  |
| **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?** |
| every listed minor and complaints against the franchisor and its detailsHow many times of complaints received against the franchisorThis register should be open to the public at free of charge for access or to make a complaint and the franchise / small business ombudsman should be involved in it |
| **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?** |
| Honest reviews from franchise partners of the franchise chain How the franchisor operates internally |
| **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 disclosure1. Electronic and hard copy disclosure
2. Separate information statement
3. Increased and formal financial disclosure
4. Provision of the ACCC’s Franchisee Manual
5. Leasing disclosure
 |
| **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?** |
| many of the information may not be accurated and up to date or may be hidden and are only very brief with minimal details |
| **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 register1. Franchisors would be required to include a statement about the accuracy of financial statements
2. National franchise register
3. Third party brokers
 |
| **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?** |
| many of the information may not be accurated and up to date or may be hidden and are only very brief with minimal details |
| **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 educational resource for the franchising sector |
| **4. What are the practical implications (costs and benefits) for prospective franchisees and franchisors of increasing cooling off or disclosure periods?** |
| Allows franchisees sufficient times to rethink |
| **5. How easy is it for franchisors to provide reasonable estimates of leasing costs before they are finalised?** |
| relatively easy |
| **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?** |
| 2 monthsThis will provides accurate financials and profitability of the business as rent is the main and largest outgoing of any business. The lease will also details every detailed requirements of the required fitout expectations and certificates it needs |
| **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 2.1.3: 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 |
| **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 leasesOption 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 documentsOption 2.2.4: Improve education and awareness around leasing and franchising |
| **Problem 2.3: Cooling off rights in transfers, extensions and renewals can be unclear, including with respect to franchisee to franchisee sales** |
| Option 2.3.2: Extend cooling off to transfers, extensions and renewals |
| **7. What would ‘meaningful information’ look like in terms of marketing fund disclosure?** |
| Itemised account for each item such as each media advertising, social media etcHow are each costs calculatedInvoice for each so its transparent |
| **8. How does the benefit of increased frequency of reporting of marketing funds compare to the costs of increased administration?** |
| easy to audit and planneda |
| **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 standards1. Introduce civil pecuniary penalties for a breach of clause 31
2. Increase the frequency and standards of reporting of marketing funds
3. Require master franchisors to meet requirements of marketing funds
4. Clarify the distribution of marketing funds in the event of franchisor insolvency
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| **9. What information should franchisors disclose in relation to supplier rebates? Are there any barriers to providing this?** |
| every cents in terms of percentage or dollar amount that will be received should be provided on the disclosure statement |
| **10. If franchisors are required to ensure franchisees get a return on their significant capital expenditure, how might this be done in practice?** |
| A reduction on franchisees loyalty fee on a 6 or 12 monthly basis |
| **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?** |
| Must presented out on a legal document and only if the reason for doing someets the criteria set out on the franchise codes. This is so to avoid the franchisors from exercising their powers for their own benefits |
| **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 disclosureOption 4.1.3: Prohibition of supplier rebates in circumstances where franchisor specifies maximum franchisee sale prices |
| **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 expenditureOption 4.2.3: Clarify franchisee rights when significant capital expenditure is required |
| **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 agreementsOption 4.3.3: Increase awareness around legal rights |
| **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?** |
| Very effective.Many franchisees wish to bring deisputes against the franchisors but do not have the knowledge to where to seek for assistance.A tribunal where the decision is binding should be in place |
| **13. Would you consider including arbitration to resolve disputes in your franchising agreement, if a clear voluntary option were provided?** |
| Defintely 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 services1. Merge OFMA and ASBFEO
2. Require that mediation and then arbitration commence within a specified time period once a mediator or arbitrator has been appointed
 |
| **14. Under what circumstances should franchisees be allowed a no-fault exit from the franchise system?** |
| Where the franchisor fails to provide supports Where the franchisees business shows significant financial lostWhere the sales reports shows no business potential at all to continue |
| **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?** |
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| **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 Code1. Additional requirements where the franchisor is terminating in special circumstances
2. Provide statutory termination rights to franchisees
3. Holding rent payments from franchisees in trust
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| **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 CodeOption 6.2.3: Codify common law that restraints of trade should go no further than reasonable to protect legitimate interests |
| **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 agreementOption 6.3.3: Increase awareness of how goodwill is handled in franchising |
| **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?** |
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| **17. What are the implications of repealing the Oil Code of Conduct and adding specific fuel retailing provisions to the Franchising Code?** |
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| **Problem 7.1: Some franchisors experience additional regulatory burden from having to comply with both the Franchising Code and the Oil Code** |
| Option 7.1.2: Increase the number of common provisions between the Oil and Franchising Codes to reduce the regulatory burden for some franchisors1. Align the Oil Code with the Franchising Code in relation to marketing funds and fees (Recommendation 6.13
2. Align the Oil Code disclosure provisions with the Franchising Code (Recommendations 10.5 and 10.6)
3. Align clause 36 of the Oil Code for termination in special circumstances with clause 29 of the Franchising Code (Recommendation 11.3)
4. Implement ACCC-recommended penalty regime, including significantly increasing the quantum of civil pecuniary penalties for a breach of the Franchising Code and introducing the same civil penalties to the Oil Code (Recommendation 16.1),
5. Align the Oil Code with the Franchising Code where any amendments are made to the Franchising Code (Recommendation 16.3)
 |
| **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** |
| Option 7.2.2: Application and enhancement of civil penalties to all breaches of the Franchising and Oil CodesOption 7.2.3: Improved education and guidance on expectations around compliance with the code |
| **Are there any other comments you would like to make?** |
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