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| **Name** | Anonymous |
| **1. What are the critical pieces of information that should be contained in a summary document?** | |
| Gross national turnover Expected turnover to Franchisee in territory to be purchased based on actual or extrapolated numbers from similar sized business within the group Marketing funding spent in area as direct or pro rata percventage of input Set up costs Costs of territory as if it was new with no customers compared to costs for existing turnover. Eg. new territory or area consisting of two regions would cost $45K per territory plus set up costs. Full financials of Franchisor including P&L and Balance Sheet, not overall numbers only Same for buying an existing business from outgoing Franchisee for at least two years Any carrots and sticks for performance and targets All setup costs and expected outgoings including renewal costs Exit conditions Good will explanations in the event of Franchisor acquiring franchisee business List of failed and successful franchisees in same group for mentoring and business information List of known direct business competitors ACCC Franchisee Manual | |
| **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?** | |
| Franchisor contact details Maybe a star rating system based on certain criteria and feedback system Years in business Franchisee contact details on request Number of formal disputes for a Franchise group, historical and current Unknown cost but not significant if information provided by Franchisors Benefits are, healthy competition for Franchisors, contacting existing Franchisees to ask how the system works and feedback about conduct of Franchisor for legitimate purchasers | |
| **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?** | |
| Pros and cons, pitfalls etc Common reasons for failure Understanding Franchise agreements and responsibilities Costs unknown but benefits would be a valuable resource in decision phase | |
| **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   1. Electronic and hard copy disclosure 2. Increased and formal financial disclosure 3. Provision of the ACCC’s Franchisee Manual   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?** | |
| This is the most important part of the decision making process. The cost to provide a more detailed financial document are zero. It is just a setting on the accounting system. The costs to set up the system are unknown. The information provided in our annual disclosure are insufficient in detail and Franchisor refuses to elaborate | |
| **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   1. Franchisors would be required to include a statement about the accuracy of financial statements 2. 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?** | |
| The information that a Franchisor has about an existing franchise that may be up for sale is verified by the numerous checks and balances in an agreement. The clauses for auditing are obvious in our agreement as well. At least the income from existing franchisee is based on fees paid on gross invoicing etc is accepted by franchisor. The actual profitability in our case is sent to Franchisor every month. The Franchisor cannot claim inaccuracy etc. if they have been accepting fees and financial documentation every month. In regard to new areas the franchisor can use similar demographics and business sizes to provide a reasonable estimate of income and profit as it changes through the life cycle and tenure of existing businesses. Profitability is another issue depending on a range of factors | |
| **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  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?** | |
| Independent advice is often available for set fees, for example an organisation like Legal Vision will give a flat fee to asses an agreement which could be included in the sale price and mandatory as part of the sale. Also existing Franchisees could advise any prospective franchisee of the pitfalls in the agreement that could be negotiated on entry into the system rather than after one is signed up. (too late then) | |
| **4. What are the practical implications (costs and benefits) for prospective franchisees and franchisors of increasing cooling off or disclosure periods?** | |
| There are many benefits of proceeding slowly, a Franchisee should be allowed to fully assess an agreement and system before being pressured to sign off. The cost to a Franchisor is limited to lost fees but and unsuitable Franchisee can lose life savings. First time franchisees are particularly vulnerable as they do not understand the sometimes onerous issues outlined in an agreement. For example spending all energy and time on the business may be fine if all is good but sometimes a second job may be required to make ends meet. This would be a breach situation | |
| **5. How easy is it for franchisors to provide reasonable estimates of leasing costs before they are finalised?** | |
| Very easy, they have experience. | |
| **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?** | |
| Not applicable to me. Business premises started off as home based and grew to purchased warehouse when affordable and necessary. | |
| **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 | |
| **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?** | |
| 21 days is a good length of time considering a 5 year stint is usually the minimum option | |
| **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?** | |
| This can be written into lease discussions with a vendor. Lease form a significant cost of doing business and must not be under estimated. | |
| **Problem 2.3: Cooling off rights in transfers, extensions and renewals can be unclear, including with respect to franchisee to franchisee sales** | |
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| **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?** | |
| Transfers are vastly different to a renewal. A renewal should be a discussion about some terms of the agreement. Transfer is to a new operator of an existing business and general business sales rules should apply. The problem with changing an agreement is that it is extremely biased towards the franchisor who has the power in this negotiation because the existing Franchisee will not have time to sell if agreement cannot be made and the franchisor resumes the business. | |
| **7. What would ‘meaningful information’ look like in terms of marketing fund disclosure?** | |
| Meaningful information is reasonable detail and any area of cloudy spend should be able to be questioned. For example wages paid to Franchisor workers undertaking "marketing activities". The real problem here is that if the description of marketing relating activities is quite universal in the agreement then expenditure considered frivolous by franchisees can be justified by broad criteria in the agreement. A franchisee should receive a benefit from the money they put in. Setting a limit such as a percentage of money spent into the area where the funds were developed may be an answer. The remainder can go back to websites, branding promotions of a national or general nature. The need for marketing in any particular area may change over time from brochures at the start of business to relationship management in a developed business. For this reason a Franchisee council providing input should be mandatory. This way the needs of franchisees can be articulated for allocation of funds. | |
| **8. How does the benefit of increased frequency of reporting of marketing funds compare to the costs of increased administration?** | |
| Frequency is not quite as important as purposeful spend that actually benefits those that put money into the marketing fund. | |
| **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   1. Improve consistency within the Franchising Code about the treatment of marketing funds, particularly clauses 15 and 31 2. Introduce civil pecuniary penalties for a breach of clause 31 3. Increase the frequency and standards of reporting of marketing funds 4. Clarify the distribution of marketing funds in the event of franchisor insolvency | |
| **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?** | |
| See above The obligations of a Franchisor are quite minimal and underdone compared to a Franchisee obligations. Once again there is no ability for Franchisees to complain about frivolous spend or to provide input into how the funds can be directed. Very autocratic due to broad definitions of marketing spend in the franchise agreement. Simply increasing the standards of reporting does nothing to address these issues where even all franchisees consider the fund to be poorly spent. The Franchisor can shrug and say, we are spending the money as per our agreement. | |
| **9. What information should franchisors disclose in relation to supplier rebates? Are there any barriers to providing this?** | |
| Supplier rebates are fine, as long as excessive fees are not charged and both parties benefit from bulk buying. Disclosing this information in a truthful matter will improve the relationship | |
| **10. If franchisors are required to ensure franchisees get a return on their significant capital expenditure, how might this be done in practice?** | |
| An agreed method or process to ensure that the profit is shared between parties. If the Franchisor is benefiting more that the franchisee in a transaction a better splitting method must be developed. Under no circumstances should a Franchisee get into financial difficulty while the franchisor continues to profit with nothing to lose.. For example if the total margin is 20% the franchisor should not receive more than 10% (50%) of the transaction. This is easily visible in P & L Another example, over a year if the Franchisee has paid $100,000 to Franchisor yet only made a profit of $10,000, there is something wrong. Profitability with agreed parameters could be set between individuals based on common ground and | |
| **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?** | |
| All depends on payback period. If there enough time left on the agreement or a renewal is guaranteed in writing or a new term immediately replacing the short term left on current agreement then it is probably ok. It is not necessary to only renew an agreement at the end of the term and a new agreement could be put in place with a longer term provided both parties agreed. | |
| **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 | |
| **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?** | |
| Honesty in disclosure makes for a better relationship. It is fair for a Franchisor to make a reasonable return on negotiation of better prices for franchisees | |
| **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?** | |
| Payback periods or competitive edge is a good thing. Significant capital expense should not be enforced when in the final 5 year term of an agreement where there is no intention on renewal. Otherwise a pro rata rebate on the expenditure can be paid back by the franchisor or new purchaser of the business. | |
| **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 | |
| **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?** | |
| This is truly the most significant change that can be made in this whole exercise. Currently our franchisor went through a process to provide an incentive program for high achieving franchisees. When these high targets were reached the clause was removed unilaterally. All the effort, cost and energy required to reach these targets was then lost and the franchisor gained significantly higher returns in perpetuity. No discussion is tolerated on this issue and it needs to be changed only with approval of 75% of Franchisees. This is also an issue with removal or addition of clauses when a renewal is negotiated. For example the above situation where some franchisees were eligible for performance rebates because it was in older agreements but it was removed from renewal documents. | |
| **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?** | |
| An arbitrator can only go on information presented. Conciliation would be appropriate where there is some agreement but sticking points on numbers or how something is paid for. | |
| **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   1. Strengthen third party involvement in dispute resolution including pathways for binding dispute resolution 2. 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?** | |
| One of the issues I have encountered was an agreement of actions reached at mediation were not followed through by Franchisor. A made up statement was simply put forward and no further action. This is not what the process is all about. There must be some form of persuasion to encourage an agreement made at mediation enforceable. Merging department will not help here. The mediation process is OK as it exists and information about it is readily available. The issues of procrastination by either party is only of concern during negotiations prior to mediation. The time frame once mediation is commenced is ok. | |
| **14. Under what circumstances should franchisees be allowed a no-fault exit from the franchise system?** | |
| No profit being made significant changes to system Shift of business or major disruptor entry to marked, becomes non viable. Significant planned changes to franchisor costs or demands. Time is needed to sell business. | |
| **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?** | |
| Under no circumstances should good will not be paid when a franchisor will not renew or extend. Good will is worth a value and the business build up by a franchisee will have a significantly higher value or resale value than a new business with no clients. A franchisee moving out should be allowed time to sell the business or obtain fair value from the franchisor who can then on sell the business. This is particularly important when major changes are made to an agreement which will financially impacta business. Sell time for a typical business can be over a year when notification to renew by Franchisor is only six months. When a franchise agreement runs out before a sale can be put in place the franchisee has no standing. Not paying good will should not be an option in the franchise agreement. Business valuation can be set at an agreed methodology | |
| **Problem 6.1 Reasonable exit arrangements may not be, or may not be perceived to be, available or accessible for some franchisees** | |
| Option 6.1.3: Clarify the termination processes available to franchisees and support greater awareness of negotiation pathways | |
| **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?** | |
| In addition to termination there should be better understanding of requirements or opportunities at the end of an agreement. When an agreement cannot be extended or renewed but the franchisor wishes to carry on, what are the rights of both parties. For example if an agreement runs out and will not be renewed or extended by Franchisor, what can a Franchisee legally do to keep solvent and make a living. | |
| **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?** | |
| Cascading time frames simply frustrate the process and is legal jargon. If a new business is started in the same industry or line of business but with a significant difference there should be no restraint. The clauses against doing anything remotely the same or investing in another business with similar interests should be removed. | |
| **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?** | |
| Good will is real. When a franchisee entered an agreement with no customers, no income and built the business from scratch goodwill must be paid by the franchisor on requisition of the business. Full stop. When a franchised business is sold to a subsequent investor, good will is calculated. Often the area fee charged by the Franchisor on initial startup actually becomes worthless and new purchaser is only interested in return on investment and PE ratios. So good will is real and should be paid by franchisor when any business is resumed as they have more opportunity to charge a much higher resale value that virgin areas. A customer base has already been built up. | |
| **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?** | |
| Know nothing about this | |
| **17. What are the implications of repealing the Oil Code of Conduct and adding specific fuel retailing provisions to the Franchising Code?** | |
| Any well written code can accomplish great things even if some parts of the common code only apply to oil. Maybe Oil Code subsection. | |
| **Problem 7.1: Some franchisors experience additional regulatory burden from having to comply with both the Franchising Code and the Oil Code** | |
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| **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?** | |
| Don't know | |
| **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 Codes  Option 7.2.3: Improved education and guidance on expectations around compliance with 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?** | |
| There is so much to know about our franchise agreements and they should be kept simple, reviewed regularly and change as the business world changes | |
| **Are there any other comments you would like to make?** | |
| The imbalance of power currently leaves franchisees exposed to exploitation and bullying if a relationship sours. A major reason why relationships sour is the power a franchisor can decide to turn on or off depending on a whim or weather a franchisee is compliant and agreeable. " I can put the fees up at any time if I wish""if you do not comply with this I will put you in breach." "I do not want to talk to you as a group, you must all deal with me through the mediation process even though your complaints are all about the same thing" | |