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| **Name** | Colin Hunt |
| **State**  | Queensland |
| **Stakeholder Type:**  | Franchisor |
| **Industry Type:** | Accounting and Business Advisory services |
| **1. What are the critical pieces of information that should be contained in a summary document?** |
| Consideration should be given to a simplified disclosure document that omits sections that are not relevant to a particular franchisor. Also simplified where the franchise entry cost is below $50,000 (index linked).A professional services based franchise without leased premises, no physical products, no capital expenditure required for plant and equipment, is very different to a fast food outlet.Large food franchisors that have acted poorly should not result in increased regulation burden for all franchisors. |
| **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?** |
| No benefit but a burden and a problem for IP protection. |
| **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?** |
| Education needs varies depending on the qualifications and experience of the prospective franchisee. Education should be available but not mandatory.For example: a prospective franchisee with a Masters degree in Accounting and 10+ years corporate experience who is confident in their knowledge of franchising does not need additional education. |
| **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?** |
| Easier for the Franchisor to update and easier for the prospective franchisee to understand. All of the cross referencing to clauses in the franchise agreement is time consuming to construct and maintain. It's easier for the franchisee just to read the franchise agreement. |
| **Problem 1.2: The reliability of information provided to prospective franchisees may be difficult to assess** |
| Option 1.2.1: Status Quo  |
| **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?** |
| Prospective franchisees already have the opportunity to contact existing franchisees as part of their due diligence. |
| **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 1.3.1: Status quo |
| **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?** |
| If the prospective franchisee is a qualified and experienced accountant they should not be forced to pay another accountant to give advice. Similarly, a qualified lawyer should not be forced to pay another lawyer for advice. The needs of franchise applicants relate to their qualifications, experience and the size of the investment they are making.The complexity and length of documents makes the cost of advice expensive. If applicants are comparing offers from multiple franchisors the cost of advice is difficult to justify when the investment cost is below $50,000. |
| **4. What are the practical implications (costs and benefits) for prospective franchisees and franchisors of increasing cooling off or disclosure periods?** |
| The current disclosure period of 2 weeks is a minimum and prospective franchisees can take longer if they need to. There is no maximum period and there is no obligation for prospective franchisees to sign. |
| **5. How easy is it for franchisors to provide reasonable estimates of leasing costs before they are finalised?** |
| Leasing is not relevant to franchisees that do not need premises. |
| **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?** |
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| **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?** |
| A longer cooling off period will result in uncertainty, delay and frustration for both parties. Franchises that do not require leased premises do not need a longer cooling off period.There is no cooling off period if you startup a new business or buy a business. Franchises are less risky than startups so why disadvantage them with a longer cooling off period. |
| **Problem 2.2: Cooling off rights may expire before lease arrangements are finalised** |
| Option 2.2.1: 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?** |
| Lease arrangements only apply to franchise systems that require leased premises. |
| **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?** |
| There is no cooling off period if you buy a business that is not a franchise so its unfair to disadvantage a franchisee that is selling their franchise. In a professional services franchise, transferring clients to a new owner that subsequently exercises a cooling off period would seriously risk the loss of those clients thereby destroying goodwill and undermining brand reputation. |
| **7. What would ‘meaningful information’ look like in terms of marketing fund disclosure?** |
| Marketing funds do not apply to all franchise systems. |
| **8. How does the benefit of increased frequency of reporting of marketing funds compare to the costs of increased administration?** |
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| **Problem 3.1 Marketing funds are not always transparent** |
| Option 3.1.1: 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?** |
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| **9. What information should franchisors disclose in relation to supplier rebates? Are there any barriers to providing this?** |
| Service franchises that have little or no supplies relevant to rebates should be exempt from these regulations. They add to the complexity and confusion of documents that prospective franchisees need to read and understand. |
| **10. If franchisors are required to ensure franchisees get a return on their significant capital expenditure, how might this be done in practice?** |
| Not relevant if franchisees incur little or no capital expenditure. |
| **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?** |
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| **Problem 4.1 Supplier rebates can lead to conflicts of interest** |
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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?** |
| None of these 3 options. Introduce an exemption for service franchises where franchisees are free to choose their own suppliers or where the rebates make little difference to the franchisees financial performance. |
| **Problem 4.2 Conflicts of interest in the context of capital expenditure** |
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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?** |
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| **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?** |
| Franchisors need to respond quickly to remain competitive and comply with changing regulations and case law. |
| **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?** |
| Resolving disagreements before they turn into disputes is best for both parties. If there is a dispute its unlikely that any one procedure would fit all cases. Conciliation may be good as an option. |
| **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 5.1.3: 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?** |
| There are many different franchise systems. Therefore, the flexibility to choose the most relevant option is good. Franchisors are mindful that franchisees will not sign an franchise agreement if the terms are not acceptable. |
| **14. Under what circumstances should franchisees be allowed a no-fault exit from the franchise system?** |
| The circumstances should be stated in the Franchise Agreement. They will need to be different for different franchise systems. |
| **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?** |
| Simply state what happens at the end of the Term with respect to goodwill. Include an example, showing the calculation and apportionment between the Franchisee and Franchisor. |
| **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?** |
| Termination arrangements need to protect other existing and future franchisees as well as the brand. |
| **Problem 6.2 Excessive restraint of trade clauses may inhibit lawful pursuit of subsequent business interests** |
| 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?** |
| Franchise agreement terms cannot be enforced if they deny an ex franchisee the right to earn a living in their profession or trade. |
| **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 |
| **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?** |
| What is fair and reasonable will vary between different franchise systems. |
| **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** |
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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?** |
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| **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** |
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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?** |
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| **Are there any other comments you would like to make?** |
| It would be great to simplify the disclosure document, franchise agreement and Franchise Code. Currently we feel the need to apologise for the bureaucracy by explaining that the intentions are good. Franchise applicants should only need to read sections that are relevant to the specific franchise system. The cost of legal advise is proportional to the length and complexity of these documents. If the applicant is comparing offers from multiple franchisors then the legal cost multiply and are difficult to justify. |