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| **Name** | Howard Bellin |
| **State** | Victoria |
| **Stakeholder Type:** | Interested Party |
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| **1. What are the critical pieces of information that should be contained in a summary document?** | |
| Number of franchisees who left voluntarily.  Number of franchisees who were terminated. The same sort of information that is included in an IPO prospective relevant to the risks involved How often can a franchiser require an upgrade and its projected cost? Any legal actions brought against the franchiser by a government body. Capital cost and the cost to lease it. | |
| **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?** | |
| The franchiser should be vetted and approved by the ACCC. All known negative details about the franchiser should be included including a view of the contract. Such approval should be updated annually. The benefit would help people from losing their homes, divorce and even suicide, far more people than enter an IPO. The costs are difficult to determine. Perhaps it should be offset by a levy on franchisers | |
| **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?** | |
| The problem is that many prospective franchisees do not take advantage of what is on offer even if it s free. Bringing all existing educational resources on franchising together is a great idea, but how can prospective franchisees be forced to use them?  Seminars and workshops are relatively inexpensive, the main cost would be in publicising them | |
| **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?** | |
| Option 3 is desirable because most prospective are not necessarily financially literate. However, there should be criminal charges brought against those franchisers who intentionally provide false information.  The ACCC should provide definitive and specific details of the form the simplified disclosure requirements should be | |
| **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. 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?** | |
| All should be required to present accurate and current information. The simplified disclosure requirements  should be no less than those required for an IPO. Generally the money required for a franchise is far more than that for an investment in an IPO.  Treating a franchise as an IPO would save millions of dollars and save people's hpmes, marriages and some lives | |
| **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?** | |
| This should be mandatory. A prospective should be given a certificate saying the above has been done. The benefits are protecting prospective franchisees form themselves.  The risks are the choice of poor advisers. There in no cost to the ACCC because the prospective franchisee pays | |
| **4. What are the practical implications (costs and benefits) for prospective franchisees and franchisors of increasing cooling off or disclosure periods?** | |
| Absolutely. Again, buying a franchise should be the same as investing in an IPO. The more prospective franchisees can find out about a franchiser the better the chances of their success. | |
| **5. How easy is it for franchisors to provide reasonable estimates of leasing costs before they are finalised?** | |
| Totally. Franchisers know the value of capital equipment and the cost of leasing that equipment by having several leasing companies on their books | |
| **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?** | |
| Totally relevant. in all cases. The goal must always be to protect the franchisee | |
| **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?** | |
| Again, the goal must be to protect prospective franchisees. The more that can be done to protect them, the more honest franchising should become | |
| **Problem 2.2: Cooling off rights may expire before lease arrangements are finalised** | |
| 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 | |
| **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?** | |
| Absolutely correct. There are no costs and no other options should 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 2.3.2: Extend cooling off to transfers, extensions and renewals | |
| **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?** | |
| Absolutely correct. No costs are involved, on;y beefits. | |
| **7. What would ‘meaningful information’ look like in terms of marketing fund disclosure?** | |
| Periodic audits If a franchisee is found to be in breach of his/her agreement, except where immediate termination is in the contract, should be counselled and given time to to remedy the breach. It is imperative that both parties operate in good faith | |
| **8. How does the benefit of increased frequency of reporting of marketing funds compare to the costs of increased administration?** | |
| Honest franchisers report the use of marketing funds. The ACCC should specify a minimum reporting cycle. In a well run business there should minimal additional cost | |
| **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. Require master franchisors to meet requirements of marketing funds 5. 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?** | |
| All are relevant and should cost well run franchisers no extra money. Well run companies know how much they spend on marketing. It is even more important when other people's money is being spent. | |
| **9. What information should franchisors disclose in relation to supplier rebates? Are there any barriers to providing this?** | |
| Total disclosure of supplier rebates. I, for example, know of one company that makes most of its money from supplier rebates. I am prepared to tell the ACCC provided my name is not disclosed | |
| **10. If franchisors are required to ensure franchisees get a return on their significant capital expenditure, how might this be done in practice?** | |
| Very difficult. Poor franchisees may be selected. The franchise is one thast should never have been launched. The franchise is run by incompetents.  As with an IPO, even with all the safeguards, people "pay their money and take their chances". | |
| **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?** | |
| If a large number of franchisees in a franchise group say capital expenditure has been understated, the ACCC and accompanying legal action should be taken.  It is difficult for prospective franchisees to evaluate capital cost, | |
| **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?** | |
| Both correct. They offer franchisees further protection | |
| **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?** | |
| I'm not sure franchisees should be able to recoup significant capital unless the franchiser's estimate is found to be intentionally fraudulent.   Prospective franchisees should be told of future capital expenditure and it should also be in the franchise agreement. | |
| **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?** | |
| I don't think franchisees should be able to ban a franchiser's right to vary the agreement. Where I have been involved as a consultant, the agreements were varied when the franchiser offered new benefits for franchisees. In every franchisees accepted the new agreement. | |
| **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?** | |
| As an American by birth, I find the system of Barristers and Solicitors very expensive. I think the system probably extends to arbitration.  Conciliation, if properly handled can work. However, I think the ACCC would need to establish some guidelines | |
| **13. Would you consider including arbitration to resolve disputes in your franchising agreement, if a clear voluntary option were provided?** | |
| Absolutely. | |
| **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?** | |
| A brilliant idea, effective cost wise and most likely to achieve results for both parties. | |
| **14. Under what circumstances should franchisees be allowed a no-fault exit from the franchise system?** | |
| 1. If the franchise system doesn't live up to its promises. An independent adviser may be needed 2. In cases of physical or mental impairment. 3 If it is impossible to get a fair lease. | |
| **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?** | |
| There s always a franchise fee but is not classified as goodwill.  Franchise fees are often dependent on the cost to the franchisee and the demand for the franchise. As regards goodwill on sale of the franchise, that is a buyer and seller issue. | |
| **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   1. 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?** | |
| Clarifying termination procedures is fair to franchisers and franchisees. All aspects of franchise agreements are better if they see the light of day. Again, the ACCC should offer preliminary advice on this. | |
| **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?** | |
| Most franchise agreements have a ladder clause which allows a court to choose the restriction which is most applicable. Those that do not, should. | |
| **Problem 6.3 There are different expectations around the treatment of goodwill in franchise arrangements** | |
| 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?** | |
| Most franchise agreements specify a modest fee to the franchiser on sale and the goodwill is the franchisee's to keep. This is a fair a proper arrangement. | |
| **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?** | |
| The oil code predates Australian franchising and is supported by major oil companies. It appears to be a good idea. | |
| **17. What are the implications of repealing the Oil Code of Conduct and adding specific fuel retailing provisions to the Franchising Code?** | |
| I think that repealing the Oil Code wold be an error. It is a very large and very specific industry and requires a separate charter. | |
| **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?** | |
| See above | |
| **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 | |
| **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?** | |
| Australia's major problem is that there are little, if any, criminal sanctions for crooked franchisers. Not only should civil penalties be enhanced, criminal charges should also be laid when applicable. | |
| **Are there any other comments you would like to make?** | |
| I began as a Franchise Consultant in 1969, expanding into Marketing Channel Strategy and running an international business with branches in NZ, USA, England, South Africa, Malaysia, Thailand and Brazil. I was the first franchisee consultant in the Southern Hemisphere.  If it is any help, I can provide examples of franchise programs, papers I wrote and press articles. Although I am retired I am keen to help with franchising, e.g. because it provided my family and me with an excellent income and lifestyle.  Any help I provide is free.  Sincerely  Howard Bellin | |