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| **Name** | Anonymous |
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| **1. What are the critical pieces of information that should be contained in a summary document?** |
| Much of the information needed is contained in the Disclosure Document, is adequate to a degree, with the following inclusion:- more detail relating to financial viability of the Franchisor itself;- Disclosure of numbers/some details of formal disputes raised by existing/previous franchisees and then consequent mediation attendance, split between Franchisor/Franchisee initiation, would be helpful to a prospective franchisee to determine the level of satisfaction of both parties within the group. In many Franchise Agreements and Dispute/Mediation resolution agreements, franchisees are bound by disparagement clauses. Combine this, with a Franchisee initiated mediation where it is common knowledge that the main "bargaining chip" for a franchisee is to opt out of the Disclosure Document, can result in a successful cover up of inherent issues within the franchise.If this factor is transparent, it is likely that issues are dealt with more effectively prior to the need for a Dispute/Mediation process being in-acted, and it will also place more bearing on avoiding a Dispute situation to occur.  |
| **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?** |
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| **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?** |
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| **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. Increased and formal financial 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?** |
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| **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. National franchise register
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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 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?** |
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| **4. What are the practical implications (costs and benefits) for prospective franchisees and franchisors of increasing cooling off or disclosure periods?** |
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| **5. How easy is it for franchisors to provide reasonable estimates of leasing costs before they are finalised?** |
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| **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 2.1.2: Extend cooling off to 14 days and modify the circumstances which trigger the commencement of the cooling off period |
| **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?** |
| Misrepresentation is a common issue leading to disputes for franchisees. All franchise arrangements are different, but many have a training or induction period. It is during this time, the franchisee has access to resources, or is able to determine whether the representation made by the Franchisor at the onset can be ultimately verified. Extending cooling off periods and/or putting in place opportunities for termination of the agreement based on misrepresentation would ensure Franchisors accurately portray the franchise offering.  |
| **Problem 2.2: Cooling off rights may expire before lease arrangements are finalised** |
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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 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?** |
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| **7. What would ‘meaningful information’ look like in terms of marketing fund disclosure?** |
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| **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** |
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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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| **9. What information should franchisors disclose in relation to supplier rebates? Are there any barriers to providing this?** |
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| **10. If franchisors are required to ensure franchisees get a return on their significant capital expenditure, how might this be done in practice?** |
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| **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?** |
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| **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 4.3.2: 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?** |
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| **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?** |
| Where mediation has not resulted in an agreement, conciliation may provide the opportunity for the parties to consider a professional's unbiased opinion. It may also be a basis in which, if one of the parties do not agree to accept the Conciliator's judgement, and should further legal action be taken, the party that refused to agree may be subject to penalty or cover legal costs of the other party willing to settle upon the original agreement.This would be an advantage whereby the financial power in-balance of the wealthier party, which is often the franchisor - can somewhat be levelled - and heightens the importance to reach an agreement during mediation. |
| **13. Would you consider including arbitration to resolve disputes in your franchising agreement, if a clear voluntary option were provided?** |
| Yes - the combined costs of both parties to mediation can amount to large sums of money, particularly where there may be a reliance on having solicitors prepare and attend mediation. These funds are wasted when there is no final agreement. So in some cases arbitration may be more beneficial when there is a need to resolve things quickly. |
| **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
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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?** |
| More clarity and easier access to the Dispute Process. Also being a combined body, it would be easier to identify rogue operators. |
| **14. Under what circumstances should franchisees be allowed a no-fault exit from the franchise system?** |
| Where misrepresentation or failure to Act in Good Faith has occurred, which may be based on a breach by the Franchisor. |
| **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. Provide statutory termination rights to franchisees
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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 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 |
| **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 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?** |
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| **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** |
| 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?** |
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| **Are there any other comments you would like to make?** |
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