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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?** | |
| current and previous franchisee list with a summary of how the end of agreement was negotiated. A clearly defined exit formula and strategy.  marketing fund disclosure including marketing expenditure in your region.  COGS including margin charged and supplier rebates given. An agreement to share any cost benefits associated with any mergers/acquisitions or improved supplier purchasing arrangements. | |
| **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?** | |
| Company annual financial reports | |
| **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 1.1.3: 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?** | |
| A key summary feature of disclosure document to include a fair valuation process of the business at the end of final term looking at all scenarios, i.e the franchisee wishes to sell and liquidate his asset for true business value, or the scenario in which the franchisor chooses not to extend a new term or indeed decides to move out of franchising altogether | |
| **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. National franchise register | |
| **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?** | |
| Financial statements for franchised businesses so as to verify the attractiveness of the investment | |
| **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 (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?** | |
| Prospective franchisees have the ability to seek their own advice. I feel changes ought to be made to ensure franchisors pay their own legal fees rather than passing the cost of preparing agreements or renewing agreements on to franchisee | |
| **4. What are the practical implications (costs and benefits) for prospective franchisees and franchisors of increasing cooling off or disclosure periods?** | |
| N/A | |
| **5. How easy is it for franchisors to provide reasonable estimates of leasing costs before they are finalised?** | |
| Lease agreements need to form part of the agreement prior to any final sign off | |
| **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?** | |
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| **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 | |
| **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** | |
| 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?** | |
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| **7. What would ‘meaningful information’ look like in terms of marketing fund disclosure?** | |
| details of dollars spent in franchisees area. breakdown of how the marketing fund is spent. Any underspend over a 2 year period should trigger a reduction in marketing levy in future years | |
| **8. How does the benefit of increased frequency of reporting of marketing funds compare to the costs of increased administration?** | |
| I believe large marketing departments would have all that information tabled- not a big ask to format it in a way that can be distributed to franchisees | |
| **Problem 3.1 Marketing funds are not always transparent** | |
| Option 3.1.3: Increase awareness and provide guidance around existing legal obligations | |
| **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?** | |
| In our business model, our franchisor is a vertically integrated provider of all aspects of the supply chain. I would like to know the margin charged for the supplies of goods we sell. Our franchisor has recently completed a merger with a [Redacted]. Disclosure of the savings from the merger and a sharing of some of those benefits via reduced COGS. | |
| **10. If franchisors are required to ensure franchisees get a return on their significant capital expenditure, how might this be done in practice?** | |
| Shopfit costs shared equally and therfore depreciated equally between franchisor and franchisee. In the event that there is no extension granted at the end of term, the franchisor reimburse the franchisee for the remaining written down value of the shopfit. | |
| **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** | |
| 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?** | |
| A sharing of the supplier rebates to protect gross profit margin | |
| **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 | |
| **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?** | |
| Conciliation of limited benefit if the franchisor has no intent or has no need to be conciliatory, thereby making arbitration more useful | |
| **13. Would you consider including arbitration to resolve disputes in your franchising agreement, if a clear voluntary option were provided?** | |
| Arbitration could work but only if the franchise code is strengthened to balance the rights of franchisees and franchisors. Currently franchise agreements are so one sided in the rights and obligations of the two parties, that an arbiter ruling on the current code may not provide any solace to a franchisee. The underlying code needs to be more protective of franchisees legitimate business interests. In our current agreement, and specifically its current renewal has inserted new deeds to spell out that the franchisee has no rights to sell at the end of the final term. This coincides with the franchisor starting to move away from franchising and concentrating its effort on building its corporate network. This leaves us vulnerable at the end of our final term despite running profitable businesses (profitable for both parties). It is possible the franchisor may inherit a windfall business at the end of the final term. This is contrary to the promises made in our initial letter of introduction which espoused the importance of every business person having an exit strategy and the value inherent in joining the franchise network as part of that exit strategy. | |
| **Problem 5.1: Some disputes are not being resolved in a fair, timely and cost effective manner.** | |
| Option 5.1.1: Status quo (no change)  Option 5.1.2: Expand options for dispute resolution, and streamline mediation procedures and services   1. Merge OFMA and ASBFEO 2. Strengthen third party involvement in dispute resolution including pathways for binding dispute resolution 3. Clarify the availability of multi-party mediation 4. 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?** | |
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| **14. Under what circumstances should franchisees be allowed a no-fault exit from the franchise system?** | |
| termination of lease. Franchisor negligence in its obligations.  Franchisor running into financial difficulty. Franchisor changing cogs or pricing that leads to large drop in profitability. | |
| **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?** | |
| Goodwill calculations based on industry standard EBITDA mutliples for non franchised businesses. Additionally, any business purchased from the franchisor at an EBITDA multiple to be bought back using the same formula. In our case, the business was purchased as a going concern at 4 times EBITDA multiple. At the end of our final term there is a real risk that goodwill will not be calculated on the same basis, and quite possibly not at all. This would result in having run a successful business which has basically paid off the initial goodwill plus shopfit(s), as it is likely we will be required to re-fit in our final term. | |
| **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?** | |
| Exit pathways should include the same principal of 'mutual benefit' which is included and defines the franchise relationship. There needs to be an insurance against exploitation by the franchisor when end of term arrives | |
| **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?** | |
| Clarification if required that restraint of trade only enforceable upon a fair valuation of goodwill which is pre-determined and not arbitrarily decided by the franchisor. | |
| **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?** | |
| Clearly outline a fair valuation of goodwill based on factors including profitability and growth and industry wide valuation models. | |
| **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?** | |
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