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| **Name** | Craig Cameron |
| **State**  | New South Wales |
| **Stakeholder Type:**  | Current franchisee |
| **Industry Type:** | Optometry and Eyewear |
| **1. What are the critical pieces of information that should be contained in a summary document?** |
| The intent of the franchisor to remain committed to a Franchising modelHow the supply chain worksCost of goodsDispute resolution pathwaysFranchise feesAdvertising fees |
| **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 details about the Franchisor including the financial strength of the company, longevity of the company, prior disputes with Franchisees and track record of resolution. |
| **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?** |
| Online education that needed to be completed by the intended Franchisee prior to entering in to the franchise. Cost to be met by the Franchisor via an annual fee paid by the Franchisor |
| **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. Electronic and hard copy disclosure
2. Separate information statement
3. Increased and formal financial disclosure
4. Provision of the ACCC’s Franchisee Manual
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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?** |
| a. Helpful to have both formats and no cost disadvantage involvedb.Having a separate information statement would reduce the likelihood of it being lost inside a larger franchise agreementc. More detail of financial disclosure to ensure the franchisee is more aware and informed. Also it would provide increased accountability by the Franchisor. |
| **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. Franchisors would be required to include a statement about the accuracy of financial statements
2. 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?** |
| This would provide added information for the franchisee, provide clarity on the financial position of the company and hold them accountable for any statements issued. |
| **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?** |
| An increased cooling off period would enable either party to reconsider after working as partners in the franchised business. Sometimes it would be difficult to wind back the business to be what it was prior to entering the agreement |
| **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 2.1.3: 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?** |
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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 leasesOption 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?** |
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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 2.3.2: 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?** |
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| **7. What would ‘meaningful information’ look like in terms of marketing fund disclosure?** |
| A clearly defined disclosure statement showing where the marketing dollar is being spent. It would need to outline what amount of funding is general in nature to benefit the brand in general and what percentage is specifically benefiting the franchisee. Having a more detailed and meaningful disclosure document would hold the Franchisor accountable for spending the marketing fee directly in marketing and not in the general running of the Franchisors business. |
| **8. How does the benefit of increased frequency of reporting of marketing funds compare to the costs of increased administration?** |
| Frequency of reporting should be justifiable as a legitimate and necessary cost of doing business. The Franchisor should reasonably expect to spending a percentage of royalties charged in running a successful Franchised business. |
| **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 standards1. 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. Require master franchisors to meet requirements of marketing funds
4. Clarify the distribution of marketing funds in the event of franchisor insolvency
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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?** |
| Supplier rebates should be fully or almost fully passed on to the franchisee. The franchisor's business model should derive its profit from the royalty fees not from kick backs gained from suppliers. Disclosure of rebates is virtually impossible to verify and so virtually impossible to enforce. |
| **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** |
| Option 4.1.2: Address conflicts of interest in the handling of supplier rebates to franchisors by requiring increased disclosureOption 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?** |
| Without increased disclosure the Franchisor is unfairly advantaged above the franchisee. This is especially true where the Franchisor controls the sale price and discounting structure. |
| **Problem 4.2 Conflicts of interest in the context of capital expenditure** |
| Option 4.2.1: Status quo (no change)Option 4.2.2: Modify the Code to define significant capital expenditure and provide rights for franchisees to recoup the value of significant capital expenditureOption 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?** |
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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?** |
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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?** |
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| **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?** |
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| **14. Under what circumstances should franchisees be allowed a no-fault exit from the franchise system?** |
| where it is clear the Franchisor is no longer actively pursuing a Franchise model - ie is corporate.  |
| **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?** |
| This could be done in the form of a minimum set formula for valuation of the Franchisees interests in the business. |
| **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 CodeOption 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?** |
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| **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?** |
| The Franchisee must be entitled to goodwill in the business at a fair market rate. |
| **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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