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| **Name** | Emmanuel Martin |
| **State** | New South Wales |
| **Stakeholder Type:** | Professional Advisor |
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| **1. What are the critical pieces of information that should be contained in a summary document?** | |
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| **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?** | |
| A regulated national franchise register would be a good step forward in protecting both prospective and existing franchisees as well as ethical franchisors. A National Franchise Register should be regulated with disclaimers to protect franchisors who are willing to participate in the register. As a general observation based on my work in the industry, the majority of franchisors do not have the appetite, the systems or the general know-how on accurately measuring the true profitability or cashflow of their individual units (sites) that make up their franchise network. I do not agree with the views of many franchisors that representing basic profitability data of their network would hold them liable for misrepresentation or give away trade secrets. The registry should be designed in a way that franchisors are protected from misrepresentation as long they provide numbers that are validated by franchisee accountants. The franchise register should contain as a minimum 1. Number of Stores/Units in the network by state 2. Average Net Sales (based on all units trading over 12 months) 3. Average COGS (based on all units trading over 12 months) 4. Average Labour Cost % of Net Sales (based on all units trading over 12 months). 5. A statement on how franchisors have provided advice to their franchisees on following compliance with state and federal labour awards) 6. The Average Occupancy Cost % Of Net Sales (based on all units trading over 12 months). 7. The Average Overhead (other Expenses) % of Net Sales (based on all units trading over 12 months). 8. The Average EBITDA (Net Profit) % of Net Sales (based on all units trading over 12 months). 9 The Number of franchise disputes of the network in the last 12 months. 10. The number of units closed 11. The number of units opened 12. The number of multi-unit franchisees  The benefits of the register far outweigh the costs of maintaining it. We should create a rating system that provides ranking of ethical franchisors . This is a worthwhile undertaking | |
| **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 educational resources available on franchising are largely basic, irrelevant and outdated. The federal government should set up a comprehensive franchise training portal that brings quality franchisee education which should focus on: 1. How to perform effective due diligence before buying a franchise (highly critical that is lacking at the moment). 2. Understanding the P&L/Cashflow and how it relates to valuation of the business  3. How to plan an exit strategy 4. Leadership and Team Management 5. Compliance in Franchising 6. Dispute Resolution  There should be accreditation associated with training and education programs.  The government should work with franchisors to absorb the cost of training platforms. | |
| **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 disclosure   1. Electronic and hard copy disclosure 2. Separate information statement 3. Increased and formal financial disclosure 4. Provision of the ACCC’s Franchisee Manual 5. Leasing 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?** | |
| Please see the response to Q1 above. | |
| **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   Option 1.2.3: Pre-entry education | |
| **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 a big gap (as mentioned above) in franchisors fully understanding the profitability of the franchisees. This has been a major issue for many years. It exposes both the franchisor and franchisees to several risks. Franchisors should be encouraged to verify financial statements, the summary of which should be updated in a national franchise register. It should be mandatory for franchisors to view franchisee P&L data through systems such as Xero or MYOB (etc).  Franchisors should establish internal teams and work with third party expertise to establish these systems ASAP. Failure to do so will result in many franchise systems failing in the next few years. | |
| **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  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?** | |
| 1.3.2 is an excellent step forward on ethical franchising. Please see response above on how Government can implement a platform. I am happy to discuss several ideas if you are interested via phone or meet. 1.3.3 is a must but I feel there is a lack of expertise in providing industry-specific financial advice. I think national accounting organisations should be consulted and specific franchise-related training should be provided to financial advisors and advisors who can then gain accreditation.  I would encourage setting up an independent franchise financial advisory body that can facilitate this process. In terms of legal advice, the same should apply. | |
| **4. What are the practical implications (costs and benefits) for prospective franchisees and franchisors of increasing cooling off or disclosure periods?** | |
| I believe that prospective franchisees 'try before they buy' where practical. A practical example in a cafe franchise would be along the lines of : 1. Prospective franchisee still pays for a basic training program before the full franchise fee is exchanged. 2. Prospective franchisee works and gains experience in either a franchisor corporate store (if existing) or works and gains experience in other franchised stores. 3. Prospective franchisee and franchisor then sit down and discuss the outcomes and if they both feel there is a good fit, a more thorough training program is conducted and franchise pays full amount and runs store. While the above may sound simplistic and potential impractical, I believe we should work towards increased cooling off and disclosure periods, but at the same time protecting the cost outlays of franchisors.  A new franchise model that will trail the above process is launching in Sydney in early 2020. | |
| **5. How easy is it for franchisors to provide reasonable estimates of leasing costs before they are finalised?** | |
| This is very easy to provide because franchisors generally have this information before they commit to a site. | |
| **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?** | |
| This is a complex situation as most leases are signed at the outset. | |
| **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?** | |
| The 21 day disclosure period allows both parties to see how the partnership may work before a commitment is made. | |
| **Problem 2.2: Cooling off rights may expire before lease arrangements are finalised** | |
| Option 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?** | |
| See ideas on education above | |
| **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?** | |
| There needs to be some measurement of ROI on historical marketing spend and ratings from existing franchisees on the effectiveness of franchisors marketing program. Also a summary of how marketing fund was used - eg. Digital , Local Area Marketing, PR etc | |
| **8. How does the benefit of increased frequency of reporting of marketing funds compare to the costs of increased administration?** | |
| It is reasonable to do an annual review of marketing funds. Increasing the frequency of disclosure is cost prohibited and does not value. | |
| **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. Require master franchisors to meet requirements of marketing funds 4. 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?** | |
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| **9. What information should franchisors disclose in relation to supplier rebates? Are there any barriers to providing this?** | |
| This is a major issue with franchisors adversely affecting the profitability of franchisees. Franchisors should at a minimum disclose a range of margins they make on major categories without going into specifics For ex. Coffee Bean Supply - xx% to xx% | |
| **10. If franchisors are required to ensure franchisees get a return on their significant capital expenditure, how might this be done in practice?** | |
| 1. Pass on substantial supply chain savings to franchisees. (and disclose a range of margins franchisors are making) 2. Minimise cost of store fitouts  3. Negotiating rents not exceeding 12% of projected sales 4. Provide professional coaching and mentoring to franchisees | |
| **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 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?** | |
| see above. Happy to discuss in detail . | |
| **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,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?** | |
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| **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?** | |
| - When franchisor fails to deliver on representations made in the disclosure document | |
| **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 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?** | |
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| **Problem 6.2 Excessive restraint of trade clauses may inhibit lawful pursuit of subsequent business interests** | |
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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 6.3 There are different expectations around the treatment of goodwill in franchise arrangements** | |
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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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| **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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