



**Australian Government**

# Franchising Taskforce Issues Paper

Developing the Government's response to the *Fairness in Franchising Report* of the Parliamentary Joint Committee on Corporations and Financial Services

## **Franchising Taskforce**

Department of Employment, Skills, Small and Family Business

Department of the Treasury

Department of the Prime Minister and Cabinet

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The document must be attributed as the Franchising Taskforce Issues Paper in relation to the *Fairness in Franchising* Report of the Parliamentary Joint Committee on Corporations and Financial Services.

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## The Taskforce process

On 14 March 2019, the Parliamentary Joint Committee on Corporations and Financial Services (the Committee), chaired by the Hon Michael Sukkar MP, handed down its report, [Fairness in Franchising](#), which made 71 recommendations to improve the operation and effectiveness of the franchising sector.<sup>1</sup>

In accordance with the Committee's first recommendation, an inter-agency Franchising Taskforce (the Taskforce) has been established. The Taskforce is made up of senior officers from the Department of Employment, Skills, Small and Family Business (the Department of Employment), the Department of the Treasury and the Department of the Prime Minister and Cabinet. It is co-chaired by the Department of Employment and the Department of the Treasury.

The Taskforce is interested in hearing from people involved in the franchising sector about possible solutions to the problems identified in the Committee's Report.

The intended timetable for consultation is:

Stage	Release Month	Timeframe for consultation	Consultation method
<b>Issues paper</b>	August 2019	Four weeks	Email and phone submissions, meetings
<b>Regulation impact statement<sup>2</sup></b>	October 2019	Six weeks	Email and phone submissions, meetings

The Franchising Taskforce will use the consultation findings to inform the development of the Regulation Impact Statement and advice to the Government on its response to the Report.

### This Issues Paper

This Issues Paper is intended to generate feedback to the Taskforce and is framed around the Committee's recommendations. To assist you with providing feedback, the Taskforce has grouped the recommendations under seven draft policy principles that emerged from its reading of the Committee's report. The Issues Paper presents some observations on the Committee's recommendations and questions to prompt feedback. You can choose which issues you respond to and the format that you provide your feedback in.

To encourage broad participation from the franchising sector, the Taskforce will maintain confidentiality of feedback and not publish responses to the Issues Paper.

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<sup>1</sup> The *Fairness in Franchising Report* can be accessed either by clicking the link in this Issues Paper or from the Committee's webpage at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Corporations\\_and\\_Financial\\_Services/Franchising](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/Franchising).

<sup>2</sup> A Regulation Impact Statement is a government requirement that ensures there has been robust analysis and genuine consultation prior to Government policy decisions.

The [exact wording of the Committee's recommendations](#) is available.

Set out below are some general questions to help guide your responses to the Issues Paper:

- How has franchising changed since the new Code was introduced in 2015 and how have those changes affected your business?
- What action could the franchising sector take to raise standards and conduct across the sector and what could government do to help?
- Are the problems identified by the Committee widespread or are they localised to particular areas of the franchising sector?
- Where the Report recommends changes to the Code, are the problems identified by the Committee significant enough that government action is needed or can it be dealt with another way (that is, without changing the Code)?
- What factors need to be addressed if a recommendation or other proposal is to be implemented effectively, so that the benefits outweigh potential risks and costs?

The Taskforce encourages you to keep these questions in mind when you are responding to the principles in this Paper.

## How to contribute

You are invited to respond to the Issues Paper by writing to the Taskforce at [franchising@employment.gov.au](mailto:franchising@employment.gov.au) or you can call 1800 314 677.

The deadline for responses to the Issues Paper is 5pm (AEST) on Friday, 20 September 2019.

## Introduction

The franchising sector is an important contributor to the Australian economy. There are over 1300 franchises operating in Australia and around 97,000 franchisees, which are predominantly made up of small and family businesses. They have a turnover in excess of \$182 billion revenue and employ over 594,000 people.<sup>3</sup>

The Australian Government is committed to supporting an effective and fair regulatory framework in the franchising sector, without placing unnecessary burden on the sector.

## About the regulation of franchising

Franchising is mainly regulated by the Franchising Code of Conduct (the Code), a prescribed industry code under the *Competition and Consumer Act 2010* (CCA), as well as by the Australian Consumer Law (ACL) and the *Corporations Act 2001*. The purpose of the Code *'is to regulate the conduct of participants in franchising towards other participants in franchising'* (Clause 2).

The Australian Competition and Consumer Commission (ACCC) in accordance with its Compliance and Enforcement policy is responsible for the regulation and enforcement of the CCA and the ACL as well as specific industry codes prescribed under the CCA, such as the Franchising Code of Conduct.

The Australian Securities and Investments Commission, the Australian Taxation Office, the Fair Work Ombudsman and state and territory fair trading agencies also have roles in regulating the sector.

The regulation of franchising has been subject to regular scrutiny over the years. A voluntary industry code was introduced in February 1993, followed by a mandatory code of conduct in 1998. Following multiple reviews of the sector the current Code was introduced in January 2015.

## Scope

The Taskforce is focussed on assisting the Government with developing a response to the Committee's report. The Taskforce is asking for comments that focus on the broad principles identified in this Paper, and will be taking into account evidence already provided to the Committee. The Taskforce, therefore, is not looking for information already on the public record.

Most of the Committee's recommendations call on the Government to take action. Others ask the Taskforce to examine the implementation of a recommendation.

Some recommendations are directed to independent agencies or relate to other government processes. These recommendations will not be considered by the Taskforce. They include recommendations relating to:

- unfair contract term protections for small businesses, including franchisors and franchisees – these protections are the subject of a separate review by the Department of the Treasury,

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<sup>3</sup> Figures as at the end of the 2018 financial year. See *X0002 Franchising in Australia, Industry Report X0002*, IBISWorld, (April 2019), <http://clients1.ibisworld.com.au/reports/au/industry/productsandmarkets.aspx?entid=1902>

which will be issuing a consultation Regulation Impact Statement in the near future<sup>4</sup> (Recommendations 9.1, 9.2, 9.3, 9.4, 9.5 and 9.6)

- actions by the ACCC in its role as independent regulator of the CCA, the Code and the Australian Consumer Law. The ACCC also decides on collective bargaining applications and is overseeing a proposal for a specific exemption for franchising<sup>5</sup> (Recommendations 4.2, 7.2, 14.1, 14.2)
- whistleblower protections – these are dealt with in the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* which extended protections to corporations and their employees (Recommendation 3.1), and
- franchising in the automotive sector – this is being managed in a separate process by the Department of Industry, Innovation and Science, in close consultation with the Taskforce (Recommendation 17.1)<sup>6</sup>.

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<sup>4</sup> See *Review of Unfair Contract Term Protections for Small Business*, Department of the Treasury, <https://consult.treasury.gov.au/market-and-competition-policy-division-internal/c2018-t342379/>

<sup>5</sup> See *Collective bargaining class exemption*, ACCC, <https://www.accc.gov.au/public-registers/class-exemptions-register/collective-bargaining-class-exemption>.

<sup>6</sup> Comments and questions in relation to Recommendation 17.1 and the automotive code specifically can be directed to the Department of Industry at [automotivefranchising@industry.gov.au](mailto:automotivefranchising@industry.gov.au). Comments on other issues raised in this Paper relating to the Franchising Code generally can be made to [franchising@employment.gov.au](mailto:franchising@employment.gov.au).



## Draft principles emerging from the Parliamentary Joint Committee's report

Below are some draft principles which emerged from the Committee's report that the Taskforce proposes to use to guide the consultation process.

Business phase	Draft Principle
<b>Entering a franchising agreement</b>	1 Prospective franchisees should be able to make reasonable assessments of the value (including costs, obligations, benefits and risks) of a franchise before entering into a contract with a franchisor
	2 Franchisees and franchisors should have 'cooling off' time to consider whether the relationship is right for them after signing
<b>Operating a franchise</b>	3 Each party to a franchise agreement should be able to verify the other party is meeting its obligations and is generating value for both parties
	4 A healthy franchising model fosters mutually beneficial cooperation between the franchisor and the franchisee, with shared risk and reward, free from exploitation and conflicts of interest
	5 Where disagreements turn into disputes, there is a resolution process that is fair, timely and cost effective for both parties
<b>Exiting</b>	6 Franchisees and franchisors should be able to exit in a way that is reasonable to both parties
<b>Regulatory framework across all phases</b>	7 The framework for industry codes should support regulatory compliance, enforcement and appropriate consistency

Feedback is invited on whether these draft principles offer a reasonable grouping of the Committee's recommendations and whether they are suitable for guiding further consultation.

## Overview of the Committee's and Taskforce's view on the performance of the franchising sector

In the Report, the Committee acknowledged that *'many franchisors have developed franchise systems that operate to the mutual benefit of the franchisor and the franchisees'* [page xiv] though it also noted that *'some franchisors were behaving opportunistically, but that the issues were relatively isolated.'* [page xiii].

The Report and submissions to the Committee contained allegations of serious harm to franchisees by franchisors. The Report indicated that this is compounded in some cases where franchisees are not effectively able to use the courts or dispute resolution processes to address problems.

The Taskforce acknowledges that many franchise systems are well run and comply with the law. The Taskforce's approach is to consider effective and efficient ways to address issues identified by the Committee, without imposing an undue burden on franchisors who are doing the right thing.

At the same time, the Taskforce is aware that not all franchise businesses will succeed and the reasons for business failure could be related to a range of factors, including those which are not in the direct control of the franchisor or franchisee.

## 5.1: Draft Principle 1. Prospective franchisees should be able to make reasonable assessments of the value (including costs, obligations, benefits and risks) of a franchise before entering into a contract with a franchisor

### Issues identified by the Committee

Evidence presented to the Committee suggests that poor disclosure can create a problem for prospective franchisees when it comes to making a decision whether or not to enter a franchise agreement. On the one hand, disclosure allows franchisees to make informed business decisions and helps prospective franchisees conduct due diligence. On the other hand, having more information may not on its own lead to better decision making.

Further, submissions to the Committee highlighted a range of things that can make it difficult for franchisees to do their due diligence prior to entering a franchise agreement.

### Committee recommendations

The Committee made a number of recommendations relating to assisting franchisees with due diligence:

- requiring franchisors to provide more information about financial viability, profitability and other obligations (such as, business activity statements, product input costs, margin and pricing history, lease agreements, goodwill calculations and personal workload expectations) (Recommendations 6.1, 6.2, 6.3, 6.4, 6.5, 7.1, 8.2, 18.3, 20.2, 20.3, 21.1)
- helping franchisees to access trustworthy third-party advice (for example, making more information publicly available through a registry and franchising specific website and examining the role of third party brokers where this reduces disclosure to franchisees and electronic disclosure) (Recommendations 6.6, 6.14, 6.16, 18.1, 18.2), and
- closing loopholes and clarifying regulation to prevent a party getting around the Code (Recommendations 6.1, 8.4, 20.1, 21.2, 21.3).

## Questions

1. What information is of most value to prospective franchisees?
  - How could it be made easier for franchisees to get and use this information, for example, through the disclosure document, a register of franchises or a franchising website?
2. How could prospective franchisees develop greater awareness of the information they need to conduct due diligence?
3. Do franchisees have a good understanding of costs and fees before entering into a franchise business? If not, why not?
4. When conducting due diligence have you been able to find the information you sought?

## 5.2: Draft Principle 2. Franchisees and franchisors should have 'cooling off' time to consider whether the relationship is right for them after signing

### Issues identified by the Committee

Cooling off and disclosure periods<sup>7</sup> give franchisors and franchisees time to consider whether the relationship is right for them before an agreement becomes final. They allow a prospective franchisee to terminate an agreement and may be used by a franchisee when a decision has been made for emotional reasons, rather than business reasons. This overcomes the problem of franchisees being forced to continue an arrangement they believe they should not be in.

The Committee considered a number of issues relating to cooling off periods. The Committee heard evidence that there is uncertainty in the sector around whether calendar or business days are used to work out the cooling off period and when it begins. For example, the franchisor and the franchisee might have different interpretations of when an agreement is entered, which means different time periods for disclosure (before entering the agreement) and cooling off (after entering the agreement).

### Committee recommendations

The Committee made a number of recommendations relating to cooling off periods, including:

- ensuring prospective franchisees have access to all necessary information and documentation during the disclosure period and before the cooling off period expires (Recommendation 10.2)
- clarifying the trigger and timing in calendar days of cooling off periods (Recommendations 10.1, 10.3), and
- extending the cooling off periods to franchise transfers, renewals and extensions, as well as franchisors (Recommendation 10.4).

### Questions

5. Are there changes to cooling off periods that could support better decision making?
6. Should franchisors also get the benefit of cooling off periods?

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<sup>7</sup> A 'cooling off period' is the time given to the franchisee to cancel the agreement without suffering a penalty; the 'disclosure period' is the time given to a franchisee to consider the disclosure document before they can enter an agreement.

### 5.3: Draft Principle 3. Each party to a franchise agreement should be able to verify the other party is meeting its obligations and is generating value for both parties

#### Issues identified by the Committee

Franchisees may be required under their franchising agreement to contribute to funds that are used for shared purposes. The Committee focused on marketing and advertising funds. Some shared funds are directly controlled by the franchisor.

Evidence presented to the Committee suggested that some franchisees receive limited information about how franchisors use marketing and advertising funds and whether they are receiving any value from the franchisor's use of those funds. The Committee also heard allegations that some franchisors had used the funds for things not related to marketing and advertising.

#### Committee recommendations

The Committee made recommendations to improve the use of shared resources, particularly marketing funds, through:

- clarifying the requirements of the Code and relevant accounting standards for the treatment and reporting of shared funds, including increased frequency of reporting (Recommendations 6.7, 6.9, 6.10, 6.11, 6.12), and
- introducing fines<sup>8</sup> to deter abuse of shared funds (Recommendation 6.8).

#### Questions

7. What information in a marketing fund statement do franchisees find helpful to understand who contributed to the fund and how the money was spent?
8. Are there examples that show how increased frequency of reporting (from annually to quarterly) would affect the use of marketing and cooperative funds by franchisors and the costs of administering funds?
9. Would franchisors consider not having a marketing fund if the Committee's recommendations about accounting standards and more regular reporting are introduced?

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<sup>8</sup> Penalties for a breach of the Code are 'civil pecuniary penalties'. These are monetary fines that are imposed and collected by civil courts. We refer to 'fines' for simplicity.

## 5.4: Draft Principle 4. A healthy franchising model fosters mutually beneficial cooperation between the franchisor and the franchisee, with shared risk and reward, free from exploitation and conflicts of interest

### Issues identified by the Committee

Franchise agreements should provide the basis for healthy ongoing cooperation between franchisors and franchisees where both parties work towards offering products and services that deliver value to customers.

Evidence submitted to the Committee identified examples of unhealthy business practices where it is the sale of franchises, rather than their operation, that may be the primary source of the franchisor's profit and also where there are potential conflicts of interest.

**Conflicts of interest:** The Committee found that in some cases franchisors receive income from both sales of a product by the franchisee and a rebate from the supplier of that product. This could give rise to a conflict of interest where supplier rebates give the franchisor an incentive to require franchisees to purchase from a more expensive supplier or purchase more supplies than are needed.

Ideally, the terms and operation of franchise agreements and the Code should lead to more cooperative and effective business practices.

**Capital investment:** The Committee identified a situation it saw as a form of co-investment where a franchisor uses the franchisees as a source of capital to grow the franchise system, rather than payments for things such as goodwill and the use of the franchisors brand and business systems.

### Committee recommendations

The Committee's recommendations about improving business practices between partners in a franchising business include:

- limiting or prohibiting one party changing the contract (unilateral variation), changing a contract after it is signed (retrospective variation) in franchisee agreements (Recommendations 9.7, 9.8, 16.2)
- improved disclosure and scrutiny of supply arrangements, rebates and practices in individual franchise agreements as well as at an industry-wide level (Recommendations 7.2, 8.1, 8.2)
- removing conflicts of interest in supply arrangements to ensure that cost and efficiency pressures are not recklessly placed on franchisees (Recommendation 8.3), and
- capital investment by franchisees and franchisors being supported by an appropriate framework to share risk and reward (Recommendations 17.1 and 22.1).

## Questions

10. What benefits do supplier rebates offer that cannot be achieved in other ways?
11. What kind of information about supply restrictions, rebates, volume supply and setting maximum prices would a prospective franchisee find helpful prior to entering into a franchise agreement?
12. How easy would it be for franchisors to provide the information required by recommendations 8.1 and 8.2?
13. How is co-investment and the sharing of risk and reward managed in your franchise system?



## 5.5: Draft Principle 5. Where disagreements turn into disputes, there is a resolution process that is fair, timely and cost effective for both parties

### Issues identified by the Committee

Negotiations and disagreements between franchisors and franchisees can be part of a healthy business relationship. When disputes arise the Code looks to provide for accessible, affordable and effective dispute resolution.

Evidence received by the Committee suggests the dispute resolution arrangements in the Code could be improved, in particular, when mediation fails, as litigation can be expensive and time consuming.

The Committee also heard that franchisees are not generally that aware of dispute resolution processes that they can use under the Code.

The Committee observed that the various channels for dispute resolution can be confusing. Under the current system, where disagreements cannot be resolved, parties can get information and assistance with non-court dispute resolution services through the Office of the Franchising Mediation Adviser (OFMA), the Australian Small Business and Family Enterprise Ombudsman (ASBFEO), state small business commissioners and private providers.

When it raised the option of binding arbitration as an addition to the existing dispute resolution scheme, the Committee noted that it is different to mediation. Arbitration is a private alternative dispute resolution process. It has some similarities with court decisions – evidence is considered by an independent arbitrator and a final decision is made that settles the dispute – however, it is not as formal a process as a court hearing.

### Committee recommendations

The Committee made recommendations about dispute resolution, including:

- improving the management of the dispute resolution services and organisations providing those services (Recommendation 15.1)
- strengthening the dispute resolution processes under the Code, including expressly allowing multi-party dispute resolution under the Code and binding arbitration (Recommendation 15.2)
- allowing one body (a merger of ASBFEO and OFMA) to manage the dispute resolution process, potentially creating efficiencies and increased awareness about dispute resolution under the Code (Recommendation 15.1)and
- having that body funded by an industry levy (or payment) paid by franchisors based on the numbers of complaints against them, a change from the present situation where the parties share the costs of mediation (Recommendation 15.1).

## Questions

14. What options are available or could be introduced to more effectively resolve disputes between franchisees and franchisors, including the creation of a single body to manage dispute resolution processes?
- Are there ways to get a fairer, timely and/or more cost-effective outcome from mediation?
  - Is there a role for mandatory arbitration when mediation does not resolve a dispute?
15. Should all dispute resolution services be supported by a levy paid by franchisors, if one is introduced, or only some services?

## 5.6: Draft Principle 6. Franchisees and franchisors should be able to exit in a way that is reasonable to both parties

### Issues identified by the Committee

Franchising agreements are contracts which either expire or are terminated. It is important to recognise circumstances can change and parties to a franchising agreement should have options to exit the arrangement simply and fairly.

Evidence submitted to the Committee indicated that exit arrangements are often heavily weighted against franchisees. Issues identified by the Committee include 'no fault' exits, the profitability of the franchised business, early termination during a dispute, the treatment of goodwill and the reasonableness of restraint of trade clauses.

Goodwill is the benefit a business gains from having a good reputation, usually resulting in regular customers and repeat trade. As goodwill is not a tangible asset, like equipment or stock; its value can only be decided by agreement.

As noted by the Committee, the presence of restraint of trade clauses may stop former franchisees from pursuing legitimate business interests. The Committee considered that, while overly restrictive restraint of trade clauses may not be enforceable, the costs of court action may make it hard for many franchisees to challenge even clearly unfair contract terms.

### Committee recommendations

The Committee recommended changes to exit arrangements for franchising agreements, including:

- widening the range of trigger events for 'no fault' exits from franchising agreements, including changes in the profitability of the franchised business or the franchisor or to the terms of the franchisee's lease (Recommendations 11.1, 11.2, 11.3, 11.4, 20.1)
- preventing early agreement termination during dispute resolution or when unsubstantiated claims are made against parties (Recommendations 11.4, 11.5)
- increasing disclosure of end-of-term arrangements for goodwill, as well as more information on how goodwill is treated in transfers of franchise agreements (Recommendations 12.1, 12.2), and
- supporting former franchisees to open new businesses without breaching reasonable restraint of trade clauses in franchise agreements, by clarifying the protections in the Code as well as increasing franchisee awareness of the protections available to them (Recommendations 13.1, 13.2 and 13.3).

## Questions

16. Does your franchise agreement give you a fair way to exit your franchise agreement?
  - If not, in what circumstances do you consider you should you be able to exit?
17. How do your franchise agreements provide for goodwill when the agreement ends?
18. If your franchise agreement has a restraint of trade clause, would it prevent you using skills you have developed in the franchise system in a new business?
19. What would be the overall effect on a franchise system, including other franchisees, if franchisees are able to leave a system in any of the scenarios in recommendation 11.1?

## 5.7: Draft Principle 7. The framework for industry codes should support regulatory compliance, enforcement and appropriate consistency

### Issues identified by the Committee

The Committee identified issues in the regulatory framework that span the lifecycle of franchising, including whether parties have sufficient incentives to comply with the law and the Code.

The Committee considered whether the ACCC has enough power to enforce the Code.

The ACCC, as an economy wide regulator of the CCA, ACL and the prescribed industry codes, cannot take action in respect of every report it receives and therefore focuses its resources on addressing those circumstances that will, or have the potential to, harm the competitive process or result in widespread consumer or small business harm.

### Committee recommendations

The Committee considered a range of actions to improve compliance with the Code, including:

- increasing the ACCC's powers of intervention in franchising business arrangements and churning and burning<sup>9</sup>, as well as increasing fines for non-compliance with ACCC requests for information (Recommendations 4.1, 6.15)
- the Taskforce examine how franchising policy can get an appropriate level of input from franchisees, including whether it is appropriate for a franchisee representative to be a voting member of the franchisor's board (Recommendation 5.1)
- the Taskforce examine how the Government could obtain regular reports on the regulation of franchising, including how industry participants are seeking to get around legislation (Recommendation 5.2)
- introducing fines for all breaches of the Code and increasing the amount of the fine (Recommendation 16.1), and
- ensuring that industry codes, particularly the Oil Code of Conduct and the Franchising Code of Conduct, are aligned as far as possible, so that requirements on regulated industries and penalties for breach are consistent (Recommendations 6.13, 10.5, 10.6, 11.3, 16.3, 17.1, 17.2).

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<sup>9</sup> The Report describes churning as “the repeated sale at a single site of a failed franchise to a new franchisee” and burning as “continually opening new outlets, some of which are unlikely to be viable, to profit from upfront fees, while leaving existing outlets to struggle and close”.

## Questions

20. What are the most common reasons for non-compliance with the Code?
21. What would be the best mix of options that would address alleged breaches of the Code?  
For example, increased fines, more enforcement action, giving the ACCC power to prevent franchise sales, an industry wide ombudsman, more effective dispute resolution or any alternative ways to enforce the Code, in addition to enforcement by the ACCC.
22. Do franchisees have sufficient channels to represent your interests to government?
23. What information is required to monitor the effectiveness of franchising regulation?
  - How easy would it be to provide this information, and to ensure it is reliable?

## Consultation questions

This Issues Paper poses a range of questions for consideration and response by interested members of the public. These are reproduced below in a consolidated list.

### General questions

- How has franchising changed since the new Code was introduced in 2015 and how have those changes affected your business?
- What action could the franchising sector take to raise standards and conduct across the sector and what could government do to help?
- Are the problems identified by the Committee widespread or are they localised to particular areas of the franchising sector?
- Where the Report recommends changes to the Code, are the problems identified by the Committee significant enough that government action is needed or can it be dealt with another way (that is, without changing the Code)?
- What factors need to be addressed if a recommendation or other proposal is to be implemented effectively, so that the benefits outweigh potential risks and costs?

### **Questions re Draft Principle 1. Prospective franchisees should be able to make reasonable assessments of the value (including costs, obligations, benefits and risks) of a franchise before entering into a contract with a franchisor**

1. What information is of most value to prospective franchisees?
  - How could it be made easier for franchisees to get and use this information, for example, through the disclosure document, a register of franchises or a franchising website?
2. How could prospective franchisees develop greater awareness of the information they need to conduct due diligence?
3. Do franchisees have a good understanding of costs and fees before entering into a franchise business? If not, why not?
4. When conducting due diligence have you been able to find the information you sought?

### **Questions re Draft Principle 2: Franchisees and franchisors should have 'cooling off' time to consider whether the relationship is right for them after signing**

5. Are there changes to cooling off periods that could support better decision making?
6. Should franchisors also get the benefit of cooling off periods?

### **Questions re Draft Principle 3: Each party to a franchise agreement should be able to verify the other party is meeting its obligations and is generating value for both parties**

7. What information in a marketing fund statement do franchisees find helpful to understand who contributed to the fund and how the money was spent?

8. Are there examples that show how increased frequency of reporting (from annually to quarterly) would affect the use of marketing and cooperative funds by franchisors and the costs of administering funds?
9. Would franchisors consider not having a marketing fund if the Committee's recommendations about accounting standards and more regular reporting are introduced?

**Questions re Draft Principle 4: A healthy franchising model fosters mutually beneficial cooperation between the franchisor and the franchisee, with shared risk and reward, free from exploitation and conflicts of interest**

10. What benefits do supplier rebates offer that cannot be achieved in other ways?
11. What kind of information about supply restrictions, rebates, volume supply and setting maximum prices would a prospective franchisee find helpful prior to entering into a franchise agreement?
12. How easy would it be for franchisors to provide the information required by recommendations 8.1 and 8.2?
13. How is co-investment and the sharing of risk and reward managed in your franchise system?

**Questions re Draft Principle 5: Where disagreements turn into disputes, there is a resolution process that is fair, timely and cost effective for both parties**

14. What options are available or could be introduced to more effectively resolve disputes between franchisees and franchisors, including the creation of a single body to manage dispute resolution processes?
  - Are there ways to get a fairer, timely and/or more cost-effective outcome from mediation?
  - Is there a role for mandatory arbitration when mediation does not resolve a dispute?
15. Should all dispute resolution services be supported by a levy paid by franchisors, if one is introduced, or only some services?

**Questions re Draft Principle 6: Franchisees and franchisors should be able to exit in a way that is reasonable to both parties**

16. Does your franchise agreement give you a fair way to exit your franchise agreement?
  - If not, in what circumstances do you consider you should be able to exit?
17. How do your franchise agreements provide for goodwill when the agreement ends?
18. If your franchise agreement has a restraint of trade clause, would it prevent you using skills you have developed in the franchise system in a new business?
19. What would be the overall effect on a franchise system, including other franchisees, if franchisees are able to leave a system in any of the scenarios in recommendation 11.1?



**Questions re Draft Principle7: The framework for industry codes should support regulatory compliance, enforcement and appropriate consistency**

20. What are the most common reasons for non-compliance with the Code?
21. What would be the best mix of options that would address alleged breaches of the Code? For example, increased fines, more enforcement action, giving the ACCC power to prevent franchise sales, an industry wide ombudsman, more effective dispute resolution or any alternative ways to enforce the Code, in addition to enforcement by the ACCC.
22. Do franchisees have sufficient channels to represent your interests to government?
23. What information is required to monitor the effectiveness of franchising regulation?
  - How easy would it be to provide this information, and to ensure it is reliable?