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| **Name** | Michael Sherlock |
| **State**  | Queensland |
| **Stakeholder Type:**  | Former franchisee |
| **Industry Type:** | Food |
| **1. What are the critical pieces of information that should be contained in a summary document?** |
| There should be a summary of all fees and charges in the annxure that includes all finical benefits the franchisor will receive during the term of the agreement ,simple English easy to understand .Do not allow Franchisors to impose costs by varying the operations manual .Ifthese charges are varied during the term of the agreement both parties to the agreement should agree to the variation . |
| **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?** |
| All major fees and charges in the Franchise deed and annexures including - the actual percentage of money collected via the marketing fund that is spent on driving network sales and the percentage retained by the Franchisor for Head offices charges - Full details on all rebates received from all suppliers  |
| **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?** |
| Introduction to franchising on line similar to the one conducted by Griffith University APCFE , case studies of where franchisees were exploited 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 1.1.3: 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?** |
| Not even a layer can understand all the charges - act in Good Faith ??? this can only be tested in a court Don't listen to FCA it does not represent the industry only Consultants and Lawyers , Franchise systems on the board are not a reflection of the sector |
| **Problem 1.2: The reliability of information provided to prospective franchisees may be difficult to assess** |
| 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?** |
| Nothing else has worked - the problems continue to be exposed |
| **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?** |
| Hard hitting examples of how not to be dissapointed  |
| **4. What are the practical implications (costs and benefits) for prospective franchisees and franchisors of increasing cooling off or disclosure periods?** |
| Make sure all prospective Franchisees meet face to face with existing and ex franchisees and spend a considerable amount of time in a store observing  |
| **5. How easy is it for franchisors to provide reasonable estimates of leasing costs before they are finalised?** |
| Very easy - no excuses  |
| **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?** |
| Lease or Agreement to Lease should be finalized before the Franchise agreement is agreed  |
| **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 longer the better , dont be in a hurry |
| **Problem 2.2: Cooling off rights may expire before lease arrangements are finalised** |
| Option 2.2.3: Provide a new cooling off period of seven days where lease terms are 10 per cent above maximum estimates provided in disclosure documents |
| **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 landlord will finalize a lease to get the deal - dont be fooled |
| **Problem 2.3: Cooling off rights in transfers, extensions and renewals can be unclear, including with respect to franchisee to franchisee sales** |
| Option 2.3.3: Extend cooling off to transfers only |
| **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?** |
| Existing franchisees dont need cooling off for a renewal , new franchisees do . |
| **7. What would ‘meaningful information’ look like in terms of marketing fund disclosure?** |
| Percentage of funds collected spent on what they are collected for driving Net work (Franchisee ) sales , max aloud on head office expenses 15%McDonald's spends 100%  |
| **8. How does the benefit of increased frequency of reporting of marketing funds compare to the costs of increased administration?** |
| Annual is OK provided the above is implemented  |
| **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. Require master franchisors to meet requirements of marketing funds
3. 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?** |
| For a start no where in the Code does it state that marketing funds should be spent on Marketing , i have seen where the Franchisor keeps 95% on head office including employing family members on Marketing  |
| **9. What information should franchisors disclose in relation to supplier rebates? Are there any barriers to providing this?** |
| The current system does not assist in any way , a full (phone book) of suppliers but no total amount collected State Coca Cola - 12% of all network purchases is rebated to the Franchisoor Include ALL suppliers - shopfitters - equipment - finance- IT - POS- project management -etc etc - everything MacDonald's does not receive rebates  |
| **10. If franchisors are required to ensure franchisees get a return on their significant capital expenditure, how might this be done in practice?** |
| No Guarantee can be provided for a new store - if the Franchisee is required during the term to buy new equipment or upgrade re image HO should show the benefits via a case study where sales grew or expenses declined  |
| **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?** |
| Normal ROI |
| **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?** |
| Full disclosure and all conflicts of interest - allow rebates but disclose them , provided the franchisee is still buying cheaper than individually they get the buying power  |
| **Problem 4.2 Conflicts of interest in the context of capital expenditure** |
| Option 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?** |
| Case studies provided showing how the capital expenditure ha driven sales  |
| **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?** |
| Up front disclosure - no changes during the term of the agreement  |
| **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?** |
| Fund the ACCC via making the registration of deeds compulsory annually - large fines for non disclosure how many RFG franchisees complained to ACCC and they did nothing Keep Mediation compulsory and measure success keep the system accountable - you cant leave until it is agreed - ask the family court how they do it  |
| **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 5.1.2: Expand options for dispute resolution, and streamline mediation procedures and services1. 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
 |
| **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?** |
| Put them in a room and make it happen |
| **14. Under what circumstances should franchisees be allowed a no-fault exit from the franchise system?** |
| Limited - get it right on entry |
| **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?** |
| EBITDA is the only measure not Goodwill - industary benchmarks |
| **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. Additional requirements where the franchisor is terminating in special circumstances
2. Provide statutory termination rights to franchisees
3. Holding rent payments from franchisees in trust
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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?** |
| If the franchisee is in breech of the agreement , wage theft , health department issues , and they have been given notice to remedy they can be terminated  |
| **Problem 6.2 Excessive restraint of trade clauses may inhibit lawful pursuit of subsequent business interests** |
| Option 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?** |
| uncommon sense |
| **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?** |
| No Goodwill - EBITDA or Market value for a store that has not traded for a finicanual year |
| **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?** |
| no opinion |
| **17. What are the implications of repealing the Oil Code of Conduct and adding specific fuel retailing provisions to the Franchising Code?** |
| no opinion |
| **Problem 7.1: Some franchisors experience additional regulatory burden from having to comply with both the Franchising Code and the Oil Code** |
| Option 7.1.1: Status quo (no change) |
| **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?** |
| no opinion |
| **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 7.2.1: Status quo (no change) |
| **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?** |
| no opinion |
| **Are there any other comments you would like to make?** |
| I have appeared at the Senate enquirey - haw many layers do you want ? DO something this time dont listen to the FCA and Lawyers stop another RFGI have been a franchisor and Franchisee since the early 80's and seen it all - no longer involved at any level but know how to fix it - happy to assist you if needed  |