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| **Name** | Stephen Penfold |
| **State**  | New South Wales |
| **Stakeholder Type:**  | Franchisor |
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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?** |
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| **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?** |
| The current disclosure is so complex that it is more often than not unread by the prospective Franchisee.It is designed by lawyers, and is not in language that most prospective Franchisees can absorb, or often, because of its complexity, they do not read it. |
| **Problem 1.2: The reliability of information provided to prospective franchisees may be difficult to assess** |
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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?** |
| None of the above.Simplify the statement into readable language |
| **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 1.3.3: 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?** |
| Buying into a franchise should have advise from an Accountant and a Lawyer oblgatiry. |
| **4. What are the practical implications (costs and benefits) for prospective franchisees and franchisors of increasing cooling off or disclosure periods?** |
| The present timing is fine.By the time a prospective franchisee has entered into the time period, they have already had as long as they need to view disclosure, discuss with accountant and check with lawyers.If they are not satisfied by the time they are asked to commit, then they do not need to commit.More time is unnecessary |
| **5. How easy is it for franchisors to provide reasonable estimates of leasing costs before they are finalised?** |
| Finallity on leasing cost cannot be finalised till the franchisee signs up.However leasing cost estimates that are close to actuallity are easily abtained prior to final sign up |
| **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?** |
| Most Lessors will not enter a final contract to lease with an option for the lessee to withdraw, so it seems imperative that those leasing obligations are finalised after the cooling off period |
| **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 2.1.1: Status quo, with clarification of the operation of existing cooling off requirements in the 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?** |
| Both Franchisee and Franchisor should have undertaken their research into the other party before entering the contract.That research should not be deferred till after entering a contract |
| **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?** |
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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?** |
| More obligation on exiting franchisees to disclose honestly are needed.When an existing franchisee is selling an existing right to a terrirtory, often the disclosure by the outgoing franchisee to the incoming franchisee is not made fully clear to the franchisor. |
| **7. What would ‘meaningful information’ look like in terms of marketing fund disclosure?** |
| Existing audited accounts done annually. |
| **8. How does the benefit of increased frequency of reporting of marketing funds compare to the costs of increased administration?** |
| I see it as an unnecessary expense for the fund |
| **Problem 3.1 Marketing funds are not always transparent** |
| Option 3.1.1: 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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| **9. What information should franchisors disclose in relation to supplier rebates? Are there any barriers to providing this?** |
| All supplier rebates should Be trensparent |
| **10. If franchisors are required to ensure franchisees get a return on their significant capital expenditure, how might this be done in practice?** |
| It is not possible to "guarantee" a franchisee'e profitability or return on investment.The franchisor does not run the franchisees business so cannot guarantee its success.Outside the franchise sector, a significant number of small businesses fail, while within the sector, few fail.My experience over approximately 275 franchisees over the last 35 years is that failures fall into 3 categoriesFirsty, successful profitable businesses that fail because their owner kives beyond his or her income, or has excessive borrowings. (nearly always hidden form the franchisor.) In our system, that accounts for 6 ailures or .025%Other failures occur most often because both the franchisor and the franchisee wrongly assess the skills the prospective franchisee brings to the business. These failures range from a franchisee being unable to generate sufficient profit to meet their lifestyle, to we, the franchisor, being surprised they do not perform as we anticipated, even though in lots of cases the franchisee is in fact satisfied.Every competent franchisor wants to lift the mininium entry level of new joiners, however, particularly in a resale, if the prospective franchisee is determined to buy, it is often hard for the franchisor to reject that purchase when the criteria are mostly subjective. |
| **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?** |
| Should the franchisee choose to ignore the franchisor's recommendations, neither party should enter the agreement. |
| **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?** |
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| **Problem 4.2 Conflicts of interest in the context of capital expenditure** |
| Option 4.2.1: Status quo (no change)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?** |
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| **Problem 4.3 Unilateral variations can lead to conflicts of interest and exploitation** |
| Option 4.3.1: Status quo (no change)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?** |
| None |
| **13. Would you consider including arbitration to resolve disputes in your franchising agreement, if a clear voluntary option were provided?** |
| No |
| **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 5.1.3: 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?** |
| Under circumstances included in both disclosure and the franchise agreement, and under the rules agreed to when bith parties enter the agreement.If the prospect finds those rules too harsh, they should not buy into that franchise |
| **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?** |
| In our aggreemnt it is clearly defined.While the franchisee remains a franchisee, the goodwill associated with that business is his to exploit'At seperation, he also has the rigth to sell that goodwill on to a new franchisee who has been approved by the franchisor.The franchisee keeps all that goodwill but pays a small administraive fee for the franchisor to manage the process. The exiting franchisee is then bound by the constraint clauses in the contract to protect both the new owner, the franchisor and other existing franchisees from the exiting franchisee carrying on a like business for a limited time. |
| **Problem 6.1 Reasonable exit arrangements may not be, or may not be perceived to be, available or accessible for some franchisees** |
| Option 6.1.1: Status quo (no change)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?** |
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| **Problem 6.2 Excessive restraint of trade clauses may inhibit lawful pursuit of subsequent business interests** |
| Option 6.2.1: 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?** |
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| **Problem 6.3 There are different expectations around the treatment of goodwill in franchise arrangements** |
| Option 6.3.1: Status quo (no change)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?** |
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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?** |
| N/A |
| **17. What are the implications of repealing the Oil Code of Conduct and adding specific fuel retailing provisions to the Franchising Code?** |
| N/A |
| **Problem 7.1: Some franchisors experience additional regulatory burden from having to comply with both the Franchising Code and the Oil Code** |
| Option 7.2.1: Status quo (no change)Option 7.2.3: Improved education and guidance on expectations around compliance with the 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?** |
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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** |
| Option 7.2.1: Status quo (no change)Option 7.2.2: Application and enhancement of civil penalties to all breaches of the Franchising and Oil CodesOption 7.2.3: Improved education and guidance on expectations around compliance with the 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?** |
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| **Are there any other comments you would like to make?** |
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