

The franchising inquiry's verdict: reform on the horizon



On 14 March 2019, the Parliamentary Joint Committee on Corporations and Financial Services handed down its report into the operation and effectiveness of the Franchising Code. So, what's the story?

The Committee didn't hold back, commenting that "the problems, including exploitation in certain franchise systems, are systemic." The major problem, it said, is that franchisors have been empowered to take advantage of franchisees under the current regulatory framework, with franchise agreements and the Franchising Code offering little recourse to franchisees.

The current regulatory assumption is that well-informed franchisees will be able to protect their own interests, so the focus has been on mandated disclosure by franchisors. According to the Committee, disclosure is helpful but it is not enough. The Committee also points to a lack of franchisee associations in the Australian franchising sector, in contrast to the US where strong franchisee associations have some real countervailing power.

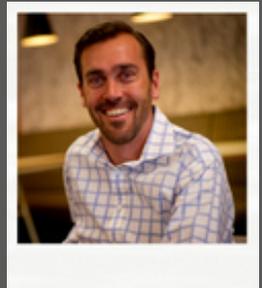
The Committee has made 71 recommendations for change. The more radical ones include:

- civil pecuniary penalties for breaches of the Franchising Code.
- a public franchise register operated by the ACCC, with disclosure documents and template franchise agreements publicly available online.
- stricter disclosure requirements around financial statements for franchise stores.
- extension of the unfair contract terms regime to franchising agreements.
- mandated transparency on the value of goodwill in franchise stores and supplier rebates to franchisors.
- binding arbitration under the Franchising Code.

The Committee recognises that not all franchisors are bad, and says its recommendations won't overly burden franchisors who treat franchisees fairly. However, it's clear that what is being proposed is a major overhaul of the regulatory framework in an attempt to rebalance the power dynamic between franchisors and franchisees.

The Committee's recommendations are now sitting with the government for consideration. To date, neither major party has come out for or against any of the specific recommendations, but it's a safe bet that some reform at least will be coming.

Questions? Give us a call.



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