

FRANCHISING UPDATE

NOVEMBER 2009

FRANCHISING CODE OF CONDUCT

In our previous Franchise Update we referred to the Federal Government's Parliamentary Joint Committee on Corporations and Financial Services tabled report into the operation of the Franchising Code of Conduct.

The Committee made eleven (11) recommendations.

The Small Business Minister Craig Emerson back in June 2009 outlined a process for "targeted" consultations on the reforms proposed in the report.

In November 2009 the Minister announced the Government's official response to the Committee's report. In summary the announcement stated as follows:

- there will be a strengthening of the Code and the unconscionable conduct provisions of the Trade Practices Act (TPA) to give small businesses greater protection from anti-competitive behaviour;
- the TPA will be amended so that unconscionable conduct will be deemed to relate not only to the process of settling the acquisition or sale of a franchised business, but also the terms and conditions of the contract and/or the Franchise Agreement and the ongoing behaviour of the parties to the contract;
- penalties will be imposed of up to \$1.1 million for corporations and \$220,000 for individuals in engaging in unconscionable conduct or making false or misleading representations;
- the Australian Competition and Consumer Commission (ACCC) will be empowered to conduct random audits under the Code and to seek redress on behalf of all franchisees who are party to an agreement;
- the ACCC will also be empowered to issue public warnings about rogue or unscrupulous franchisors;

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- an acknowledgement by the Government of the Committee's recommendation regarding the need for good-faith provisions. The Government will introduce measures into the Code in this regard aimed at preventing behaviours deemed inappropriate in franchising agreements;
- proposed amendments to the Code to clarify obligations of the Franchisor and Franchisee in respect of end-of-term arrangements and mediation.

At this point in time the Government intends to establish an expert panel to inquire further into and report on the above. The panel is expected to report by the end of January 2010.

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This update is for your information and interest only. It is not intended to be comprehensive, and it does not constitute and must not be relied on as legal advice. You must seek specific advice tailored to your circumstances.

If you would like to ask any question about this or any other similar issue Raymond may be contacted on 5499 3622 between 8.00am to 5.30pm Monday to Friday or email rduffy@quinnscattini.com.au

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