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FRANCHISING UPDATE

JUNE 2009

The Federal Government's Parliamentary Joint Committee on Corporations and Financial Services tabled its report into the operation of the Franchising Code of Conduct on December 2008. The inquiries made pursuant to that report were aimed at identifying and, where justified, recommending improvements to the Code.

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In summary the Terms of Reference for the Committee were to inquire into:

- The nature of the franchising industry, including the rights of both franchisors and franchisees;
- Whether an obligation for franchisors, franchisees and prospective franchisees to act in good faith should be explicitly incorporated into the Code;
- The interaction between the Code and the Trade Practices Act 1974, particularly with regard to unconscionable conduct in business transactions;
- The operation of the dispute resolution provisions under the Code; and
- Any other related matters.

The Committee made eleven (11) recommendations. The key recommendations were as follows:

1. The Code be amended to require that disclosure documents include a clear statement by franchisors of the liabilities and consequences applying to franchisees in the event of franchisor failure;
2. Online registration system for Australian franchisors, requiring them on an annual basis to lodge a statement confirming the nature and extent of their franchising network and providing a guarantee that they are meeting their obligations under the Code and the Trade Practices Act 1974;
3. Government to conduct a review (within two years of them taking effect) of the efficacy or value of the 1 March 2008 amendments to the disclosure provisions of the Code;
4. Government to explore avenues to better balance the rights and liabilities of franchisees and franchisors in the event of franchisor failure;
5. The Code be amended to require franchisors to disclose to franchisees, before a franchise agreement is entered into, what process will apply in determining end of term arrangements such that due regard is given to the potential transferability of equity in the value of the business as a going concern;





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6. A new clause 6 be inserted into the Code as follows:

“Franchisors, franchisees and prospective franchisees shall act in good faith in relation to all aspects of a franchise agreement.”

7. The Trade Practices Act 1974 be amended to include pecuniary penalties for breaches of the Code;

8. The Trade Practices Act 1974 be amended to include pecuniary penalties for breaches of section 51AC (re unconscionable conduct in business transactions), section 52 (re misleading or deceptive conduct) and other mandatory industry codes under section 51AD.

9. The ACCC be given investigative powers in relation to suspected breaches of the Code.

As at June 2009 the Small Business Minister Craig Emerson has reportedly indicated that "targeted" consultations on the reforms proposed in the report will be the next step.

Time will tell what, if any, of the recommendations in the report will be adopted.

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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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