

# Changes to the code of conduct for the franchising industry should enhance a thriving sector.

Report: Judith Tydd

## CODE READ

● The long-term viability of Australia's franchising system will be determined by a series of changes set to revolutionise the \$130 billion sector.

The changes are broadly underpinned by plans to streamline processes for both franchisors and franchisees. These include the introduction of disclosure documents outlining liabilities in the event of franchisor failure, and investigating the development of an online registration system for franchisors.

Despite federal and state inquiries assessing the efficiency of the sector, the industry remains without clarity and in apparent limbo.

Federal small business minister Craig Emerson's office recently received a report from an expert panel on changes to the Franchising Code of Conduct.

Emerson says in order to promote competition, the government will strengthen the code and the "unconscionable conduct provisions of the Trade Practices Act to give small businesses greater protection from anti-competitive behaviour by more powerful businesses".

The best way to proceed, Emerson says, is to identify specific franchising behaviours considered inappropriate and introduce policies to tackle them.

"For example, we will amend the Franchising code of conduct to require franchisors to disclose

to franchisees the processes that will apply in determining end-of-term arrangements, including whether or not there is some right of renewal beyond the term of the agreement," he says.

"We will also amend the franchising code to specify the type of behaviour that is expected in dispute resolution, such as attending and participating in meetings and abiding by confidentiality undertakings."

Other activities, including unforeseen capital expenditure and unilateral contract variations, were referred to an expert panel for assessment. The findings have been reported to the federal government, and remain at the disposal of Emerson's office. He says the timeline will be determined "once the government has considered its response to the expert panel report".

"We have committed to implementing regulatory changes in a way that minimises the administrative burden on businesses," he says.

Throughout the consultative process, the government has actively engaged with franchisee and franchisor groups and other stakeholders, including the Franchise Council of Australia, Emerson says.

A PricewaterhouseCoopers survey released late last year revealed the majority of franchisors are expecting to see 10-15 per cent business growth in 2010.



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Franchise Council of Australia executive director Steve Wright says this is optimism in a business model which should have been ravaged by the downturn in the same way many small and large businesses were.

"The fact is, franchising was not hit in the way many had anticipated it would be ... sails were trimmed and hatch fasteners checked, but the shutters were not raised. Business investment continued and marketing dollars continued to flow to keep businesses in the customer eye," he says.

Wright says the changes being recommended by the government are positive and will further enhance a sector that is already – both economically and from a regulatory point of view – in a strong position.

"Only those attempting to sail too close to the wind need be worried," he says. "This is a good thing."

While the government's plans to strengthen the code of conduct are well intentioned, it is misguided if it seeks to prevent business failure, DC Strategy executive director Rod Young says.

"To try and regulate the nature of the commercial arrangement between two parties is tinkering with the dynamics of business and the risk/reward nexus," he says.

Young admits that while the government has openly sought input from industry, many submissions are motivated by "self-interest by

**FEDERAL  
INQUIRY  
PROPOSED  
REFORMS  
INCLUDE:**

- Franchisors include a statement in the disclosure documents pertaining to any liabilities and consequences to franchisees in the event of franchisor failure.
- Investigating the development of an online registration system for franchisors.
- Franchisors disclose

- to franchisees, before a franchising agreement is entered into, what process will apply in determining end-of-term arrangements.
- The Australian Bureau of Statistics develops mechanisms for collecting and publishing relevant statistics on the franchising sector.

- Requiring franchisors, franchisees and prospective franchisees to act in good faith.
- Giving the ACCC power to investigate when it receives credible information that a party to a franchising agreement is engaging in conduct contrary to the code.

the submitting parties and often the inquiry panel is exposed to extreme views".

Although he agrees with the proposals "in principle", he doesn't foresee any reforms introduced leading to a change in behaviour.

He believes the 100 biggest franchisors have the vast majority of franchisees within their networks, and "understand the franchising relationship is dependent on having profitable franchise owners who are satisfied with their decision to become and remain a franchise owner".

Franchisors will adapt to the proposed changes just as they did when the code

of conduct was first introduced in 1998, he says. While there will be a cost of compliance, this will ultimately be passed on to the franchisee and then the consumer.

Young says recent press coverage of the franchise sector that has depicted it in a negative light, including coverage of the legal battle involving Jim's Mowing founder and franchisor Jim Penman, is unlikely to deter new entrants to the industry.

A spokesperson for the Australian Competition and Consumer Commission says the proposed changes are being considered by the minister and any reform "remains a policy matter for government". **BRW**

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\*Source: BRW Fast Franchises issue 10, 09, 08, 07, 06, 05, 04

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