



Franchise Council of Australia Media Release

FCA endorses Minister's announcement on Franchising Code of Conduct changes

April 3 2014

Yesterday, the Minister for Small Business, Bruce Billson announced the specific changes planned for the Franchising Code of Conduct and published [The Future of Franchising](#) statement.

The document outlines the Government's position on the 2013 Wein Report and the changes they plan to implement.

The Franchise Council of Australia, which has been working collaboratively with the Government to endeavour to implement the Wein Report recommendations in a pragmatic and cost-effective manner, endorses the Minister's announcement. The FCA remains supportive of the intent, which provides clarity on the Government's position and will allow the sector to move on from the regulatory limbo it has been in since January last year.

FCA Deputy Chairman and Partner at Norton Rose Fulbright, Stephen Giles says while the news is generally good, there are some inconsistencies that need to be addressed.

"Unfortunately some of the drafting in the Exposure Draft of the Code that accompanied the Minister's announcement is not consistent with the Minister's statement, and does not reflect the Wein Report recommendations.

"Of particular concern is a new statutory definition of good faith, which seems to fly in the face of the Wein Report recommendation that the Code simply be amended to incorporate the current common law duty. The FCA supported that position, but does not support the new wording, which will create unnecessary legal uncertainty, disputation and compliance cost," Mr Giles says.

Added to the FCA's concerns is a new civil penalty for failure to act in good faith, which has never been the subject of any public discussion and again runs contrary to the Wein Report recommendations that had such widespread industry support.

"Across the board, the proposed new penalty provisions also appear to need some work. However, the amounts attached to the new provisions of up to \$51,000 through the court, and up to \$8,500 for infringement notices without court action are sensible dollar amounts. The ACCC has assured the FCA and the sector penalties will be used to stop 'fly by night' franchise operations and scammers," Mr Giles says.

The Government has announced a three week public consultation period, during which interested parties can share their thoughts on the proposed changes before they are implemented.

The FCA will continue to work with the Government during this period and beyond to endeavour to fine tune the Exposure Draft so that it is consistent with the Minister's statement, the Wein Report and the industry perspective.

It is likely the changes will be in place before the close of the calendar year.



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The Franchise Council of Australia is the peak industry body for the \$131 Billion Australian franchise sector representing franchisors, franchisees and suppliers/advisors. www.franchise.org.au