



Franchising Alert December 2008

Federal Inquiry Report Released

On 25 June 2008, the Parliamentary Joint Committee on Corporations and Financial Services (**Committee**) agreed to conduct an inquiry into the Franchising Code of Conduct (**Code**). After considering around 160 written submissions and evidence provided during 4 public hearings, the Committee has now tabled its report in which it made 11 recommendations.

What were the Committee's recommendations?

- > **Recommendation 1** – That the government amend the Code to require a franchisor's disclosure document to include a clear statement of the liabilities and consequences applying to franchisees in the event that the franchisor's business fails
- > **Recommendation 2** – That the government investigate the benefits of developing an online registration system to require franchisors to lodge an annual statement which:
 - confirms the nature and extent of the franchisor's network, and
 - expressly guarantees that the franchisor is meeting its obligations under the Code and the *Trade Practices Act 1974 (Cth)* (**Act**)
- > **Recommendation 3** – That the government review the effectiveness of the 1 March 2008 amendments to the disclosure provisions of the Code within 2 years of the amendments taking effect
- > **Recommendation 4** – That the government explore avenues to better balance the rights and liabilities of franchisees and franchisors in circumstances in which a franchisor's business fails
- > **Recommendation 5** – That the Code be amended to require franchisors to disclose to franchisees the process that will apply to determine end of term arrangements, giving regard to the potential transferability of equity in the value of the business as a going concern
- > **Recommendation 6** – That the name of the Office of the Mediation Advisor be changed to the Office of the Franchising Mediation Adviser
- > **Recommendation 7** – That the government require the Australian Bureau of Statistics to develop mechanisms for collecting and publishing relevant statistics about franchising
- > **Recommendation 8** – That the Code be amended to include a requirement that franchisors, franchisees and prospective franchisees must act in good faith in relation to all aspects of a franchise agreement



- > **Recommendation 9** – That the Act be amended to include pecuniary penalties for those who breach the Code
- > **Recommendation 10** – That consideration be given to amending the Act to include pecuniary penalties for those who breach sections 51AC (unconscionable conduct), 52 (false and misleading conduct) and other mandatory industry codes referred to in section 51AD of the Act
- > **Recommendation 11** – That the ACCC be given power to investigate when it receives credible information which indicates that a party to a franchising agreement may be engaging in conduct contrary to their obligations under the Code

Click on this link to read the full report of the Committee: http://www.aph.gov.au/senate/committee/corporations_ctte/franchising/report/report.pdf

Our Initial Comments

Some of the recommendations made by the Committee, such as its proposal that the Code be amended to incorporate a good faith requirement, were expected. Other recommendations, such as those relating to disclosure about the consequences of franchisor failure and financial penalties, focus on areas which historically have not been addressed by government.

In some parts of the report, the Committee simply recommended that the government undertake further investigation or explore other avenues to manage the relationship between franchising parties. This is primarily due to the number of reviews and government enquiries which have taken place in recent times (as detailed in the Committee's report), and it was hoped that the Committee would be in a position to express concluded views on the best

way to manage franchise arrangements. Unfortunately, however, it seems that if the government accepts the recommendations of the Committee, the franchise industry will remain in a state of flux for a while longer. This has an impact on the stability of all franchised businesses.

A more comprehensive report on the recommendations of the Committee and the impact they may have on your business will be provided by the end of this year.

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